

## AGREEMENT

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF DELRAY BEACH, FLORIDA, hereinafter called the CITY or OWNER, and M&M ASPHALT MAINTENANCE INC DBA ALL COUNTY PAVING, hereinafter called CONTRACTOR. OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### Article 1. WORK.

- 1.1 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. For the project entitled:

**ITBC NO.: 2026-014**  
**Brant Bridge Connector**  
**CITY PROJECT NO.: 20-015**  
**FDOT LAP Project No. 441586-1-58-01**

- 1.2 The Contractor, in full and complete satisfaction of its role as general contractor, hereby accepts responsibility for the completion of the Work as provided by the Contract Documents, and will perform the procurement of materials and equipment required by the Contract Documents, construction coordination, construction, supervision and project management as may be required in order to construct the Work in accordance with the Contract Documents such that the finished Work shall be performed and completed and the Work will be performed in accordance with all required state and local code requirements as are described in the Contract Documents. Notwithstanding, the foregoing shall not be construed to impose any design responsibility on Contractor except where such design responsibility is an existing contractual requirement of the Contractor pursuant to Florida law in performance of the Work or the Contract Documents.
- 1.3 The Contractor shall schedule and attend regular meetings with the City and Consultant as required for the timely and proper completion of the Project, but in no event less than twice a week. The following people shall attend the meeting on behalf of Contractor: Project Executive and General Superintendent.
- 1.4 The Contractor hereby represents and warrants to the City that the Contractor has and will continue, to the extent appropriate during the Project: (1) to evaluate the scope, schedule and budget established by the City, for the Project in order, among other things, (a) to assess the quality and soundness of such program, schedule and budget, (b) to identify and evaluate alternatives to the City's schedule so as to reduce the time required for construction, (c) to evaluate and recommend alternative materials and systems and methods of achieving the City's program schedule and cost requirements or other design parameters, and (2) as and when requested by the City or the Consultant, to discuss and review the cost, scope and schedule any suggested revisions to same.
- 1.5 The Contractor hereby represents and warrants to the City that (a) the Contractor has carefully reviewed and shall continue to review the Drawings (including all notes and specifications contained in the Drawings), designs and other Contract Documents, (b) the responsibilities of the Contractor are properly identified and assigned therein, and (c) the Contractor will timely bring to the attention of City (via written notification) if it discovers that the Drawing (including all notes and specifications contained in the Drawings) contain any errors, omissions, inconsistencies, or areas of conflict or overlap in the Work to be performed by the Contractor, with sufficient advanced notice so as not to delay the progress of the Work.

- 1.6 The Contractor shall coordinate and integrate the activities of the Consultant, Contractor, the City, and other persons or entities participating in the construction of the Project.
- 1.7 The Contractor hereby represents and warrants that the Contractor has particular expertise and experience in the construction of projects similar to the Project and in the performance of the Work and other services required hereunder.
- 1.8 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents and applicable Florida Law, either by tests, inspections, approvals, activities, duties, actions or inactions of the Threshold inspectors, special inspectors, the Consultant, building department inspectors, building department officials or by persons or entities other than the Contractor.
- 1.9 **No Recovery for Changed Market Conditions.**  
In entering into the Agreement, the Contractor represents and warrants that it has considered all impacts and potential impacts associated with the following: (1) COVID-19, Monkey Pox, and related worldwide pandemics (“Pandemics”); and (2) the current military conflict involving Russia and the Ukraine (the “Ukraine Military Conflict”). The Contractor further represents and warrants that in entering into this Agreement, it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, including but not limited to impacts from the Pandemics and the Ukraine Military Conflict. The Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into account these impacts from the Pandemics and the Ukraine Military Conflict, and has included all of those factors in the Project Schedule and Contract Sum.

The Contractor will not seek any price increases or time extensions relating to or arising from any impacts from the Pandemics or Ukraine Military Conflict.

The City shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

## **Article 2. CONSULTANT.**

The Project will be administered by a third-party construction engineering and inspection firm, who is hereinafter called CONSULTANT and who will assume all duties and responsibilities and will have the rights and authority assigned to CONSULTANT in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

## **Article 3. ENTIRE AGREEMENT.**

- 3.1 The Contract Documents consist of this Agreement, all terms and conditions of the solicitation, General and Supplementary Conditions, the City’s Bid Package (including M/WBE Program Requirements and Project Manual), Drawings and Specifications, Addenda issued prior to execution of this Agreement, other documents and exhibits listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein (the “Contract Documents”).
- 3.2 The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent or in conflict with any of the terms of this Agreement, this Agreement shall govern. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. NO CHANGES, AMENDMENTS OR MODIFICATIONS OF

ANY OF THE TERMS OR CONDITIONS OF THE CONTRACT DOCUMENTS SHALL BE VALID UNLESS REDUCED TO WRITING AND SIGNED BY BOTH PARTIES.

- 3.3 Any of the Contract Documents not attached hereto but expressly identified in this Agreement are hereby incorporated by reference and shall be deemed to be of the same force and effect as if actually attached hereto.
- 3.4 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. On the Drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small-scale drawings.
- 3.5 In the event of any conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities, keeping in mind that the better quality or greater quantity of Work shall be provided in accordance with the City's interpretation:
- (1) This Agreement, the General Conditions, and all Exhibits hereto, as modified;
  - (2) Addenda, with those of later date having precedence over those of earlier date;
  - (3) City's Bid Package; and
  - (4) Drawings and Specifications.
- 3.6 In the case of an inconsistency between the Drawings and Specifications or within either document not clarified by an Addendum, the better quality or greater quantity of Work shall be provided in accordance with the City's interpretation.

**Article 4. CONTRACT SUM.**

- 4.1 The City shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, the Contract Price (including all Contractor fees) of Two Million Seventy-Nine Thousand dollars (\$2,079,000.00), subject to additions and deductions by Change Order as provided in the Contract Documents. The Contract Price shall include Contractor's Fee for the proper performance of the Work. Contractor agrees and represents that the level of staffing, administrative resources, and other conditions of General Conditions shall be sufficient for the Project throughout completion of the Work.
- 4.2 It is the intent and understanding of Contractor in providing a Contract Price for this Work, that the Contract Documents provide for the construction of the Work by the Contractor, including all devices, fasteners, materials or other work not shown in the Drawings but which are reasonably inferable therefrom and any and all incidental accessories necessary to complete the Work (even if not specified in the description of the Work, but necessary for proper installation and operation (not arising from a design deficiency in the design criteria of the equipment) of the Work as required by the Contract Documents), all of which shall be included as part of the Cost of the Work. The expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Work and exercising the care, skill and diligence of the Contractor by the Contract Documents. Notwithstanding, the foregoing shall not be construed to impose any design responsibility on Contractor except where such design responsibility is contractually required or an existing requirement of Florida law in the performance of the Work or the Contract Documents.
- 4.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Consultant, Contractor shall include in the Contract Price for such further development consistent with the Contract Documents and reasonably inferable therefrom as necessary to produce the indicated results (not arising from a design deficiency in the design criteria). Such further development does not include changes in scope, systems, kinds and quality of materials,

finishes or equipment, all of which, if required, shall be incorporated by Change Order. Contractor will construct the Project in strict accordance with the Contract Documents.

#### 4.4 Subcontractor Buyout/Value Engineering

4.4.1 Contractor shall work with the City to negotiate the most complete and economical deals with the Subcontractors that have not been “bought out” as of the date of this Agreement in order to establish and or achieve the Contract Price.

4.4.2 In addition, in order to control costs, the Contractor shall submit to the City, for the City’s review for any unbought scope of Work, (i) a bid analysis and list of proposed Subcontractors for the performance of the several portions of the Work, (ii) the scope of Work to be performed under each respective subcontract, (iii) a detailed estimate of the Cost of the Work based on such bids, (iv) a list of alternate selections of persons or entities for each proposed Subcontractor and their respective bids, along with a list of the differences between the alternate bids and those set forth in the bid analysis, and (v) the instructions, clarifications, written responses, and other information given to or submitted by the bidders. The Contractor shall consult with the City before awarding the subcontract and shall provide the City with a copy of each proposed subcontract for the City’s review. The Contractor shall provide the City with a complete copy of each executed subcontract.

4.4.3 Until the Subcontractor Buyout is complete, Contractor shall provide City with written ongoing budget updates on a weekly basis or as requested by City.

4.4.4 Contractor shall participate in Value Engineering the Contract Documents with the City and/or Consultant with the goal of finding acceptable means for reducing the Cost of the Work. Upon acceptance by City of recommendation for Value Engineering, the Contract Documents shall be modified to reflect such changes. All savings in connection with Value Engineering of the Work shall revert to City.

4.5 Contractor represents to City that prior to execution of this Agreement, Contractor has compared and reviewed all general and specific details on the Drawings and that all conflicts, discrepancies, errors, and omissions, which are within the commonly accepted knowledge base of a licensed general contractor and subcontractors, or which a reasonably prudent licensed general contractor or subcontractor would have discovered, have been disclosed to the City. Contractor shall represent the same upon inspection of any Drawings prepared after execution of this Agreement. Therefore, Contractor warrants that 1) the Contract Price includes, without limitation, the cost of correcting all conflicts, discrepancies, errors, or omissions which Contractor identified; 2) that Contractor’s review and comparison of all drawings has been taken into consideration the Project can be constructed in accordance with the Contract Documents and therefore, the Contractor represents that the Contract Price represents the total cost of the Work; 3) that Contractor can complete the Project in the time set forth in the Agreement and the approved Project Schedule; and 4) that Contractor has considered all customary issues that could impact price and time, including the inefficiencies pertaining to the Pandemics as well as the Ukrainian Military Conflict.

4.6 Schedule of Values. The Contractor shall provide to City, for City’s written approval, a written Schedule of Values with supporting Subcontractor bids and scope of work used to establish each line item in the Contract Price, which Schedule of Values shall be used for all payment applications going forward.

#### **Article 5. CONTRACT TIME; LIQUIDATED DAMAGES.**

5.1 The work will be substantially completed within **three hundred and thirty-five (335)** calendar days from the date of the issuance of the Notice to Proceed and completed and ready for final payment in accordance with paragraph 15.13 of the General Conditions within **thirty (30) calendar days** from the date of Substantial Completion.

5.2 Liquidated Damages. The CITY and CONTRACTOR recognize that time is of the essence of this Agreement and that the CITY will suffer financial loss if the Work is not completed within the times specified in paragraph 5.1 above, plus any extensions thereof allowed solely in accordance with Article 13 of the General Conditions.

They also recognize that the actual loss suffered by the CITY if the Work is not completed on time is not readily ascertainable at the time of entering this Contract. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CITY for each calendar day that expires after the time specified in paragraphs 5.1 for substantial completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR shall pay the CITY for each calendar day that expires after the time specified in paragraph 5.1 for completion and readiness for final payment. CONTRACTOR expressly acknowledges that such sum is not payable as a penalty but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, and additional overhead and costs likely to be sustained by the CITY, estimated at the time of executing the Contract. If the CITY reasonably believes in its discretion that Substantial Completion will be delayed, it shall be entitled, but not required to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. Partial use or occupancy of the Work shall not result in the Work deemed substantially completed, and such partial use or occupancy shall not be evidence of Substantial Completion.

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

<u>Original Contract Amount</u>	<u>Daily Charge Per Calendar Day</u>
\$299,999 and under.....	\$980
\$300,000 but less than \$2,000,000.....	\$1,699
\$2,000,000 but less than \$5,000,000.....	\$2,650
\$5,000,000 but less than \$10,000,000.....	\$3,819
\$10,000,000 but less than \$20,000,000.....	\$4,687
\$20,000,000 but less than \$40,000,000.....	\$7,625
\$40,000,000 and over.....	\$10,467 plus 0.00005 of any amount over \$40 million (rounded to nearest whole dollar)

5.2.2 The above liquidated damages provision shall not affect the City's right to terminate this Agreement as provided in this Agreement nor shall it limit any of the other remedies as provided in the Contract Documents. The City's exercise of its right to terminate this Agreement shall not release City's claim for liquidated damages in the amount set forth herein or Contractor's defenses thereto.

5.2.3 Assessments of liquidated damages shall be immediately due and payable to the City or, at the City's option, may be deducted from payments that may be due and owing to Contractor. To the extent the City agrees in writing to phased Substantial Completion, the above-referenced liquidated damages will apply as to each respective phase of Substantial Completion.

5.2.4 Any Subcontract Agreements providing for liquidated damages at a per diem amount lower than the per diem amount set forth in this Agreement is subject to City's prior written approval.

5.3 Recovery of Damages Suffered by Third Parties. In addition to the damages provided for in paragraph 5.2.1 and pursuant to Section 337.18 of the Florida Statutes, when the CONTRACTOR fails to complete the work within the Contract Time the CITY may recover from the CONTRACTOR

amounts that the CITY pays for damages suffered by third parties unless the failure to timely complete the work was caused by the CITY's act or omission.

- 5.4 In addition to the liquidated damages set forth above, City shall also be entitled to proceed directly against Subcontractors and suppliers (in Contractor's name) responsible for delays in achieving Substantial Completion for the full amount of damages City has incurred, plus any and all acceleration and/or Extraordinary Measures costs as provided in the General and Supplementary Conditions. Said pass-through claim shall be at Contractor's sole cost and expense.

Further, Contractor shall make appropriate claim(s) against all available insurance and the Subcontractor, supplier, and/or manufacturer responsible for delays in achieving Substantial Completion, and if the Subcontractor, supplier and/or manufacturer fails to pay costs incurred by Contractor and the City for the City's actual damages, acceleration, and/or Extraordinary Measures costs, Contractor shall default or terminate such Subcontractor and/or supplier and Contractor shall make and diligently pursue, at Contractor's sole cost and expense, the appropriate claim against its Subcontractors, for the benefit of City. Any recovery from Contractor's Subcontractors and suppliers shall be included in fully compensating City, and not in place of City's recovery of liquidated damages from Contractor. To assist City with claims against Subcontractors and suppliers as set forth above, Contractor shall provide City with Project Records as determined by City to assist City in identifying Contractor's Subcontractors and suppliers responsible for delays in achieving Substantial Completion and or Final Completion.

#### **Article 6. PAYMENT PROCEDURES.**

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by the CONSULTANT as provided in the General Conditions.

**ATTN: Engineering Division Manager  
Engineering Division, Public Works Department  
Swinton Operations Complex  
434 South Swinton Avenue  
Delray Beach, Florida 33444**

- 6.1 Progress Payments. The CITY shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by CONSULTANT, on or about the First day of each month during construction as provided below and to the extent Contractor's Applications for Payment are timely submitted pursuant to the Contract Documents. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values initially submitted by the Contractor and approved by the City as established in Paragraph 3.6.3 of the General Conditions and in the case of Unit Price Work based on the number of units completed or, in the event there is no schedule of values, as provided in the General Requirements. Each Application for Payment submitted by the Contractor shall be accompanied by substantiating data and lien waivers as provided in the Contract Documents.
- 6.1.1 Prior to Substantial Completion progress payments will be made in an amount equal to 90% of the work completed until 50% of the work has been completed and installed, then payment may be made in an amount equal to 95% of the work completed, but in each case, less the aggregate of payments previously made and less such amounts as CONSULTANT shall determine, or the CITY may withhold, in accordance with paragraph 15.7 of the General Conditions.
- 6.1.2. Prior to Substantial Completion, progress payments for materials and equipment not incorporated in the Work but delivered and suitably stored and accompanied by documentation satisfactory to the CITY, as provided in paragraph 15.2 of the General Conditions, will be made in an amount equal to 0% as established by the Schedule of Values.

- 6.1.3 The CITY is entitled to withhold amounts due CONTRACTOR for any defective or non-conforming work as well as for liquidated damages.
- 6.1.4 In addition, as a further condition to payment of each progress payment, Contractor shall submit to the City and Consultant: (i) a sworn and certified Progress Payment Affidavit, which recites that all laborers, material suppliers and Subcontractors dealing with the Contractor have been paid in full through the date of the prior application for payment which has been received by Contractor from City, with the exception of disputed payments; (ii) a partial release of lien conditioned upon payment from Contractor for the current Application for Payment, (iii) partial releases of lien from all lienors providing Work on the applicable Application for Payment through the date of the last payment made, (iv) partial releases of lien conditioned only upon payment from all lienors providing Work on the applicable Application for Payment, through the date of the current Application for Payment, (v) any evidence of payment of any indebtedness incurred with respect to the Work of Contractor, as may be required by the Consultant and such other evidence that Consultant may reasonably require substantiating that all Work which is the subject of each such Application for Payment has been performed, and (vi) where required by any manufacturers for extended warranties, inspection certificates or other acceptable documentation confirming the acceptable completion of any and all required inspections for the Work performed for which payment is being made.
- 6.1.5 Each Application for Payment shall be based on the Schedule of Values approved by the City unless subsequently amended by Change Order in accordance with the Contract Documents. If the Schedule of Values is subsequently amended by Change Order in accordance with the Contract Documents, then each subsequent Application for Payment shall be based on the Amended Schedule of Values. The Schedule of Values shall allocate the entire GMP among the various portions of the Work. As individual subcontracts are executed, the actual subcontract value will be identified separately in the Schedule of Values in place of any estimates that made up the original GMP, with any remaining portion of the line item carried in the same scope of Work, to complete the Work in any particular division, as long as the GMP is not increased. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the City or Consultant may require. This Schedule of Values and each update approved by the City shall be used as a basis for reviewing the Contractor's Applications for Payment.
- 6.1.6 In taking action on the Contractor's Application For Payment, the Consultant and the City shall be entitled to reply on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the City and/or Consultant has made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with this Article or other supporting data; that the Consultant and/or the City has made exhaustive or continuous on-site inspections; or that the City and/or Consultant has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Agreement. Such examinations, audits, and verifications, if required by City, will be performed by the City's auditors acting in the sole interest of the City.
- 6.1.7 For each progress payment made prior to Substantial Completion of the Work as defined in the Contract Documents, determined and certified by Consultant and/or the City, the City may withhold the following amount, as retainage, from the payment otherwise due: Five Percent (5%) of all payments until the Work reaches Final Completion as defined in the Contract Documents and determined and certified by Consultant and City. Contractor shall include a similar retainage provision pertaining to its subcontractors and suppliers.
- 6.1.8 In the event of any default by the Contractor under the Contract Documents for which the Contractor has not cured or commenced to cure, the City may withhold any payment or part of any payment in the amount of the costs and damages incurred by City to correct,

remedy and/or mitigate any Contractor defaults or the amount of the costs of damages, including Liquidated Damages (provided the Contract Time has expired), reasonably estimated to be incurred to correct, remedy and/or mitigate any Contractor defaults including, but not limited to: (1) defective Work not remedied; (2) claims or liens filed; (3) failure of the Contractor to make payments in accordance with the terms of this Agreement and the subcontract agreements for properly performed Work by the Subcontractors or for labor, materials, or equipment; (4) failure to provide waivers of lien for all lienors giving notices; (5) damage to the City's property caused by Contractor, its Subcontractors or anyone working for Contractor, notwithstanding insurance coverage as required by the Contract Documents; (6) failure of the Work to progress satisfactorily or according to schedule; and (7) failure to carry out the Work in accordance with the Contract Documents.

- 6.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 15.13 of the General Conditions, the CITY shall pay the remainder of the Contract Price as recommended by CONSULTANT as provided in said paragraph 15.13.
- 6.3 The making of progress payments or Final Payment shall not constitute or be deemed to be a waiver by the City of any claims which the City may have against the Contractor under the provisions of this Agreement or otherwise: and provided, further, that the making of the Final Payment shall not be deemed a waiver by the City of any claims which the City may have against the Contractor for latent defects or any other defect or an incomplete item which is not readily apparent at the time such Final Payment is made; and provided further, that the making of Final Payment shall not be deemed a waiver by the City of any obligation of the Contractor under the provisions of the Contract Documents or otherwise to repair or correct any Work or materials that prove defective as a result of faulty materials, equipment or workmanship.
- 6.4 Acceptance of Final Payment by the Contractor, a Subcontractor or material or equipment supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment or as provided in this Agreement.

#### **Article 7. SUBCONTRACTS.**

**No more than sixty percent (60%) of the dollar value of the total Work under the Contract Documents may be accomplished by subcontractors. The balance of Work must be accomplished by selected CONTRACTOR'S own forces.**

#### **Article 8. CONTRACTOR'S REPRESENTATIONS.**

In order to induce the CITY to enter into this Agreement CONTRACTOR makes the following representations:

- 8.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 8.2 CONTRACTOR has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 8.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.3 of the General Conditions
- 8.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 8.5 CONTRACTOR has given CONSULTANT prompt written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents no later than seven (7) calendar days from discovery of such, and the written resolution thereof by CONSULTANT is acceptable to CONTRACTOR.

**Article 9. NO DAMAGES FOR DELAY.**

- 9.1 All time in the Contract Documents is calculated on a consecutive calendar day basis.
- 9.2 Time is of the essence in this Agreement, and any breach of same shall go to the essence hereof, and CONTRACTOR, in agreeing to complete the Work within the time herein mentioned, has taken into consideration and made allowances for all reasonable hindrances and delays incident to Contractor's Work.
- 9.3 CONTRACTOR agrees to commence the Work when directed by the CITY and to diligently and continuously perform such Work and to coordinate the Work with other Work being performed on the Project by other trades and/or Separate Contractors, if any, so that the CITY shall not be delayed by any act or omission of CONTRACTOR in completion of the Project within the time specified above.
- 9.4 CONTRACTOR shall not be entitled to any claim for damages on account of hindrance or delays from any cause whatsoever, but if caused by any act of God or active interference on the part of the CITY, such act, hindrance or delay may only entitle the CONTRACTOR to receive an extension of time as its sole and exclusive remedy for such delay, as set forth in Article 13 of the Contract General Conditions. Contractor shall not be entitled to an increase in the GMP or to payment of any other additional monies from the City for costs incurred as a result of such delay, including additional or extended General Conditions costs or General Requirements costs. The City's exercise of its rights under this Agreement shall in no way be considered active interference.
- 9.4.1 An extension of time to complete the Work shall be determined by the CONSULTANT provided the CONTRACTOR provides CONSULTANT and CITY with notice in writing of the cause of said act, hindrance, or delay within twenty (20) calendar days after its occurrence.
- 9.4.2 In the event the request for extension is not made in writing within that twenty-day time period, CONTRACTOR acknowledges and agrees it has forever waived any and all rights to such an extension.
- 9.4.3 All extensions of time shall be authorized only by a written change order executed by the CITY, CONSULTANT, and CONTRACTOR; in the absence of a written and fully executed change order, CONTRACTOR shall not be entitled to any claim for additional time.
- 9.4.4 This "no damage for delay" provision shall encompass any damages for delay or disruption even if the CONTRACTOR completes construction of the Work in a timely fashion in accordance with this Agreement.

- 9.4.5 Damages as referenced in this “no damage for delay” provision shall include any type of damages that are or could be awarded by any court or arbitration panel such as, by way of general example, but not limitation, tort, contract, strict liability, consequential damages, liquidated damages and/or punitive damages.
- 9.4.6 The CONTRACTOR recognizes and specifically acknowledges the terms and conditions of this “no damage for delay” clause upon execution of this Contract.

**Article 10. CONTRACT DOCUMENTS.**

- 10.1 This Agreement.
- 10.2 Advertisement for Bids.
- 10.3 Instructions to Bidders.
- 10.4 Bid Submittal.
- 10.5 Bid Bond.
- 10.6 Florida Performance and Payment Bonds.
- 10.7 Certificates of Insurance.
- 10.8 Notice of Intent to Award.
- 10.9 Notice to Proceed.
- 10.10 Certificate of Substantial Completion.
- 10.11 Warranty of Title.
- 10.12 Final Receipt.
- 10.13 Standard General Conditions.
- 10.14 Technical Specifications.
- 10.15 Construction Plans dated September 17, 2024

with each sheet bearing the following general title:

**ITBC NO.: 2026-014**  
**Brant Bridge Connector**  
**CITY PROJECT NO.: 20-015**  
**FDOT LAP Project No. 441586-1-58-01**

- 10.16 Exhibits to this Agreement.
- 10.17 Addenda number 0 to 0, inclusive.
- 10.18 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or

supplementing the Contract Documents pursuant to paragraphs 4.4 and 4.5 of the General Conditions.

- 10.19 The documents listed above are attached to this Agreement (except as expressly noted otherwise above). There are no Contract Documents other than those listed above in this Article 10. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 4.4 and 4.5 of the General Conditions.

**Article 11. INDEMNITY.**

- 11.1 In consideration of Ten Dollars (\$10.00) in hand paid and other valuable consideration, receipt of which is hereby acknowledged, CONTRACTOR agrees to defend, indemnify, and hold harmless the CITY, their agents, and employees in accordance with this Article 11 and paragraph 7.28 of the General Conditions which is incorporated herein and made a part hereof as if fully set forth herein. It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statutes 725.06, as amended. It is further the specific intent and agreement of said parties that all of the Contract Documents on this Project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.
- 11.2 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, the Consultant, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees (at the trial and appellate levels), arising out of or resulting from performance of the Work, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Article 11.
- 11.3 In any and all claims against the Indemnified Parties by any employee of the Contractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this provision of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or on behalf of the Contractor or any Subcontractor under Workers Compensation Acts, Disability Benefit Acts or other employee benefit acts.
- 11.4 The Parties hereto acknowledge and agree that, to the extent any portion of the indemnification provisions contained herein is deemed void or unenforceable in any action or proceeding, then such portion shall be considered severed such that it will not affect the remaining portions of these indemnification provisions.
- 11.5 The Indemnitors' indemnity obligations under this Section shall also specifically include, without limitation, all claims, fines, penalties, damages, liability, costs, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses), and punitive and consequential damages (if any) arising out of, or in connection with or attributable to, any claims made against the Indemnified Parties for (i) bodily injury, sickness, disease, death, or destruction of tangible property caused by Contractor and/or any of its Subcontractors and/or Sub-subcontractors, (ii) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, and/or any of the Indemnitors, or any person or entity for whom they are responsible, (iii) Contractor's failure to comply with any provision of the Contract Documents including Warranty obligations, and obligations to correct damaged and defective work, (iv) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and/or (v) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under this Agreement and/or the other the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible. Moreover, and without limiting the foregoing, the Indemnitor's indemnity obligations under this Section include any and all claims by third parties against Indemnified Parties for consequential damages arising from and/or in connection with this Agreement and/or the performance and/or failure of the Work.

- 11.6 The Contractor shall indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees for all trial and appellate levels) incurred by any of the Indemnified Parties in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Agreement.
- 11.7 The Contractor shall include in all Subcontracts provisions by which each Subcontractor agrees to defend, indemnify, and hold harmless Contractor and the Indemnified Parties from and against liability, damages, losses and costs, including, but not limited to, reasonable attorneys' fees for all trial and appellate levels, arising out of, in connection with, or resulting from the performance of the Work or any Subcontractor's obligations under the Contract Documents to the same extent and in the same manner as the Contractor is liable to the City pursuant to this provision.
- 11.8 The provisions of this Section shall survive Final Completion and Final Payment or termination of this Agreement.

**Article 12. REIMBURSEMENT OF CONSULTANT EXPENSES.**

Should the completion of this Agreement be delayed beyond the specified or adjusted time limit authorized by the City, CONTRACTOR shall reimburse the CITY for all expenses of CONSULTING and inspection incurred by the CITY during the period between said specified or adjusted time and the actual date of final completion. All such expenses for CONSULTING and inspection incurred by the CITY will be charged to CONTRACTOR and be deducted from payments due CONTRACTOR as provided by this Contract. Said expenses shall be further defined as CONSULTANT charges associated with the construction contract administration, including resident project representative costs.

**Article 13. MISCELLANEOUS.**

- 13.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meaning indicated in the General Conditions.
- 13.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 13.3 The CITY and CONTRACTOR each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.
- 13.4 The agreement shall be void if not signed by both the CITY and the CONTRACTOR.
- 13.5 No change or modification of this Agreement shall be valid unless in writing and signed by City and the duly authorized representative of Contractor. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
- 13.6 The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

**Article 14. CITY PROVISIONS.**

- 14.1 **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 CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**
- 14.2.1 Contractor shall comply with public records laws, specifically to:
- 14.2.1.1 Keep and maintain public records required by the City to perform the service.
  - 14.2.1.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
  - 14.2.1.3 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 term and following completion of the Agreement if the Contractor does not transfer the records to the City.
  - 14.2.1.4 Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
  - 14.2.1.5 If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.
- 14.2 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.
- 14.3 The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 14.4 By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract

with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Contractor.

- 14.5 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

#### **Article 15. FDOT PROVISIONS.**

In accordance with Florida Department of Transportation's Local Agency Program, projects receiving federal funds must comply with the following provisions:

##### 15.1 Approved Product List

15.1.1 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).

15.1.2 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>

15.1.3 Applications must include the following documentation:

15.1.3.1 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.

15.1.3.2 A photograph displaying the product as shipped with packaging.

15.1.3.3 A list displaying all components within the shipped packaging, if applicable.

15.1.3.4 Installation instructions and materials, if applicable.

15.1.3.5 Product packaging or product labels as required by the Specifications.

15.1.3.6 Construction material percentages and country source of materials.

15.1.3.7 Last two manufacturing steps and country of manufacture.

15.1.3.8 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.

- 15.1.3.9 Applications must be signed by a legally responsible person employed by the manufacturer of the product.
  - 15.1.4 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.
  - 15.1.5 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 Section 6, 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.
  - 15.1.6 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. Documentation requirements for the product review and re-approval, including schedule and criteria, are available on the Department's website at the following URL:  
<https://www.fdot.gov/programmanagement/ProductEvaluation/Default.shtm>
- 15.2 Products and Source of Supply.
- 15.2.1 Source of Supply—Convict Labor (Federal-Aid Contracts Only)
    - 15.2.1.1 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.
    - 15.2.1.2 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.
    - 15.2.1.3 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.
  - 15.2.2 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.

15.2.2.1 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.

15.2.2.2 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.

15.2.2.3 Construction Materials

Use non-ferrous metals, plastic and polymerbased 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.

15.2.2.4 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.

15.3 Compliance with Federal Endangered Species Act and other Wildlife Regulations

15.3.1 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 in permits as identified in FDOT Specifications Section 7-2.1.
- 15.3.2 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.
- 15.3.3 These guidelines are posted at the following URL address:  
<https://www.fdot.gov/docs/default-source/programmanagement/Implemented/URLinSpecs/files/endangeredwildlifeguidelines.pdf>
- 15.3.4 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.
- 15.3.5 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.
- 15.3.6 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.
- 15.4 Compliance with Section 4(f) of the USDOT Act
- 15.4.1 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.
- 15.4.2 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.

15.5 Wage Rates for Federal-Aid Projects.

15.5.1 For all projects that include Federal-aid participation, the Special Provisions contain requirements with regard to payment of predetermined minimum wages. Predetermined Wage Rate Decisions (U.S. Department of Labor provided Wage Rate Tables) exist for Heavy, Highway, and Building Construction Projects.

15.5.2 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.

<u>Wage Rate Decision Number</u>	<u>Associated Work</u>
"20260264 (01/02/2026)"	Highway Construction Projects

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

15.5.4 For guidance on the requirements for the payment of wages and benefits and the submittal of certified payrolls, and for general guidance and examples of multiple wage rates when assigned to a Contract, refer to the Department's Office of Construction website. Questions regarding wage rates and the applicability of wage tables should be submitted in accordance with FDOT Specifications Section 2-4.

15.6 Disadvantaged Business Enterprise Program.

15.6.1 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.

**FDOT's program is race neutral with a 10.54% statewide goal.**

15.6.2 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:

15.6.2.1 Withholding monthly progress payments;

15.6.2.2 Assessing sanctions;

15.6.2.3 Liquidated damages; and/or

15.6.2.4 Disqualifying the Contractor from future bidding as non-responsible.

15.6.3 Plan Requirements:

Include the following in the DBE Affirmative Action Program Plan:

15.6.3.1 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.

15.6.3.2 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.

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

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

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

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

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

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

15.6.4 DBE Records and Reports:

Submit the following through the Equal Opportunity Compliance System:

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

15.6.4.2 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:

- 15.6.4.2.1 The procedures adopted to comply with these Specifications;
  - 15.6.4.2.2 The number of subordinated Contracts on Department projects awarded to DBEs;
  - 15.6.4.2.3 The dollar value of the Contracts awarded to DBEs;
  - 15.6.4.2.4 The percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;
  - 15.6.4.2.5 A description of the general categories of Contracts awarded to DBEs; and
  - 15.6.4.2.6 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.
- 15.6.5 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:
- 15.6.5.1 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.
  - 15.6.5.2 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.
  - 15.6.5.3 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.

- 15.6.5.4 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.
  - 15.6.5.5 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.
  - 15.6.5.6 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.
  - 15.6.5.7 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.
  - 15.6.5.8 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.
  - 15.6.5.9 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.
  - 15.6.5.10 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.
- 15.6.6 Prompt Payments: Meet the requirements of FDOT Specification Section 9-5 for payments to all DBE subcontractors.
- 15.7 On-The-Job Training Requirements

As part of the Contractor's equal employment opportunity affirmative action program, the Contractor **shall** provide training aimed at developing full journeymen in a trade or job classification involved on all applicable roadway and bridge construction projects receiving federal funds

Training **shall** be provided as follows:

- 15.7.1 The anticipated minimum number of trainees will be initially derived from construction contract calendar days and dollar value as represented within the provided table in 15.7.3.1 below. A final training goal will be determined at the Training Evaluation Meeting based upon the Department's consideration of all relevant factors including qualitative evidence in the form of contractor efforts to advance equal employment opportunity beyond mere compliance with legal obligations; the availability of eligible trainees; potential for effective training; contractor workforce; project location; type of work and

work items; and contractor participation in other approved training or workforce development programs.

15.7.2 No trainees will be required for Federal-aid Contracts administered with a Contract Time allowance of less than 275 calendar days.

15.7.3 When the Contract Time allowance is 275 calendar days or more, the estimated required number of trainees shown in the provided table in 15.7.3.1 below, with all other relevant factors, be the basis in determining totals. The ability of the contractor to successfully achieve completion of required training goals is desired. From consideration of all criteria presented during the Training Evaluation Meeting, the District Contract Compliance Manager may adjust the minimum number of trainees regarding those totals.

15.7.3.1	<u>Estimated Contract Values</u>	<u>Anticipated Required Trainees</u>
	\$3,500,000 or less	0
	Over \$3,500,000 to \$7,500,000	2
	Over \$7,500,000 to \$12,000,000	3
	Over \$12,000,000 to \$20,000,000	4
	Over \$20,000,000 to \$30,000,000	6
	Over \$30,000,000 to \$40,000,000	8
	Over \$40,000,000 to \$60,000,000	10
	Over \$60,000,000 to \$75,000,000	12
	Over \$75,000,000 to \$90,000,000	14
	Over \$90,000,000 to \$100,000,000	15
	Over \$100,000,000 to \$125,000,000	17
	Over \$125,000,000 to \$150,000,000	20
	Over \$150,000,000 to \$175,000,000	22
	Over \$175,000,000 to \$200,000,000	25
	Over \$200,000,000*	

\*One additional trainee per \$10,000,000 additional Construction Contract amount

15.7.4 Training and upgrading of minority, nonminority, women, and economically disadvantaged persons toward journeyman status is a primary objective of this Section. Accordingly, by conducting systematic and direct recruitment through public and private sources likely to yield minorities and women trainees, the Contractor **shall** make every effort to enroll candidates to the extent such individuals are located and available within a reasonable area of recruitment. This training is not intended, and **shall** not be used, to discriminate against any applicant or prevent access of, whether minority, nonminority, woman, or persons believed economically disadvantaged.

15.7.5 The intent of these provisions is to provide training in construction crafts rather than clerical 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 or General Laborer, may be permitted provided that significant and meaningful training plan is provided and approved by the District Contract Compliance Manager. Training as a Helper for any position, Rodman/Chainman, and Timekeeper classifications will not be approved for the On-The-Job Training Program.

15.7.6 The Contractor may incorporate the requirements of this Section, including responsibility for training a portion of trainees, in any such subcontract maintaining continued primary responsibility and satisfaction of requirements imposed by this Section.

15.7.7 The Department and the Contractor **shall** establish a training program which is tied to construction scope of work, length of operations, and satisfy all equal employment opportunity obligations of the Contractor. Other additionally recognized apprenticeship

or training programs may be considered acceptable provided those are being administered in a manner consistent with the equal employment obligations of Federal-aid Highway Construction Contracts. Approval or acceptance of a training schedule **shall** be obtained from the Department prior to commencing work with classifications covered by such programs.

- 15.7.8 The Department and Contractor **shall** determine the training goal, classification types and minimum total hours needed during the Trainee Evaluation Meeting. An On-the-Job Training Schedule indicating number of training candidates and appropriate Proficiency Standards for each classification must be submitted by the Contractor within ten days after the meeting for approval by the Department.
- 15.7.9 This schedule may be subject to change and a revised schedule **shall** be submitted for approval by the Department if any of the following occur:
- Start date on the approved On-The-Job Training Schedule or Plan has been missed by 14 or more days.
- 15.7.9.1 Start date on the approved On-The-Job Training Schedule or Plan is accelerated to commence earlier than 14 or more days.
- 15.7.9.2 A change in previously approved classifications.
- 15.7.9.3 Replacement trainees are added due to voluntary or involuntary termination.
- 15.7.10 The Contractor is responsible for identifying qualified candidates for enrollment and feasibly 25% of trainees in each occupation are in their first year of training. To ensure eligibility, the Contractor should include 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 Department will gather additional information regarding the proposed Candidates' previous work experience, training, as well as understanding of the On-the-Job Program and Proficiency Standards established for the classification.
- 15.7.11 The Trainee Enrollment and Notification of Personnel Action form is to be submitted fourteen days prior to the requested enrollment date. To be considered for enrollment, the proposed trainee candidate must meet the following criteria:
- 15.7.11.1 The candidate did not successfully complete a training course leading to journeyman status for the proposed classification.
- 15.7.11.2 The candidate did not gain sufficient experience by working in the proposed classification.
- 15.7.11.3 The candidate was not hired as a journeyman in the proposed classification.
- 15.7.11.4 The candidate is not currently enrolled in the On-the-Job Program.
- 15.7.12 The Contractor **shall** compensate the trainee at no less than the laborer rate established in the Contract at the commencement 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 graduate works in the classification in which they were trained.
- 15.7.13 If an economically disadvantaged non-minority person is enrolled, such action **shall** be accompanied by a disadvantaged certification or a justification for such action acceptable to the Department. The Contractor will be responsible for, and provided an opportunity

to identify actions and steps taken in pursuance thereof, prior to a determination of compliance with this Section being assessed the Contractor.

- 15.7.14 The Contractor may only enroll a trainee in one active classification per instance prior to approval of an additional classification for that trainee on the same project unless approved by the District Contract Compliance Manager. At beginning of training, the Contractor **shall** furnish the trainee a copy of the scheduled program they will follow during the intended training period and upon completion, award certification indicating type and total hours satisfactorily achieved.
- 15.7.15 To complete training, the transfer of trainees from project to project and from district to district is permitted. This includes transfers between multiple projects which could include non-FDOT government projects (City, County, etc.) provided there is the existence of an agreement to monitor the OJT Trainees in accordance with the OJT Program with the contractor, FDOT and other participating agencies. A trainee is only allowed to be enrolled on the original project.
- 15.7.16 The Contractor **shall** generate, maintain and furnish the District Contract Compliance Manager with the Monthly Time Report reflecting known training hours apart from other work hours performed by each individual trainee as part of this Contract. The report **shall** be submitted no later than the tenth day of the subsequent month and identify proficiency occurring.
- 15.7.17 Graduation to journeyman status will be based upon satisfactory accomplishment of:
  - 15.7.17.1 Proficiency Demonstration being achieved upon conclusion of training as established for the specific training classification.
  - 15.7.17.2 Completion of the minimum hours in a training classification range.
  - 15.7.17.3 The employer's satisfaction that the trainee does meet journeyman status in the classification of training.
- 15.7.18 The Contractor **shall** furnish the following documentation to the Department within seven days of successfully demonstrating proficiency:
  - 15.7.18.1 Trainee Enrollment and Notification of Personnel Action form.
  - 15.7.18.2 Proficiency Demonstration Verification Form signed by representatives of both the Contractor and the Department as well as the trainee indicating successful completion of each Proficiency Standard established for the classification.
- 15.7.19 The Contractor **shall** submit to the Department a copy of the Trainee Enrollment and Notification of Personnel Action form no later than seven days after the effective date when the candidate is voluntarily or involuntarily terminated from the program.
- 15.7.20 When approved in advance, the Department provides the Contractor the opportunity to participate in "Voluntary On-the-Job Training Program for Banking". Banking Certificates will be issued when the Contractor desires to preserve credit for a trainee. Further, if the Contractor or subcontractor requests to utilize banked trainees, the Banking Certificate will be validated allowing credit to the Contractor on a subsequent Federal-Aid Project. Banked credits of Prime Contractors working as Subcontractors may be accepted for credit. Voluntary On-the-Job Training Program for Banking can be considered under the following circumstances:

- 15.7.20.1 Federal-Aid Projects – Banking Certificates are issued for training of persons in excess of the required number of candidates based on the awarded Contract amount less items of work for which no training can be afforded.
- 15.7.20.2 State Funded Projects – The Contractor will have the option to train employees on project for which On-the-Job Training Program mandates do not apply. However, the request to participate must be evaluated and will be considered if adequate Department staff are available to monitor compliance with the training criteria.
- 15.7.21 The following criteria will be used in determining if the Contractor has complied with the requirements of this specification:
  - 15.7.21.1 Credit will be allowed for each trainee who satisfactorily completes training for the classification in which the trainee is enrolled.
  - 15.7.21.2 Credit will be allowed for each trainee who continues training in the same job classification and who completes their training on a different contract.
  - 15.7.21.3 Credit will be allowed for a trainee who is given the greatest practical amount of training on the contract; however, the trainee is unable to complete the training due to insufficient amount of work available in the classification.
  - 15.7.21.4 Credit will be allowed for any position indicated in the approved On-the-Job Training Schedule or Plan, for which the Contractor can demonstrate that a good faith effort was made to provide training.
  - 15.7.21.5 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.
  - 15.7.21.6 Banking certificates may be redeemed within five (5) years of issuance. The issuance and redemption of banking certificates are tracked by each District and the EEO.
  - 15.7.21.7 Earned banking credits are redeemed by presenting the original banking certificate to the DCCM of the district where the project on which the credit is to be applied.
  - 15.7.21.8 A contractor utilizing banking credit(s) to fulfill agreed upon trainee requirement(s), must present the original banking certificate for redemption. If the contractor has determined at the TEM that banked credits will be used to meet trainee requirements, then the certificate(s) is submitted with the initial training schedule. A prime contractor working as a subcontractor to another prime, may redeem their earned banking certificates for the prime.
  - 15.7.21.9 If the contractor subsequently determines to use banked credit(s) to meet trainee requirements, then the certificate(s) are submitted with the revised training schedule.
- 15.7.22 The Contractor will have fulfilled the responsibilities of this Specification when acceptable training has been provided to the trainee as specified above.

15.8 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.

15.9 Certification of Payment to Subcontractors:

15.9.1 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. Submit this certification in the form designated by the Department.

15.9.2 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 submits written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30 day period.

15.9.3 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.

15.10 Restrictions, Prohibitions, Controls, and Labor Provisions

15.10.1 Neither the CITY 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 CITY 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 CITY, the CITY, 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 CITY or the locality relating to such contract, subcontract or arrangement. The CITY 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:

15.10.1.1 "No member, officer or employee of the CITY 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."

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

#### 15.11 Indemnification and Insurance

15.11.1 To the extent provided by law, contractors, subcontractors, consultants, or subconsultants ("ENTITY") shall indemnify, defend, and hold harmless the CITY and the State of Florida, Department of Transportation, 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 ENTITY, 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 CITY.

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

15.11.3 The CITY shall, or cause its contractor or consultant to carry and keep in force, during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$200,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$200,000 each occurrence, for the services to be rendered in accordance with this Agreement. The CITY shall also, or cause its contractor or consultant to carry and keep in force Workers' Compensation Insurance as required by the State of Florida under the Workers' Compensation Law. With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The CITY shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Agreement. Policies that include Self Insured Retention will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

#### 15.12 Inspector General

The Parties agree to comply with s. 20.055(5), F.S., and to incorporate in all subcontracts the obligation to comply with s. 20.055(5), F.S. "It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section."

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**Vendor Eligibility Check Prior to Contract Award**

375-030-91  
PROCUREMENT  
06/22

Project Description(s): \_\_\_\_\_

Financial Project Number(s): \_\_\_\_\_

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 Petroleum Energy Sector 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  
06/22

The List of Scrutinized Companies that Boycott Israel, and the Scrutinized List of Prohibited Companies (Activities in Sudan/Iran Petroleum Energy Sector) are available at the following Florida State Board of Administration site:

<https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx>

\*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:

Casetra Thompson

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

\_\_\_\_\_  
Signature

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

**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/WHD/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.

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**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.

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#### **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.

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#### **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.



OPERATOR: Piledriver.....	\$ 22.02	0.00
OPERATOR: Roller.....	\$ 16.82	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.....	\$ 16.68	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.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.30 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 2025. The applicable Executive Order

minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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

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

#### Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate 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. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

#### Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

#### Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted

average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the 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. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

#### State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were 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. The date, 01/03/2024 in the example, 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:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to [davisbaconinfo@dol.gov](mailto:davisbaconinfo@dol.gov) or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to [BCWD-Office@dol.gov](mailto:BCWD-Office@dol.gov) or by mail 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 an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to [dba.reconsideration@dol.gov](mailto:dba.reconsideration@dol.gov) or by mail 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 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.

=====

END OF GENERAL DECISION

..

IN WITNESS WHEREOF, the CITY and CONTRACTOR have caused this Agreement to be executed the day and year shown above.

ATTEST:

CITY OF DELRAY BEACH

\_\_\_\_\_  
Alexis Givings, City Clerk

By: \_\_\_\_\_  
Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Lynn Gelin, City Attorney

M&M ASPHALT MAINTENANCE, INC.

DBA ALL COUNTY PAVING

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

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

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

(SEAL)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged 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 was executed).

Personally known \_\_\_ OR Produced Identification \_\_\_

Type of Identification Produced \_\_\_\_\_

\_\_\_\_\_

Notary Public – State of \_\_\_\_\_



**SAMPLE SURETY PERFORMANCE AND PAYMENT BOND**

Bond No \_\_\_\_\_

By this Bond, We \_\_\_\_\_, as Principal, whose principal business address and phone number are \_\_\_\_\_, as Contractor under the contract dated \_\_\_\_\_, 20\_\_\_\_. Between Principal and the City of Delray Beach, whose principal address and phone number are \_\_\_\_\_ for the construction of:

**ITBC NO.: 2026-014**  
**Brant Bridge Connector**  
**CITY PROJECT NO.: 20-015**  
**FDOT LAP Project No. 441586-1-58-01**

(hereinafter referred to as "Contract") the terms of which Contract are incorporated by reference in its entirety into this Bond and \_\_\_\_\_, as Surety, whose principal business address and telephone number are \_\_\_\_\_ the sum of (U.S. dollars) \$ \_\_\_\_\_, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that Principal:

1. Performs, all the work under the Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Contract being made a part of this bond by reference, and in the times and in the manner prescribed in the Contract, including any and all damages for delay; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1) Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract and
3. Pays City all losses, damages, including damages for delay, expenses, costs and attorney's fees, including appellate proceedings, that City sustains because of a default by Principal under the Contract, including but not Limited to a failure to honor all guarantees and warranties or to cure latent defects in its work or materials within 5 years after completion of the work under the Contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the Contract, including all warranties and curing all latent defects within 5 years after completion of the work under the Contract;

then this bond is void; otherwise it remains in full force.

In the event that Principal shall fail to comply fully with, carry out and perform the terms and conditions of the Contract the Surety, following receipt of a written demand by the Obligee to correct Principal's default(s), and having failed to correct such default (s) within a reasonable time , shall be deemed to be in default fifteen (15) days after receipt of an additional written demand by the Obligee to correct the Principal's default, and the Obligee shall be entitled to enforce any remedy against Surety available to the Obligee including, but not limited to recovery of damages for the Surety's delay.

If no specific periods of warranty are stated in the Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the City. This Bond does not limit the City's ability to pursue suits directly with the Principal seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(3) include, Florida Statutes.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05 (2), Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CONTRACTOR: \_\_\_\_\_  
(Contractor Name)

WITNESS: \_\_\_\_\_

BY: \_\_\_\_\_  
(President, Managing Partner, or Joint Venturer)

(SEAL)

SURETY: \_\_\_\_\_

FLORIDA AGENT OF SURETY: \_\_\_\_\_

(Copy of Agent's current Identification Card as issued by State of Florida Insurance Commissioner must be attached)

WITNESS: \_\_\_\_\_

BY: \_\_\_\_\_  
(Attorney-in-Fact)

(CORPORATE SEAL)

**LETTER OF CREDIT FORMAT**

LETTER OF CREDIT NO.: \_\_\_\_\_

ISSUANCE DATE: \_\_\_\_\_

APPLICANT:  
**{Name of Corporation}**  
**{Address}**  
**{City, State, Zip}**

BENEFICIARY:  
CITY OF DELRAY BEACH  
100 N.W. 1<sup>ST</sup> AVENUE  
DELRAY BEACH, FL 33444

FOR U.S.D. \$ \_\_\_\_\_  
DATE OF EXPIRATION: \_\_\_\_\_

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ IN FAVOR OF THE BENEFICIARY, THE CITY OF DELRAY BEACH, FLORIDA FOR THE ACCOUNT OF THE ABOVE-REFERENCED APPLICANT, AVAILABLE BY YOUR DRAFTS DRAWN ON **{Name of Bank}** PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF **{Amount of Money}**, THE AMOUNT REFERENCED ABOVE.

DEMANDS OF THE LETTER OF CREDIT MUST BE ACCOMPANIED BY A STATEMENT FROM THE CITY MANAGER OF THE CITY OF DELRAY BEACH CERTIFYING EITHER: (1) THAT SAID LETTER OF CREDIT IS ABOUT TO EXPIRE AND HAS NOT BEEN RENEWED, OR (2) THAT WORK HAS NOT BEEN COMPLETED IN ACCORDANCE WITH THE PLANS, SPECIFICATIONS, AND AGREEMENTS (INCLUDING ANY AMENDMENTS THEREOF) FOR THE FOLLOWING PROJECT: **{Name of Project}** (THE 'PROJECT').

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED FOR PERIODS OF ONE YEAR FROM EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, WITHOUT ANY AMENDMENT, UNLESS THIRTY (30) DAYS BUT NO MORE THAN SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE SHALL NOTIFY THE CITY OF DELRAY BEACH IN WRITING BY CERTIFIED MAIL RETURN RECEIPT REQUESTED, OR BY COURIER VIA HAND DELIVERY AT THE ABOVE-LISTED ADDRESS, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS, AND BONA FIDE HOLDERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THE CREDIT THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO **{Name of Bank}** (THE 'BANK'), WHICH IS DULY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF FLORIDA IN ACCORDANCE WITH THE TERMS HEREOF. IF A DRAFT, AS DESCRIBED IN THIS LETTER OF CREDIT, IS PRESENTED PRIOR TO THE EXPIRATION DATE AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT AND UPON PRESENTATION IT IS WRONGFULLY DISHONORED BY THE BANK, THE BANK AGREES TO PAY REASONABLE ATTORNEYS FEES AND COSTS, INCLUDING FEES AND COSTS ON APPEAL, INCURRED BY THE CITY OF DELRAY BEACH TO ENFORCE THIS LETTER OF CREDIT SHOULD THE CITY PREVAIL.

DOCUMENTS MUST BE PRESENTED FOR PAYMENT TO:

**{Name of Bank Branch}**

**{Address}**

**{City, State, Zip}**

ATTN: **{Department}**

ALL DRAWINGS UNDER THIS LETTER OF CREDIT MUST BE ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT INSTRUMENT WHICH WILL BE RETURNED TO THE BENEFICIARY AFTER ENDORSING THE BACK OF SAME WITH THE AMOUNT OF EACH DRAWING BY US.

PARTIAL DRAWINGS ARE PERMITTED.

THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED ON THE REVERSE OF THE ORIGINAL CREDIT. ALL DRAFTS MUST BE MARKED "DRAWN UNDER **{Name of Bank}** LETTER OF CREDIT NUMBER \_\_\_\_\_ DATED \_\_\_\_\_, 20\_\_.

THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600", AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN THE LAW OF ANOTHER STATE OR COUNTRY AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. VENUE FOR ANY DISPUTES RELATING TO THE ENFORCEMENT OF THIS LETTER OF CREDIT SHALL BE PALM BEACH COUNTY, FLORIDA.

**{Name of Bank}**

BY: \_\_\_\_\_

**{Name}**

**{Title}**

**LIMITED POWER OF ATTORNEY**

and

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

hereby grants the City Clerk of the City of Delray Beach Power of Attorney to insert the date of execution on the contract, surety bonds to the contract and agreement entitled, \_\_\_\_\_

\_\_\_\_\_  
In Witness Whereof, we have hereunto set our hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal (SEAL)

\_\_\_\_\_  
Surety (SEAL)

WITNESS: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

WITNESS: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

[remainder of this page left blank intentionally]



**NOTICE OF INTENT TO AWARD**

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

TO: \_\_\_\_\_  
(Bidder)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITBC NO.: 2026-014**  
**Brant Bridge Connector**  
**CITY PROJECT NO.: 20-015**  
**FDOT LAP Project No. 441586-1-58-01**

You are notified that your Bid dated \_\_\_\_\_, for the above Contract has been considered. You are the apparent Successful Bidder. Accordingly, notice is hereby given of the Tentative Award of this contract to you.

The Contract Price of your contract is: \$ \_\_\_\_\_  
\_\_\_\_\_  
Dollars  
\_\_\_\_\_  
Cents

Five (5) copies of each of the proposed Contract Documents, (except Drawings) accompany this Notice of Intent to Award.

You must comply with the following conditions precedent within fifteen (15) days of the date of this Notice of Intent to Award (that is by \_\_\_\_\_):

1. You must deliver to the CITY five (5) fully executed counterparts of the Agreement including all the Contract Documents. Each of the Contract Documents must bear your signature on the cover page of each set of Contract Documents.
2. You must deliver with the executed Agreement, Insurance Certificates and the Contract Security Bonds as specified in the Instructions to Bidders and in Article 6 of the General Conditions together with Power of Attorney for use by the City for the purpose of inserting the date of execution of the Contract Surety Bonds and the Agreement, within fifteen (15) calendar days from the date of this Notice to you.
3. You should have the following prepared for the preconstruction conference.
  - (a) A preliminary project construction progress schedule.
  - (b) An itemized schedule of payment and values.
  - (c) A detailed shop drawing submission plan.

Failure to comply with these conditions within the time specified will entitle the CITY to consider your bid abandoned, to annul this Notice of Intent to Award and to declare your Bid Security forfeited.

Within forty-five (45) days after you comply with those conditions, if the contract is approved by the City Commission, the CITY will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

City of Delray Beach

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

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

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

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF INTENT TO AWARD is hereby acknowledged by  
\_\_\_\_\_ this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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

Copy to: City of Delray Beach  
(Use Certified Mail, Return Receipt Requested)

**NOTICE TO PROCEED**

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

TO: \_\_\_\_\_  
(Contractor)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITBC NO.: 2026-014**  
**Brant Bridge Connector**  
**CITY PROJECT NO.: 20-015**  
**FDOT LAP Project No. 441586-1-58-01**

You are notified that the Contract time under the above contract will commence to run on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. By that date, you are to start performing your obligations under the Contract Documents. In accordance with the Agreement the dates of Substantial Completion and Final Completion are the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and the \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, respectively.

City of Delray Beach

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

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

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

Copy to \_\_\_\_\_  
(Use Certified Mail, Return Receipt Requested)

cc: Purchasing Manager  
Project file

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

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

TO: \_\_\_\_\_  
(Contractor)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITBC NO.: 2026-014**  
**Brant Bridge Connector**  
**CITY PROJECT NO.: 20-015**  
**FDOT LAP Project No. 441586-1-58-01**

CONTRACT DATE: \_\_\_\_\_

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

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

TO: City of Delray Beach, Florida

AND TO: \_\_\_\_\_  
(CONTRACTOR)

The Work to which this Certificate applies has been inspected by authorized representatives of the CITY, CONTRACTOR and CONSULTANT, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on:

\_\_\_\_\_  
(Date of Substantial Completion)

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within \_\_\_\_\_ days of Substantial Completion.

The responsibilities between the CITY and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance, and warranties shall be as follows:

RESPONSIBILITIES:

CITY:

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CONTRACTOR:

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The following documents are attached to and made a part of this Certificate:

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This certificate does not constitute an acceptance of Work not in accordance with the Contract documents nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

Executed by CONSULTANT on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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

CONTRACTOR accepts this Certificate of Substantial Completion on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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

The CITY accepts this Certificate of Substantial Completion on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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

**WARRANTY OF TITLE**  
(For Periodic Progress Payments)

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

CONTRACTOR: \_\_\_\_\_

**ITBC NO.: 2026-014**  
**Brant Bridge Connector**  
**CITY PROJECT NO.: 20-015**  
**FDOT LAP Project No. 441586-1-58-01**

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_  
(the "Affiant"), who after being duly sworn, says that he is the "CONTRACTOR", pursuant to a Contract (the  
"Contract") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, with the CITY OF DELRAY BEACH, FLORIDA,  
(the "OWNER"), for the supply of certain labor and/or materials (the "Work"), to certain property, as shown  
and described in the Contract Documents, subsequent Addenda or Change Orders, and on behalf of the  
Contractor makes the following warranties:

- I. The CONTRACTOR warrants that it has fully completely in accordance with the plans and specifications therefore, that portion of the Work, pursuant to the Contract (the "Completed Work") covered by the attached Periodic Progress Payment Request.
- II. The CONTRACTOR further warrants and represents that:
  1. All subcontractors, vendors, material men, suppliers, and other parties of whatever kind of nature who are entitled to payment from the CONTRACTOR for providing labor and/or materials to the CONTRACTOR pursuant to the Contract as of the date in the last previous request for payment have been paid in full and therefore have delivered to the CONTRACTOR validly executed Partial Release of claims with respect thereto.
  2. Title to all materials and equipment covered by the attached Periodic Pay Request for Payment dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, passes to the City at the time of payment free and clear of all liens.

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

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

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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature and Stamp of Notary Public

My Commission Expires:

**FINAL RECEIPT**

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_ being first duly sworn, deposes and says as follows:

1. HE/SHE is \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Name of Corporation or Firm)  
a \_\_\_\_\_ corporation which is named in Construction Contract dated the  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between said corporation as the CONTRACTOR and the CITY OF  
DELRAY BEACH, FLORIDA (the CITY) as the OWNER for the construction of:

**ITBC NO.: 2026-014**  
**Brant Bridge Connector**  
**CITY PROJECT NO.: 20-015**  
**FDOT LAP Project No. 441586-1-58-01**

2. CONTRACTOR has fully completed all construction and work under the Contract and Title to all work, materials and equipment under the Contract passes to the CITY at the time of final payment, free and clear of all liens, and all labors, and material men and subcontractors have been paid in full for performing or furnishing the work, labor or materials under the Contract.

3. Receipt by CONTRACTOR of the final payment from CITY in the amount of  
\_\_\_\_\_ dollars (\$\_\_\_\_\_)

shall constitute a full release and discharge by CONTRACTOR to the CITY of all claims or liens of CONTRACTOR against OWNER arising out of, connected with, or resulting from performance of the Contract, including full payment for all extra work and material furnished by the undersigned in the construction of said improvements.

4. The undersigned further certifies that all non-exempt taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged.

5. This statement under oath is given in compliance with Sections 713.05 and 713.06, Florida Statutes.

Affiant Contractor

Signed and sealed in  
the presence of:

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

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

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature and Stamp of Notary Public

My Commission Expires: