REQUEST FOR BID (RFB) 2018-3044

Martin County Board of County Commissioners
2401 S.E. Monterey Road
Stuart, Florida  34996
(772) 288-5481
E-mail: pur_div@martin.fl.us
www.martin.fl.us

The Board of County Commissioners, Martin County, Florida, will receive sealed bids for a federal-aid construction project:

**RUNWAYS 30 & 34 SAFETY AREA DRAINAGE IMPROVEMENTS**

Sealed bids will be received by the Information Desk on the 1st Floor at the address above until 2:30 PM local time, on Wednesday, April 11, 2018. Bids received after the designated time and date will not be considered.

The basic bid document is available at www.martin.fl.us. Search for “bids”.

The complete bid document may be downloaded from www.publicpurchase.com (online bidding site).

Martin County is an equal opportunity/affirmative action employer.

Funds for this project are derived from federal grants and therefore the successful contractor must comply with federal guidelines.

By order of the Board of County Commissioners of Martin County, Florida.

Publish: The Stuart News March 7 and March 15, 2018
LIST OF CONTENTS

Bidders must register with the online bidding site in order to receive all required documents and notification of addenda.

This document contains:
1. Basic Scope of Services
2. Instructions to Bidders
3. Sample Agreement between Owner and Contractor
   - Exhibit A – Federal and State Contract Clauses
   - Exhibit C – FHWA Requirements
   - Exhibit D – Wage Rates
4. Title VI Policy Statement
5. Contractor Performance Evaluation
6. Sample Payment & Performance Bond
7. Sample Waivers of Right to Claim Against the Payment Bond

The successful bidder will be required to complete the following forms and comply with all state and federal requirements.

8. Buy America Certificate of Compliance
9. Certification of Non-Collusion
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion or explanation
11. Certification Regarding Lobbying
12. Drug-Free Workplace Certification
13. E-Verify

The following documents are available for download from the online bidding site:

1. Technical Specifications
2. General and Special Conditions
3. SFMWD Permit
4. Plans

One copy of the following documents must be returned with bid. No other documents should be submitted with the bid.

5. Bid Form
6. Bid Bond
7. Bidder's Qualification Statement
8. Certificate of Corporate Principal
9. Bid Opportunity List
10. Certification of Current Capacity
11. Certification of Sublet Work*
12. Addenda, if any

*Submit draft with bid and finalized form prior to or at the mandatory preconstruction meeting.
BASIC SCOPE OF SERVICES

The County of Martin proposes to improve the drainage characteristics of the existing Runway 30 and Runway 34 safety areas. The project entails re-grading of existing areas of ponding to improve the drainage characteristics of these areas. The project includes stripping and stockpiling vegetation, excavation and embankment, compaction per FAA requirements, solid sodding/topsoiling from strippings, and new Airport security fencing. The project also includes the height adjustment of a Runway End Identifier Light (REIL) unit, and concrete support pad elevation.

Substantial completion shall be achieved within 45 calendar days from Notice to Proceed. Final completion shall be within 15 days of substation. Liquidated damages will be assessed at $1,532.00 per day for any loss of use of the runways.

The successful bidder must have a valid State of Florida Certified Contractor license or evidence of FDOT State Highway pre-qualification.

Project cost estimate is $450,000.

Contract Special Condition

1. Bidders must hold their bids for at least one year from the date of opening to the time of contract execution/construction start, due to the moratorium on construction at the Airport during the months of November through May, as well as the Federal grant timing.

2. Bidders must comply with the Airport’s latest approved Federal DBE program for FAA Airport Improvement Projects (AIP), which may be different than the County’s FDOT goal.
INSTRUCTIONS TO BIDDERS

Bidders are encouraged to read the following instructions carefully. Deviations, changes, modifications or failures to complete the bid can, and in some instances shall, invalidate the bid.

1. **Date and Place of Bid Opening.** Sealed bids will be received at the Martin County Administrative Center, 1st Floor, Information Desk, 2401 S. E. Monterey Road, Stuart, Florida 34996, at the time set forth on the Request for Bids (RFB). Bids received after the designated time and date will not be considered. Bids will be publicly opened and read. If an award of the Contract is made, it will be as soon thereafter as is practical. In case of a tie, a selection among the lowest tied responsive and responsible bidders shall be made in accordance with County policy.

2. **Inquiries/Addenda.** Verbal interpretations of the meaning of the Drawings, Specifications, or other Contract Documents will not be valid. Every request for interpretation shall be in writing and e-mailed to Purchasing at pur_div@martin.fl.us no later than 5:00 PM on Monday the week prior to the bid due date. The County will respond to all such requests for interpretation and any supplemental instructions in the form of written addenda and shall publish such addenda on the online bidding site not later than five (5) calendar days prior to the bid opening date fixed for the opening of bids. Bidders must acknowledge receipt of the addenda in their bid. Failure of any bidder to receive, or to acknowledge receipt of any such addenda shall not relieve such bidder from any obligation under its bid as submitted, provided, however, that failure to so acknowledge receipt of any such addenda may render a bid non-responsive and result in its rejection. Bidders are advised to contact the County prior to submitting bids to satisfy themselves as to the existence and number of all such addenda. All addenda so issued shall become part of the Contract Documents.

3. **Preparation of Bids.** Bids shall be submitted on the Bid Form(s) furnished, or upon an exact copy thereof, and must be signed by an authorized representative of the firm submitting the bid. The County shall not consider any information other than that contained on the Bid Forms; specifically, nothing written on the envelope in which the Bid Forms are contained will be considered except for purposes of identification. Bidders must quote on all items listed and failure to do so will disqualify the bid. The intent of the Bid Form is to secure a price for the work described in the Contract Documents. All bid preparation costs shall be borne by the bidder. The County will not be responsible for paying any bidder for its costs incurred in preparing its bid.

4. **Credentials of Bidders/Licenses.** All Bidders shall provide proof that they are properly certified or registered as a Contractor by the State of Florida or have a Contractor's License issued by Martin County, if applicable. Other information, including, but not limited to, references, financial data, and evidence to conduct business in the jurisdiction where the project is located shall be provided upon specific request by the County.

5. **Bidders Disclosure.** In each bid by an individual or firm, there shall be stated the name and address of every person having an interest in the bid; and in case of a corporation the names and addresses of its officers. Bids shall be signed by the person or member of the firm making the same, and in the case of a corporation, by some authorized officer or agent subscribing the name of the corporation and his own name. Once bids are opened, they become the property of the County and will not be returned. Bids become a “public record” and shall be subject to disclosure consistent with Chapter 119, Florida Statutes, thirty (30) calendar days after the bid opening or upon bid award.
6. **Joint Venture.** If the bid involves a joint venture, a copy of the joint venture agreement shall be included with the bid along with the attached “Statement of Business Organization”.

7. **Public Entity Crimes.** Any bidder, or any of his suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the County shall not be a convicted vendor or, if the bidder or any of his suppliers, subcontractors, or consultants of the bidder has been convicted of a public entity crime, a period longer than 36 months shall have passed since that person was placed on the convicted vendor list. The bidder further understands and accepts that any contract issues as a result of this solicitation shall be either voidable by the County or subject to immediate termination by the County, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 Florida Statutes. The County, in the event of such termination, shall not incur any liability to the respondent for any work or materials furnished.

8. **Bid Guaranty (bids over $200,000 only).** Bid must be accompanied by the County’s Bid Bond form, including those applicable to the sureties for the Statutory Payment Bond and Common Law Performance Bond. The bond shall be on the Bid Guaranty form provided by the County, with Power of Attorney Affidavit attached, in the amount of 5% of the total bid amount. Alternate bond forms will not be accepted. Failure to provide the County bond forms may deem the bid non-responsive. In lieu of the Bid Bond, the bid may be accompanied by a certified check of any national or state bank made payable to the County in the amount of 5% of the total bid amount. Any certified check that may be received will be returned to the unsuccessful bidder(s), within thirty (30) calendar days after the opening of the bids. Bid bonds will not be returned to the bidders unless specifically requested by the bidder. Any certified check of the successful bidder(s) will be returned to them promptly after the County and the successful bidder(s) have (i) executed the Contract. Failure of the County to execute the Contract within ninety (90) days after the date of the bid opening shall initiate release of the Bid Bond, certified check, cashier’s check, treasurer’s check or bank draft of lowest and second lowest bidders unless mutually agreed otherwise.

9. **Power of Attorney.** Attorneys-In-Fact who sign bonds must file with the board a certified copy of their power of attorney to sign such bonds.

10. **Delivery of Bids**
    The bid shall be submitted in a sealed envelope (or e-bid) and must indicate on the outside, bidder name, bid name and number, and the bid due date. The County shall not be responsible for bids improperly identified. If forwarded by regular mail or express mail, the sealed envelope containing the bid and marked as directed above, shall be enclosed in another envelope addressed to the U.S. Mail address indicated on the cover page. If forwarded by overnight courier services (other than United States Postal Service Express Mail), the sealed envelope containing the bid and marked as directed above, shall be enclosed in another envelope addressed to the street address indicated on the cover page. Bids may be hand-delivered. Bids by fax or e-mail will NOT be accepted. The County cautions bidders to assure actual delivery of mailed or hand-delivered bids directly to the Martin County Administrative Center, 1st Floor, Information Desk, 2401 S. E. Monterey Road, Stuart, Florida. Confirmation of timely receipt of the bid may be made by e-mailing pur_div@martin.fl.us before bid opening time. Bids received after the established deadline shall not be considered.

11. **E-bidding**
    E-bidding through the online bidding site shall be accepted in lieu of a sealed bid as outlined above. However, the bidder shall be responsible for ensuring that the required bid documents are properly uploaded and accepted by the online bidding site. The County shall not be responsible for nor accept
bids not properly uploaded by the bid due date and time.

12. **Withdrawal of Bids.** Prior to the bid opening, a bid may be withdrawn provided that the bidder submits a written request that is signed by an authorized representative of the firm that submitted the bid. However, modifications will not be accepted or acknowledged.

13. **Notice of Intended Award.** Bid tabulations will be posted within two (2) working days of the bid opening on [www.martin.fl.us](http://www.martin.fl.us) (search for “Bid Tabulations”). Interested parties may inquire by visiting the online bidding site for information as to the intended award.

14. **Acceptance or Rejection of Bids.** The County reserves the right to reject any and all bids, in whole or part, when (i) such rejection is in the interest of the County; (ii) such bid is void per se; or (iii) the bid contains any irregularities, provided, however, that the County reserves the right to waive any minor irregularities and to accept the lowest responsible and responsive bid determined by the County and approved by the Florida Department of Transportation. Bids may be considered irregular and may be rejected if the bid: 1) does not strictly conform to the requirements of the bid; 2) shows omissions; 3) bid form is altered; 4) additions are added which were not called for; 5) is conditional; 6) the unit prices are, in the opinion of the County, unbalanced either in excess or below the reasonable cost analysis values; 7) abandonment of the project; and 8) bids are over the approved budget for the project. The County reserves the right to request a written confirmation of the bid and the responsibility of the bidder prior to the awarding of the Contract. Failure of the bidder to confirm the bid within seven (7) working days from the date of the County’s request may render the bid unresponsive and will entitle the County to award to the next lowest bidder and may require forfeiture of the bid bond.

15. **Contractor’s Financial Ability.** The apparent low, responsive bidder shall provide evidence of financial health prior to bid award upon request including but not limited to financial statements, cash flow projections, bank statements and tax returns. Failure to provide requested information shall deem the bidder non-responsive.

16. **Responsible Bidder.** Florida Statute 287.012(25) states that a “Responsible vendor” means a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. The County shall review factors, including but not limited to, past project performance, references and length of time in business and shall make the determination of responsibility in its sole discretion. A Contractor Performance Evaluation will be completed at the end of each project. An overall rating of “poor” will result in the Contractor being deemed “non-responsible” for future bids and will result in rejection of bid.

17. **Reliance Upon Bid.** The County shall be entitled to rely upon all representations, including financial and other terms of performance, contained within a bid. The bidder further agrees to be bound to perform in accordance with its bid terms, including price. All bid terms, including price, shall be valid for a period of **90 calendar days** from the date of the bid opening.

18. **Contract.** The bidder understands that this Request for Bids does not constitute a Contract with the bidder. County contracts are awarded only when a fully executed written agreement has been returned to the Bidder by the County. No one shall be entitled to rely on any other action as an award. The County will not be liable for any costs incurred by the bidder prior to execution of the contract by the parties. The bidder to whom the award is made shall, within fourteen (14) calendar days after receipt of the Contract, execute the Contract on the form attached and return it to the
County. The executed Contract should be returned to the County accompanied by the required performance and payment bonds as set forth herein. If the bidder fails to execute the Contract or provide the insurance and bonds within fourteen (14) calendar days, there shall be just cause for the annulment of the award and forfeiture of the Bid Guaranty to the County. Award may then be made to the next lowest, responsible, and responsive bidder or the work may be re-advertised at the County’s sole discretion.

19. **Substitute Material and Equipment.** A Contract, if awarded, will be on the basis of material and equipment described in the Drawings and the Technical Specification without consideration of possible substitute or an “or equal” item of material or equipment may be furnished or used by the Contractor if acceptable to the Engineer, application for such acceptance will not be considered by the Engineer until after the date of execution of the Contract. In all cases, the low bidder shall be determined on the basis of the base bid which shall reflect the costs for the materials and equipment specified. Any bidder unable to provide the specified materials and equipment shall be determined unresponsive.

20. **Equal Opportunity (EEO) Statement.** Martin County believes in equal opportunity practices which conform to both the spirit and the letter of all laws against discrimination and is committed to nondiscrimination because of race, creed, color, sex, age, or national origin.

21. **Award.** The contract will be awarded on the basis of the lowest responsive bid submitted by a bidder meeting all the requirements of the Request for Bid.

22. **Pricing Rules.** Bids having erasures or corrections must be initialed in ink by the bidder. In the event of extension error(s), the unit price will prevail and the bidder’s total offer will be corrected accordingly. In the event of addition errors, the extended totals will prevail and the bidder’s total will be corrected accordingly.

23. **Performance During an Emergency.** By submitting a bid, bidder agrees and promises that, during and after a public emergency, disaster, hurricane, flood, or acts of God, Martin County shall be given "first priority" for all goods and services under this contract (if applicable). Bidder agrees to provide all goods and services to Martin County throughout the emergency/disaster at the terms, conditions, and prices as provided in this solicitation, and with a priority above, a preference over, sales to the private sector. Bidder shall furnish a 24-hour phone number and address to the County in the event of such an emergency. Failure to provide the stated priority/preference during an emergency/disaster shall constitute breach of contract and make the bidder subject to sanctions from further business with the County.

24. **Disadvantaged Business Enterprise.** Contractors, consultants, sub-contractors and/or sub-recipients 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 U.S. Department of Transportation (DOT) assisted contracts. Failure by the contractor to carry out these requirements is a material breach of the contract which may result in termination of the contract or such other remedy as the recipient deems appropriate. Good faith efforts shall be made to encourage subcontracts with State of Florida Department of Transportation (FDOT) Certified DBEs. The FDOT’s current DBE Program race-neutral goal is 10.65%. To view their plan, methodology for determining their goal and learn more about the DBE Program visit FDOT’s website at: [http://www.dot.state.fl.us/equalopportunityoffice/dbeplan.shtm](http://www.dot.state.fl.us/equalopportunityoffice/dbeplan.shtm)
25. **Additional Vendor Requirements.** The successful bidder(s) will be required to monitor the performance of his employee on a periodic basis while they are assigned to the County. The successful bidder(s) is required to comply with the Immigration Reform Act of 1986 (IRCA) which requires all individuals hired after November 6, 1986, to provide employers with proof of citizenship or authorization to work in the United States.

26. **Federal, State and County Regulations.** The successful bidder(s) and their employees shall conform to all Federal, State and County regulations while in performance of their contracts. Specifically all parts of FHWA-1273 must be followed, as applicable. Any individual found not to conform shall not be allowed to start to work or if started shall be required to leave the job site immediately. Continued violations by any Successful Bidder shall result in the immediate termination of the Successful Bidder’s contract. In the event of a conflict between the Federal Requirements listed in this document and other provisions of the Invitation to Bid and the Agreement, the Federal Requirements will govern and prevail.

27. **Prohibited Communications.** Potential bidders shall not communicate in any way with the Board of Commissioners, County Administrator or any County staff other than Purchasing Division personnel from the time of bid advertisement through and including bid award. Such communication shall result in disqualification.

28. **Bid Solicitation Protest Rights.** Pursuant to Section 337.11, Florida Statutes, any person adversely affected by a bid solicitation shall file both a notice of protest and bond within 72 hours of the receipt of the bid documents, and shall file a formal written protest within ten (10) days after filing the notice of protest. The formal written protest shall state with particularity the facts and law upon which the protest is based. Any person who files a notice of protest as to a bid solicitation pursuant to this rule shall post with the Martin County Board of County Commissioners, Purchasing Division, at the time of filing the notice of protest, a bond payable to the Martin County Board of County Commissioners in the following amounts: for an action protesting a bid solicitation for which bidders must be pre-qualified by the State of Florida Department of Transportation to be eligible to bid, the Bond shall be $5,000.00; for an action protesting a bid solicitation, bid rejection, or contract award that does not require qualification of bidders, the bond shall be $2,500.00. The required notice of protest, bond and formal protest must each be timely filed with the Purchasing Manager, Martin County Board of County Commissioners, Purchasing Division, 2401 SE Monterey Road, Stuart, Florida, 34996, 772-288-5481, pur_div@martin.fl.us. Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. A protest is not timely filed unless the notice of protest, bond and the formal protest are each received by the Purchasing Administrator within the required time limits.

29. **Award/Non Award Protest Rights.** Any person who feels they are adversely affected by the intended decision of the Martin County Board of County Commissioners' Purchasing Division to award a contract or to reject all bids shall file, with the Purchasing Manager, Martin County Board of County Commissioners, Purchasing Division, 2401 SE Monterey Road, Stuart, Florida, 34996, 772-288-5481, pur_div@martin.fl.us, both a notice of protest and bond within 72 hours after the posting of the Summary of Bids. If notice of intended decision is given by certified mail or express delivery, the adversely affected person must file both the notice of protest and bond within 72 hours after receipt of the notice of intent. At the time of filing the notice of protest, a bond payable to the Martin County Board of County Commissioners in the following amounts: for an action protesting a bid rejection or contract award that requires pre-qualification of bidders, the bond shall be equal to
one percent (1%) of the lowest bid submitted or $5,000.00, whichever is greater. For an action protesting a bid solicitation, bid rejection, or contract award that does not require pre-qualification of bidders, the bond shall be $2,500.00. Additionally, a formal written protest must be filed within ten (10) days after filing the notice of protest. The formal written protest shall state with particularity the facts and law upon which the protest is based. All protests must be submitted in accordance with Section 337.11, Florida Statutes. Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. A protest is not timely filed unless the notice of protest, bond, and the formal protest are each received by the Purchasing Administrator within the required time limits. A protest which is filed prematurely will be deemed abandoned unless timely renewed.

30. **Federal and State Tax.** Martin County is exempt from Federal Tax and State Tax for Tangible Personal Property. Vendors or contractors doing business with Martin County shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the County, nor shall any Vendor/Contractor be authorized to use the County’s Tax Exemption Number in securing such materials.

31. **Conflict of Interest.** Section 112.313, Fla. Stat., prohibits contracts with County employees, officers and advisory board members. All bidders must disclose the name of any Martin County officer or employee who owns, directly or indirectly an interest in the bidder's firm or any of its branches.

32. **Errors/Erasures/Corrections.** Bids having erasures or corrections must be initialed in ink by the bidder. In the event of extension error(s), the unit price will prevail and the bidder’s total offer will be corrected accordingly. In the event of addition errors, the extended totals will prevail and the bidder’s total will be corrected accordingly.

33. **Warranties.** The Contractor shall be required to provide a written one (1) year warranty covering all labor, equipment, and materials provided. If required, as specified elsewhere in these documents, the Contractor shall furnish to the County a surety or performance bond in the amount of 100% of the contract value at time of signing contract.

34. **No Obligation by the Federal Government.** Absent the express written consent by the Federal Government, the Federal Government or the Federal Highway Authority is not a party to the contract and shall not be subject to any obligations or liabilities to Martin County, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

35. **Prevailing Minimum Wage Requirement.** 23 USC 113 and 23 CFR 633A apply to this contract. For all contracts over $2,000, the Contractor must ensure payment of the prevailing minimum wage rates, including fringe benefits, for covered classes of laborers and mechanics employed by the Contractor and any subcontractor or lower tiered contract over $2,000. For further information, reference Exhibit A, Exhibit B, and Exhibit C of the sample CONTRACT.
AGREEMENT BETWEEN COUNTY AND CONTRACTOR
FOR HORIZONTAL CONSTRUCTION
FEDERALLY FUNDED TRANSPORTATION PROJECTS

THIS AGREEMENT, effective this _____ day of _____ in the year, 20__, between:

MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, (hereinafter COUNTY), located at 2401 S.E. Monterey Road, Stuart, FL 34996

AND the CONTRACTOR:
(hereinafter CONTRACTOR)

Project Name/Address:

Martin County Project Number: RFB#

FDOT Finance FM Number: FM#

FDOT Contract Number:

FAP Number:

Architect/Engineer:

In accordance with the following terms:

Total Contract Price: $

Substantial Completion Time: calendar days

Liquidated Damages: $per day following substantial completion

Final Completion Time: Not-to-Exceed 15 calendar days following substantial completion

Liquidated Damages: $per day following final completion
INDEX

Article 1: Definitions
Article 2: Work/Preliminary Requirements
Article 3: Contract Price
Article 4: Contractor Responsibilities
Article 5: Payment
Article 6: Time of Performance
Article 7: Liquidated Damages
Article 8: Claims for Additional Time
Article 9: Site Conditions
Article 10: Indemnification
Article 11: Termination
Article 12: Suspension of Work
Article 13: Changes in the Work
Article 14: Materials, Equipment and Workmanship; Substitutions
Article 15: Compliance
Article 16: Non-Discrimination
Article 17: Defective Work
Article 18: Bonds and Insurance
Article 19: Performance Guarantee and Warranty
Article 20: Shop Drawings, Product Data and Samples
Article 21: Safety
Article 22: Protection of Work and Property
Article 23: Tests and Inspections
Article 24: Utility Coordination
Article 25: Hazardous Materials
Article 26: Audit
Article 27: Public Records
Article 28: Assignment
Article 29: Attorney’s Fees and Costs
Article 30: Notices
Article 31: Resolution of Claims and Disputes
Article 32: Miscellaneous
Exhibit A: Federal and State Contract Clauses
Exhibit B: FHWA-1273
Exhibit C: Wage Rates
Exhibit D: Buy America Certification
Exhibit E: Non-Collusion Certification
Exhibit F: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Primary Covered Transactions
Exhibit G: Certification Regarding Lobbying
Exhibit H: Drug Free Workplace Certification
Exhibit I: E-Verify
Exhibit J: Bid Documents (Advertisement, Instructions & Addendum)
Exhibit K: Contractors Bid Form
Exhibit L: Technical Specifications
Exhibit M: Approved for Construction Plans
ARTICLE 1
DEFINITIONS

Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1.1 Actual Costs. The real Project costs attributable to:

A. labor, including social security, insurance, fringe benefits required by Agreement or custom, and workers’ compensation insurance;

B. materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

C. rental machinery and equipment, exclusive of hand tools, whether rented from the CONTRACTOR or others;

D. premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

E. field supervision and field office personnel directly attributable to the charge, exclusive of the cost of estimating, contract administration, and purchasing.

1.2 Addenda. Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

1.3 Agreement. The written instrument which is evidence of the Agreement between the COUNTY and the CONTRACTOR covering the Work. Also referred to as “Contract”.

1.4 Authorized Representative. The individual appointed by and acting on behalf of the CONTRACTOR, as approved by the COUNTY, for the duration of the Project.

1.5 Bid Package. The Bid Advertisement, Instructions to Bidders, all Addenda, the Bonds, the Notice of Award, and the Notice to Proceed.

1.6 Bonds. The performance bond and payment bond and other instruments of security, furnished by the CONTRACTOR and its surety in accordance with the Contract Documents and in accordance with the laws of Florida.

1.7 Change Order. A written document, which is signed by the CONTRACTOR and the COUNTY, that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

1.8 Claim. A demand or assertion by the COUNTY or the CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract (a demand for money or services by a third party is not a Claim).

1.9 Contract Documents. The documents that establish the rights and obligations of the parties and include the following:

A. the Agreement (including Exhibits);

B. the CONTRACTOR’s entire completed Bid Package;
C. the Design Documents; and

D. the approved submittals, and other documents provided by, through, or under the CONTRACTOR that fix, depict, and/or describe the size, quality and character of the Project; however, Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

1.10 Contract Price. The monies paid to the CONTRACTOR under the Contract Documents.

1.11 Contract Times. The number of days or the dates stated in the Agreement to: (A) achieve Substantial Completion; and (B) complete the Work so that it is ready for final payment as evidenced by the COUNTY’s written recommendation of final payment.

1.12 CONTRACTOR. The individual or entity with whom the COUNTY has entered into this Agreement.

1.13 Design Documents. The Drawings (Construction Plans) and Specifications, surveys, permits, estimates, photographs, and reports, together with all Written Amendments, Change Orders, the Work Change Directives, Field Orders, and the COUNTY’s written interpretations and clarifications issued on or after the Effective Date of the Agreement.

1.14 Drawings. That part of the Contract Documents prepared or approved by an engineer that graphically shows the scope, extent, and character of the Work to be performed by the CONTRACTOR (Shop Drawings or other the CONTRACTOR submittals are not Drawings). Also referred to as Construction Plans.

1.15 Effective Date of the Agreement. The date indicated in the Agreement on which it becomes effective (if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the two parties).

1.16 Field Order. A written order issued by the COUNTY that requires minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Times.

1.17 Final Completion or Final Acceptance. The completion of all the Work called for under the Contract Documents, including, but not limited to:

A. satisfactory operation of all equipment supplied by the CONTRACTOR;

B. correction of all punch list items to the satisfaction of the COUNTY;

C. payment of all trade contractors, subcontractors, and materialmen;

D. settlement of all claims, if any;

E. payment and release of all mechanic's, materialmen's, and similar liens;

F. delivery of all guarantees, equipment operation and maintenance manuals, Record Drawings, required certificates, and all other required approvals and acceptances by any municipality within Martin County, Martin County itself, the State of Florida or other authorities or agencies having jurisdiction; and

G. removal of all rubbish, tools, scaffolding, and surplus materials and equipment from the Work site.
1.18 **Notice to Proceed.** A written notice given by the COUNTY to the CONTRACTOR fixing the date on which the Contract Times will commence and on which the CONTRACTOR shall start to perform the Work under the Contract Documents.

1.19 **Project Manager.** The individual appointed by and acting on behalf of the COUNTY for the duration of the Project; the individual that is responsible for receiving the Applications for Payments from the CONTRACTOR on behalf of the COUNTY.

1.20 **Public Record.** All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business between the COUNTY and the CONTRACTOR.

1.21 **Samples.** Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.22 **Shop Drawings.** All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for the CONTRACTOR and submitted by the CONTRACTOR to illustrate some portion of the Work.

1.23 **Specifications.** That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

1.24 **Substantial Completion.** For the purpose of this Agreement, and for the compliance of those procedures, duties and obligations as set forth in the Florida Statutes’ “Local Government Prompt Payment Act”, the term “Substantial Completion” is defined as that point where the COUNTY is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that the COUNTY is able to utilize the entire the Project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life, safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of the Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific as set forth in Exhibits (if any). The Project should be completed to the point that the Work can be utilized for the purposes for which it was intended, as well as the satisfaction of the following requirements: (A) the items that affect operational integrity and function of the Project must be capable of continuous use; (B) all permits and other regulatory requirements must be satisfied; and (C) where required, a Certificate of Occupancy must be issued.

1.25 **Surety.** The corporate body that is responsible for the CONTRACTOR in connection with the Work as set forth in the Bonds and that is included in the most recent United States Department of the Treasury List of Acceptable Sureties and authorized to issue surety bonds in Florida, and which maintains a surety rating of “A-” or better.

1.26 **Underground Facilities.** All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.27 **Unit Price Work.** The Work to be paid for on the basis of unit prices included in the Project bid.
ARTICLE 2
WORK / PRELIMINARY REQUIREMENTS

2.1 The CONTRACTOR agrees to furnish and complete all authorized and approved work, materials, supplies, tools, furnishings, fixtures, labor, services, equipment, site development, permitting, regulatory matters, environmental mitigation, traffic control, accounting, coordination, and construction of the Project, more specifically described in the Design Documents, as applicable.

2.2 The CONTRACTOR shall be responsible to produce a color audio-visual recording of the Project site prior to construction. The purpose of the audio-visual recording is to document the condition of the Project site prior to construction with attention focused on the existence of any faults, fractures, or defects. Therefore, the recording shall be produced by a skilled videographer that is regularly engaged in the production of pre-construction recordings. The video recording shall be produced with sharp picture and accurate colors and shall be free of vibrations, distortion, or other significant picture imperfections; it shall be recorded during daylight hours and when the Project site is free of debris or obstructions. The pan rate, rate of travel, camera height, and zoom rate shall be maintained steady and clear at all times. The audio commentary shall be produced with proper volume and clarity and shall be free of distortion; it shall be simultaneously recorded with the video to assist the COUNTY with the orientation, location, identification, and description of the recorded features that are included in or adjacent to the Project site, which include, but are not limited to: (A) each side of the roadways; (B) sidewalks, bicycle paths, and other modes of transportation facilities; (C) buildings, walls, retaining walls, and seawalls; (D) elements of the stormwater management system, including ponds, culvert ends, and visible drainage structures; and (E) landscaping/trees, visible components of the irrigation system, and fencing.

2.3 Prior to the issuance of the Notice to Proceed, the COUNTY shall schedule a pre-construction meeting with the CONTRACTOR. At the pre-construction meeting, the CONTRACTOR shall submit for the COUNTY’s review its audio-visual recording of the Project site, the proposed Critical Path Method (CPM) Schedule, the Final Schedule of Values, personnel and subcontractor lists, and the proposed mobilization requirements. It is the intent of the pre-construction meeting to ensure that the Project Manager and the Authorized Representative have a clear understanding of the proposed Work and the requirements of this Agreement and to establish the appropriate Date of Commencement, which may or may not coincide with the date of the pre-construction meeting.

2.4 The Date of Commencement of the Work shall be the date indicated in the Notice to Proceed. The Notice to Proceed shall be issued by the Project Manager after the CONTRACTOR has delivered to the COUNTY the executed Agreement together with the Bonds and Insurance Certificates required in accordance with the Agreement and the Martin County Board of County Commissioners has approved this Agreement. No Work shall be performed by the CONTRACTOR or its Professionals, subconsultants, or subcontractors, and no irrevocable commitments to vendors shall be made prior to the Date of Commencement, at which time, the CONTRACTOR may commence to perform the Work.

ARTICLE 3
CONTRACT PRICE

3.1 The COUNTY shall pay the CONTRACTOR for the performance of this Agreement and completion of the Work under the Project in accordance with the Contract Documents, subject to adjustment by Change Order, the fixed Contract Price as stated on Page 1 of this Agreement, based on the unit costs and quantities in the Bid. The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for the Project by the COUNTY.
3.2 The CONTRACTOR fully understands that the Lump Sum and/or Unit Price for all items includes a sufficient allowance for the completion of all Work associated with the Project, as depicted in the Contract Documents, including, but not limited to, all profit and overhead, Incidents, all labor, supervision, testing, machinery, equipment, tools, utility coordination, clean up, and other means of construction necessary to complete the Work in accordance with all applicable regulatory agencies.

ARTICLE 4
CONTRACTOR RESPONSIBILITIES

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

4.2 The CONTRACTOR shall give all notices and comply with all municipal, local, state and federal laws, ordinances, codes, rules, licenses, and regulations applicable to the Work. If the CONTRACTOR observes that any of the Agreement is contradictory to such laws, rules, and regulations, it shall notify the Project Manager promptly in writing. If the CONTRACTOR performs any the Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations, it shall bear all related costs.

4.3 The CONTRACTOR understands and acknowledges that all documents and materials provided with the Request for Bid package and any addenda are general and preliminary, and that the CONTRACTOR shall not rely on the accuracy or completeness thereof. The CONTRACTOR acknowledges that its duties hereunder shall not be excused or discharged in any respect based on the incompleteness or inaccuracy of any such documents or materials.

4.4 The CONTRACTOR shall be responsible to the COUNTY for acts and omissions of the CONTRACTOR and the CONTRACTOR’s agents, employees, professionals, subconsultants, subcontractors, and all other parties performing the Work by, through, and under the CONTRACTOR.

4.5 The CONTRACTOR shall be responsible for the management, coordination and supervision of all construction means, methods, techniques, sequences, and procedures for completion of the Work.

4.6 The CONTRACTOR agrees to bind specifically every professional, subconsultant and subcontractor to the applicable terms and conditions of the Agreement, for the benefit of the COUNTY.

4.7 The CONTRACTOR represents that it is fully experienced and properly qualified to perform the Work under the Contract Documents and that it is properly licensed, equipped, organized, and financed to perform such the Work.

4.8 The CONTRACTOR shall act as an independent contractor and not as the agent of the COUNTY. The CONTRACTOR shall supervise and direct the Work and shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction subject to compliance with the Contract Documents.
4.9 The CONTRACTOR shall employ and maintain a full time on-site Authorized Representative who shall have been designated in writing by the CONTRACTOR and pre-approved by the COUNTY. The Authorized Representative shall be dedicated to this the Project full time and shall have full authority to act on behalf of the CONTRACTOR. All communications given to the Authorized Representative shall be as binding as if given to the CONTRACTOR. Copies of written communications given to the Authorized Representative of the CONTRACTOR shall be mailed to the address set forth in the Agreement for notices. Nothing contained herein shall be construed as modifying the CONTRACTOR's duty of supervision and fiscal management as provided by Florida law. The COUNTY shall have the right of direct removal of any Authorized Representative of the CONTRACTOR. Any change in the Authorized Representative of the CONTRACTOR assigned to the Project shall be subject to the COUNTY’s prior written approval.

4.10 The CONTRACTOR shall perform at least 30% (fifteen percent) of the total amount of the Work in-house. The foregoing 30% (fifteen percent) is exclusive of administrative work performed by the CONTRACTOR in connection with the Work.

4.11 The CONTRACTOR shall not employ any subcontractor or Consultant against whom the COUNTY may have reasonable objection.

4.12 The CONTRACTOR represents to the COUNTY that the CONTRACTOR (and its officers, directors, partners, or shareholders holding ten 10% (ten percent) or more of the outstanding stock of the CONTRACTOR), does not have any financial interest in or with (i.e. is not an officer, director, partner or 10% (ten percent) plus shareholder) any person, entity, subcontractor, consultant, design professional, materialmen, supplier, or any other subcontractor performing the Work or the Project. The CONTRACTOR agrees to obtain prior written consent from the COUNTY before entering into any agreement on this the Project in which it has a common financial interest.

4.13 The CONTRACTOR shall keep on-site one record copy of all Drawings, Specifications, Addenda, Modifications, and Shop Drawings that is annotated to show all changes made during the construction process. Final acceptance of the Work will be withheld until all such modifications have been properly inserted electronically into the design documents, thus creating Record Drawings, and the Record Drawings are accepted by the COUNTY.

4.14 The CONTRACTOR shall provide the COUNTY two copies of the Record Drawings verifying the as-built conditions for all installed and constructed components of the Work, including, but not limited to, the surface water management, traffic control, lighting, water distribution, and wastewater collection systems. The Record Drawings, which shall be signed and sealed by a Professional Engineer or Surveyor and Mapper, licensed in the State of Florida, must demonstrate to the Project Manager that the Project components were constructed in substantial conformance with the approved Construction Plans and applicable permits and that the Project will function as designed and intended. The Record Drawings must be certified based on an As-Built Survey prepared in accordance with the Minimum Technical Standards established in Florida Administrative Code (FAC) 5J-17.051 and 5J-17.052. If the Project Manager determines that the as-built conditions of one or more components are not constructed in substantial conformance with the approved Construction Plans or that the Record Drawings do not sufficiently demonstrate conformance with the Construction Plans, one set of the Record Drawings will be returned to the CONTRACTOR that identify the deficient component(s) of the Work. The CONTRACTOR shall correct the component(s) or the Record Drawing in the timeframes set forth in Article 6 of this Agreement. Upon acceptance by the Project Manager, the CONTRACTOR shall provide the COUNTY Record Drawings electronically in AutoCAD® and Adobe Acrobat®. The Adobe Acrobat® file shall be a replica of the signed and sealed Record Drawing.
4.15 The CONTRACTOR shall, at its expense, attend any and all meetings called by the COUNTY to discuss the Work under the Agreement.

4.16 The CONTRACTOR shall not establish and shall not allow its employees to engage in any non-Project related commercial activities on the Project site.

4.17 The CONTRACTOR shall, at its expense, arrange for, develop, and maintain all utilities required to execute the Work. Such utilities shall be furnished by the CONTRACTOR at no additional cost to the COUNTY, including, but not be limited to: telephone service for the CONTRACTOR's use; construction power; and potable water, and sanitary sewer. Prior to Final Acceptance of the Work, the CONTRACTOR shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Agreement.

4.18 The CONTRACTOR shall be responsible for the proper control, maintenance, and detour of traffic in the construction area, at all times during the course of the Work. All traffic control and maintenance procedures shall be in accordance with the requirements of the Florida Department of Transportation, Martin County, or the local municipality, within their respective area of jurisdiction. It shall be the CONTRACTOR’s responsibility, as Bidder, prior to submitting its Bid, to determine the requirements of these agencies so that its Bid reflects all costs to be incurred. No claims for additional payment will be considered for costs incurred in the proper control, maintenance, detour of traffic. The CONTRACTOR shall notify all such agencies and the COUNTY at least 7 (seven) days in advance of any traffic detour. The CONTRACTOR shall notify all such agencies and the COUNTY at least 14 (fourteen) days in advance of any road closure.

4.19 The CONTRACTOR is responsible for adequate NPDES-compliant drainage at all times. Existing functioning storm sewers, gutters, ditches, and other run-off facilities shall not be obstructed.

4.20 The CONTRACTOR shall ensure that all fire hydrants on or adjacent to the Project shall be kept accessible and no obstruction shall be placed within fifteen feet of any hydrant.

4.21 The CONTRACTOR shall ensure that heavy equipment is not operated close enough to pipe headwalls or other structures to cause their displacement.

**ARTICLE 5**

**PAYMENT**

5.1 A Schedule of Values shall be approved by the COUNTY prior to the commencement of the Work. The approved Schedule of Values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the COUNTY. Progress payments on account of Unit Price Work will be based on the number of units completed.

5.2 Applications for Payments

A. The CONTRACTOR shall submit to the COUNTY for review, an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as required by the Contract Documents. Such supporting documents shall include but not be limited to: (i) a current release from the CONTRACTOR releasing all claims, other than those previously submitted pursuant to Article 10 herein, through the date of the Application for Payment; and (ii) a monthly dated Critical Path Method (CPM) Schedule for the Project. Submission of this supporting documentation shall be a condition precedent to the CONTRACTOR’s entitlement to receive payment. If payment is requested on the basis of materials and
equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the COUNTY has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect the COUNTY’s interest therein, all of which must be satisfactory to the COUNTY. Advance payments shall not be allowed.

B. Beginning with the second Application for Payment, each Application shall include:

(i) an affidavit by the CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge the CONTRACTOR’s legitimate obligations associated with prior Applications for Payment and

(ii) a “Conditional Waiver of Right to Claim Against Payment Bond and Martin County” completed by the CONTRACTOR and all subcontractors.

C. The amount of retainage with respect to progress payments will be 10% (ten percent) of the Contract Price or as otherwise stipulated in the Agreement. After 50% (fifty percent) completion of the construction, the amount of retainage withheld from each subsequent progress payment shall be 5% (five percent). “Fifty Percent Completion” of the Work is defined as that point in time when 50% (fifty percent) of the overall value of the Work items are incorporated and will remain in place subsequent to final completion of the Work based upon the schedule of values contained in the Agreement. As such, and by way of example, the value of the CONTRACTOR’s mobilization, general conditions, supervision or like items which do not involve permanent incorporation of the Work do not apply to the determination of “Fifty Percent Completion” of the Work for purposes of establishing entitlement to a reduction of retainage.

D. The Application for Final Payment shall be made after the CONTRACTOR has, in the opinion of the COUNTY, satisfactorily completed all corrections identified during the Final Inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, and other documents.

E. The Application for Final Payment shall be accompanied (except as previously delivered) by:

(i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to the COUNTY) of all Lien rights arising out of or Liens filed in connection with the Work.

F. In lieu of the releases or waivers of Liens and as approved by the COUNTY, the CONTRACTOR may furnish receipts or releases in full and an affidavit of the CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the COUNTY or the COUNTY’s property might in any way be responsible have been paid or otherwise satisfied. If any subcontractor or supplier fails to furnish such a release or receipt in full, the CONTRACTOR may furnish a Bond or other collateral satisfactory to the COUNTY to indemnify the COUNTY against any Lien.

5.3 Review of Applications
A. The COUNTY’s approval of any payment requested in an Application for Payment will constitute a representation by the COUNTY that to the best of the COUNTY’s knowledge, information and belief:

(i) the Work has progressed to the point indicated;

(ii) the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price the Work, and to any other qualifications stated in the recommendation); and

(iii) the conditions precedent to the CONTRACTOR’s being entitled to such payment appear to have been fulfilled in so far as it is the COUNTY’s responsibility to observe the Work.

B. The COUNTY’s approval of any payment requested in an Application for Payment will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work performed have been exhaustive, extended to every aspect of the Work, or were detailed inspections of the Work; or (ii) there may not be other matters or issues between the parties that might entitle the CONTRACTOR to be paid additionally by the COUNTY or entitle the COUNTY to withhold payment to the CONTRACTOR.

C. The COUNTY may reject the payment request or invoice within 20 (twenty) business days after the date on which the payment request or invoice is stamped as received by the COUNTY. The rejection must be in writing and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application.

D. The COUNTY may refuse to make payment of the full amount because:

(i) claims have been made against the COUNTY on account of the CONTRACTOR’s performance or furnishing of the Work;

(ii) Liens have been filed in connection with the Work, except where the CONTRACTOR has delivered a specific Bond satisfactory to the COUNTY to secure the satisfaction and discharge of such Liens;

(iii) there are other items entitling the COUNTY to a set-off against the amount recommended.

(iv) the Work is defective or the completed Work has been damaged, requiring correction or replacement;

(v) the Work for which payment is requested cannot be verified;

(vi) the CONTRACTOR failed to make proper payments to subcontractor(s) for labor, materials or equipment in connection with the Work;

(vii) the Contract Price has been reduced because of modifications or there is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

(viii) the COUNTY has been required to correct defective Work or complete the Work in accordance with the Contract Documents;
(ix) the CONTRACTOR failed to carry out the Work in accordance with the Contract Documents, or otherwise unsatisfactory prosecution of the Work;

(x) of any other breach of, default under, violation of, or failure to comply with the provisions of the Contract Documents.

E. If the COUNTY refuses to make payment of the full amount, the COUNTY must give the CONTRACTOR written notice within 10 (ten) business days of receipt of invoice stating the reasons for such action and promptly pay the CONTRACTOR any amount remaining after deduction of the amount so withheld. The COUNTY shall promptly pay the CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by the COUNTY and the CONTRACTOR, when the CONTRACTOR corrects the reasons for such action to the COUNTY’s satisfaction.

5.4 All payments made to the CONTRACTOR, whether Progress or Final, shall be in strict accordance with the “Local Government Prompt Payment Act” addressing payment, retainage, and punchlist procedures for the performance of the Work.

5.5 The CONTRACTOR warrants and guarantees that title to all the Work covered by an Application for Payment, whether incorporated in the Work or not, shall pass to the COUNTY prior to the making of the Application for Payment, free and clear of all liens, claims, security interests, purchase money security interest, chattel paper or encumbrances of any nature whatsoever (“Liens”).

5.6 The CONTRACTOR shall promptly pay all subcontractors, laborers, materialmen, and suppliers upon receipt of payment from the COUNTY out of the amount paid to the CONTRACTOR on account of such person's portion of the Work, the amount to which such person is entitled, reflecting percentages actually retained from payments to the CONTRACTOR. The CONTRACTOR shall, by appropriate agreement with each subcontractor or other person, require each subcontractor or other person to make payments to sub-subcontractors in similar manner.

5.7 A Certificate of Payment, a progress payment, or partial or entire use of the Project by the COUNTY shall not constitute acceptance of Work not in accordance with the Contract Documents.

5.8 In accordance with the provisions of §255.05, Florida Statutes, where the CONTRACTOR requires a waiver from laborers, materialmen, subcontractors, or sub-subcontractors (as each such term is defined by §713.01, Florida Statutes) of the right to make a claim against the Payment Bond in exchange for or to induce payment of a progress payment or a final payment, such waivers shall comply with the form set forth in §255.05, Florida Statutes, as amended from time to time.

5.9 If one or more Notice of Non-Payment is received by the COUNTY, no further payments will be approved until non-payment(s) have been satisfied and a Release of Claim for each Notice of Non-Payment has been submitted to the COUNTY. Upon request, the CONTRACTOR shall furnish acceptable evidence that all such claims or liens have been satisfied. If the CONTRACTOR fails to satisfy the non-payment, the COUNTY may make payment and back-charge the CONTRACTOR for any and all costs associated with such payment.

5.10 If at any time during the progress of the Work, the CONTRACTOR's actual progress is inadequate to meet the requirements of the Agreement, the COUNTY may, but is not required to, notify the CONTRACTOR to implement some or all of the following remedial actions at the sole cost and expense of the CONTRACTOR:
A. Increase construction manpower in such quantities and crafts as necessary to eliminate the schedule progress deficiency;

B. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the schedule progress deficiency;

C. Reschedule the Work in conformance with the specification requirements.

5.11 Neither such notice by the COUNTY nor the COUNTY’s failure to issue such notice shall relieve the CONTRACTOR of its obligation to achieve the quality of the Work and rate of progress required by the Agreement.

ARTICLE 6
TIME OF PERFORMANCE

Time is of the essence under this Agreement.

6.1 Prior to requesting an inspection for Substantial Completion, as defined in Article 1.25, the CONTRACTOR shall confirm that:

A. All construction is complete, the project components are clean, and all systems fully functional.
B. All utilities are installed or adjusted, as required, and are fully functional.
C. The Project site is clear of the CONTRACTOR’s excess equipment, temporary facilities and/or trailers.
D. All operations and maintenance manuals for all equipment have been delivered to the COUNTY.
E. All operations and maintenance training related literature, software, and back-up disks have been delivered to the COUNTY.
F. All manufacturers’ certifications and warranties have been delivered to the COUNTY.
G. All required spare parts, materials, as well as any special measuring devices and tools have been delivered to the COUNTY.

6.2 The COUNTY shall have the right to exclude the CONTRACTOR from the Project after the date of Substantial Completion, but the COUNTY shall allow the CONTRACTOR reasonable access to complete or correct items on the punch list.

6.3 When the CONTRACTOR considers the Work ready for its intended use, the CONTRACTOR shall notify the COUNTY, in writing, that the Work is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the COUNTY issue a certificate of Substantial Completion. Promptly thereafter, the COUNTY and the CONTRACTOR shall make an inspection of the Work to determine the status of completion. For the purpose of this Agreement, and for the compliance of those procedures, duties, and obligations as set forth in §218.70 et seq. and §218.735 et seq., Florida Statutes, the term “Substantial Completion” is defined as that point where the COUNTY is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that the COUNTY is able to utilize the entire Project for its intended purposes, including but not limited to the completion of all specified systems and items relating
to life, safety, and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of the Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific are as set forth in attached Exhibits. If the COUNTY does not consider the Work substantially complete, the COUNTY will notify the CONTRACTOR in writing giving the reasons therefore. If the COUNTY considers the Work substantially complete, the COUNTY will issue and deliver to the CONTRACTOR a certificate of Substantial Completion, which shall fix the date of Substantial Completion. In addition to §218.735(7)(a), Florida Statutes, punch list procedures for construction projects having an estimated cost of less than $10,000,000 (ten million dollars) to render the Work complete, satisfactory, and acceptable are established as follows:

A. The intent of this section is for the COUNTY and the CONTRACTOR to cooperate to develop a Final Punchlist no later than 30 (thirty) days from the date of reaching Substantial Completion.

B. Within 5 (five) days of Substantial Completion of the Project, the CONTRACTOR shall schedule a walkthrough with the COUNTY (“Punchlist Walkthrough”). The purpose of the Punchlist Walkthrough is to determine that the project has achieved Substantial Completion, and if so, to develop a Punchlist of items to be performed by the CONTRACTOR, based upon observations made jointly between the CONTRACTOR and the COUNTY during the Punchlist Walkthrough. The COUNTY shall issue the Final Punchlist within 30 (thirty) days of the Substantial Completion date.

C. The CONTRACTOR shall endeavor to address and complete as many items as possible noted on the Punchlist either during the Punchlist Walkthrough itself or within 25 (twenty five) days from the date of the Punchlist Walkthrough.

D. No more than 20 (twenty) days following the issuance of the Final Punchlist, the CONTRACTOR shall again initiate and request a second walkthrough (“Final Walkthrough”) of the Project with the COUNTY. The purpose of the Final Walkthrough is to identify which items on the Punchlist remain incomplete and to supplement that list as legally necessary (based, for example, upon work which may have been damaged as a result of the CONTRACTOR’s performance of completion of items contained on the Punchlist.

E. The CONTRACTOR shall complete the Final Punchlist items within 30 (thirty) days of the date of its issuance by the COUNTY.

F. In no event may the CONTRACTOR request payment of final retainage under §218.735(7)(e), Florida Statutes, until the CONTRACTOR considers the Final Punchlist to be 100% (one hundred percent) complete.

G. The CONTRACTOR acknowledges and agrees that no item contained on the Final Punchlist shall be considered a warranty item until such time as: (i) the Final Punchlist is 100% (one hundred percent) complete; and (ii) the COUNTY has been able to operate or utilize the affected punchlist item for 15 (fifteen) days, whichever occurs last.

H. The CONTRACTOR acknowledges and agrees that the COUNTY may, at their option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective work for the CONTRACTOR to address. The intent of any such lists prior to Substantial Completion is to streamline the Punchlist process upon achieving Substantial Completion, and to allow for the CONTRACTOR to address needed areas of corrective work as they may be observed by the COUNTY during performance of the Work.

I. The CONTRACTOR acknowledges and agrees that in calculating 150% (one hundred fifty percent) of the amount which may be withheld by the COUNTY as to any Final Punchlist item for which a good faith basis exists as to it being complete, as provided for by §218.735(7)(e),
Florida Statutes, the COUNTY may include within such percentage calculation its total costs for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the Final Punchlist item. Such percentage shall in no event relate to the schedule of value associated with such the Work activity, but rather total costs are based upon the cost of completing the Work activity based upon market conditions at the time of Final Punchlist completion.

6.4 If Substantial Completion has not been obtained at the Punchlist Walkthrough inspection called by the CONTRACTOR, for reasons that are the fault of the CONTRACTOR, the cost of any subsequent inspections requested by the CONTRACTOR for the purpose of determining Substantial Completion shall be at the cost of the CONTRACTOR and shall be assessed against the final payment application. Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the CONTRACTOR within the time-frame established.

6.5 Use by the COUNTY, at the COUNTY’s option, of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which the COUNTY and the CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by the COUNTY for its intended purpose without significant interference with the CONTRACTOR’s performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

A. The COUNTY may request, in writing, the CONTRACTOR permit the COUNTY to use any such part of the Work which the COUNTY believes to be ready for its intended use and substantially complete. If the CONTRACTOR agrees that such part of the Work is ready for its intended use and substantially complete, the CONTRACTOR will certify to the COUNTY that such part of the Work is substantially complete and will request the COUNTY issue a certificate of Substantial Completion for that part of the Work. The CONTRACTOR may notify, in writing, the COUNTY that the CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request the COUNTY issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either a request or notification is made, the COUNTY and the CONTRACTOR shall inspect that part of the Work to determine its status of completion. If the COUNTY does not consider that part of the Work to be substantially complete, the COUNTY will notify the CONTRACTOR in writing giving the reasons therefore.

B. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of this Agreement regarding property insurance.

6.6 Upon written notice from the CONTRACTOR that the entire Work, or an agreed portion thereof, is complete, the COUNTY will promptly make a final inspection with the CONTRACTOR and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The CONTRACTOR shall immediately take such measures necessary to complete such Work or remedy such deficiencies.

ARTICLE 7
LIQUIDATED DAMAGES

7.1 Upon failure of the CONTRACTOR to Substantially Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the COUNTY
daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the COUNTY’s estimated damages resulting from the delay to Substantial Completion.

7.2 Upon failure of the CONTRACTOR to Finally Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the COUNTY daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the COUNTY’s estimated damages resulting from the delay to Final Completion.

7.3 Milestones, milestone completion dates, and applicable Liquidated Damages shall be in accordance with the Contract Documents.

7.4 If the milestones are not strictly complied with, then Liquidated Damages will be assessed against the CONTRACTOR, which are agreed upon, and it is further agreed that such Liquidated Damages bear a reasonable relationship to damages to be incurred by the COUNTY, and are not a penalty.

ARTICLE 8
CLAIMS FOR ADDITIONAL TIME

8.1 If the CONTRACTOR's performance of this Agreement is delayed, either by delays that are beyond the reasonable control and without the fault or negligence of the CONTRACTOR or its subcontractors or by changes ordered in the Work, and in either event where such delay or change in the Work affects the critical path, then the Agreement Time shall be extended by Change Order as determined by the COUNTY. If the CONTRACTOR wishes to make Claim for an increase in the Contract Time, the CONTRACTOR shall provide the COUNTY a written notice of claim upon discovering the cause of the alleged delay. Such notice of claim shall include the following information, or else be waived:

A. Nature of the delay or change in the Work;
B. Dates of commencement and cessation of the delay or change in the Work;
C. Activities on the current progress schedule affected by the delay or change in the Work;
D. Identification and demonstration that the delay or change in the Work affects the critical path;
E. Identification of the source of delay or change in the Work;
F. Anticipated extent of the delay or change in the Work; and
G. Recommended action to minimize the delay.

8.2 The CONTRACTOR shall not be entitled to any extension of time for delays resulting from any cause unless the CONTRACTOR has notified the COUNTY in writing within 7 (seven) calendar days of commencement of the delay.

8.3 No Damages for Delay; Exclusive Remedy. The CONTRACTOR shall not be entitled to and hereby waives any and all claims for damages which it may suffer by reason of delay, acceleration, loss of efficiency, or other related time or impact-based claims (hereinafter collectively "delay") or for delay attributable to any foreseen or unforeseen condition, or for delays claimed to be the result of active, intentional, knowing, or passive interference by the COUNTY, or its agents, and waives damages that it may suffer by reason of such claims for lost profits, loss or impairment of bonding capacity, destruction of business, extended overhead, supervision, extended, unabsorbed home office overhead; the extension
of time granted herein, being the CONTRACTOR’s sole remedy, with the exception that in the event of demonstrated critical, compensable, non-concurrent delay suffered by the CONTRACTOR, the CONTRACTOR may claim as its sole and exclusive remedy any associated, extended direct jobsite general conditions expended by the CONTRACTOR (hereinafter "applicable extended general conditions") in a sum not to exceed $250.00 (two hundred fifty dollars) per each day of delay. Apart from extensions of time or acceleration costs approved by the COUNTY and any applicable extended general conditions, no payment of claim for delay damages shall be made to the CONTRACTOR as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay be avoidable or unavoidable. Notwithstanding anything herein to the contrary, provided the CONTRACTOR has otherwise satisfied the requirements of this Agreement, the CONTRACTOR shall be entitled to an increase in the Contract Price based upon approved general condition, insurance, and bond premium costs resulting from delays for which the COUNTY has approved by Change Order or Construction Change Directive, provided, however, the COUNTY shall not be required to pay such additional amounts for any days following the date on which the CONTRACTOR achieves Final Completion for the appropriate portion of the Work.

8.4 The time during which the CONTRACTOR is delayed in the performance of the Work by the acts or omissions of the COUNTY, acts of God, unusually severe and abnormal climatic conditions or other conditions beyond the CONTRACTOR’s control and which the CONTRACTOR could not reasonably have foreseen and provided against, shall be added to the Contract Time stated in the Agreement; provided, however, that no claim by the CONTRACTOR for an extension of time for such delays be considered unless made in accordance with Paragraph 8.1.

8.5 The COUNTY shall not be obligated or liable to the CONTRACTOR for and the CONTRACTOR hereby expressly waives any claims against any damages, costs, or expenses of any nature whatsoever which the CONTRACTOR, its subcontractors or sub-subcontractors may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like, arising from or out of any act or omission of the COUNTY, or any of the events referred to in Paragraph 8.4 above, it being understood and agreed that the CONTRACTOR’s sole and exclusive remedy in such event shall be an extension of Contract Time, but only if claim is properly made in accordance with Paragraph 8.1.

ARTICLE 9
SITE CONDITIONS

9.1 Field Measurements. Before undertaking each part of the construction, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the COUNTY any conflict, error, or discrepancy that the CONTRACTOR or any of its subcontractors or Suppliers may discover and shall obtain a written interpretation or clarification from the COUNTY before proceeding with any Work affected. The CONTRACTOR shall remain liable to the COUNTY for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents prepared by the CONTRACTOR.

9.2 Differing Site Conditions. The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the COUNTY in writing of: (A) subsurface or latent physical conditions at the site differing materially from those indicated in this Agreement; or (B) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in this Agreement. The COUNTY will promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or the time required for, performance of any
part of the Work under this Agreement, an equitable adjustment shall be made and the Agreement modified in writing accordingly. The CONTRACTOR’s failure to provide notice upon discovery of the differing site condition shall waive any entitlement to such an adjustment in the Contract Price or Contract Time.

9.3 Physical Conditions (Including Underground Facilities). The CONTRACTOR shall have full responsibility for physical conditions, and Underground Facilities owned by the COUNTY or others, as shown or indicated in the Contract Documents. The CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. The COUNTY shall not be responsible for accuracy or completeness of data, plans, and specifications and the CONTRACTOR shall have full responsibility for checking all information and data. If the Contract Documents necessitate amending to order changes in the Work due to Underground Facilities owned by the COUNTY or others, whether they be shown or indicated or newly discovered, the COUNTY shall authorize the required changes in the Work by Change Order. If those Underground Facilities owned by the COUNTY or others cause or will cause delays in the performance or extend completion of all or part of the work, the CONTRACTOR shall absorb all related delay, extension, or acceleration costs, however caused, except that if the COUNTY and the CONTRACTOR agree that the delays require a change in Contract Time, the COUNTY shall authorize the necessary change in Contract Time only to the extent that such delays exceed 30 (thirty) days impact to controlling work items. However, an extension in Contract Time, when and if so granted shall be the CONTRACTOR’s sole and exclusive remedy with respect to the COUNTY for any delay, disruption, interference, inefficiency, acceleration, extension or hindrance, and associated costs, however caused, resulting from variance in the location or configuration of Underground Facilities owned by the COUNTY or others as shown or indicated, or from newly discovered Underground Facilities owned by the COUNTY or others.

9.4 Special Requirements for Underground Facilities. The CONTRACTOR shall have full responsibility for the following list. Except as otherwise provided, all costs involved and time required to perform these responsibilities shall be considered as having been included in the Contract Price and in the CONTRACTOR’s schedule for the performance of the Work within the Contract Time, even if the Contract Documents need amending to authorize minor deviations or changes in the Work due to those Underground Facilities including utilities.

A. Field locating any and all Underground Facilities including utilities shown or indicated as to depth and alignment in advance of excavation;

B. Notifying the COUNTY of any newly discovered Underground Facility and promptly notifying that the COUNTY of that discovery;

C. Shoring, blocking and protecting Underground Facilities including utilities shown, indicated or discovered;

D. Coordination, scheduling and sequencing the Work with the COUNTY’s of all Underground Facilities shown, indicated or discovered;

E. Repairing any damage to the satisfaction of the COUNTY, to the extent that the damage was due to the CONTRACTOR’s failure to adhere to the requirements, or to the fault or negligence of the CONTRACTOR; and

F. The safety and protection of any affected the Work, and for repairing any damage done to the work.
9.5 If those Underground Facilities owned by the COUNTY or others cause or will cause delays in the performance or extend completion of all or part of the work, the CONTRACTOR shall absorb all related delay, extension or acceleration costs, however caused, except that if the COUNTY and the CONTRACTOR agree that the delays require a change in Contract Time, the COUNTY shall authorize the necessary change in Contract Time only to the extent that such delays exceed 30 (thirty) days impact to controlling work items. However, an extension in Contract Time, when and if so granted shall be the CONTRACTOR’s sole and exclusive remedy with respect to the COUNTY for any delay, disruption, interference, inefficiency, acceleration, extension or hindrance and associated costs, however caused, resulting from variance in the location or configuration of Underground Facilities owned by the COUNTY or others shown or indicated, or from newly discovered Underground Facilities owned by the COUNTY or others.

9.6 Unless it prejudices the Work already excavated and uncovered, the CONTRACTOR shall schedule layout, excavation and uncovering of the Work or Underground Facilities a sufficient time in advance to allow the COUNTY’S design professional’s review, and the possible amending or supplementing of the Contract Documents.

ARTICLE 10
INDEMNIFICATION

The CONTRACTOR hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of any tier of the CONTRACTOR, its SUBCONTRACTS, CONSULTANTS or SUPPLIERS or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with the execution of the Agreement, or in preparation for the work and services under this Agreement, or any extension, modification, or amendment thereto by change order to otherwise.

The CONTRACTOR hereby agrees to indemnify and hold harmless the Martin County Board of County Commissioners and the Federal Government, its officers and employees from liabilities, damages, lawsuits, and costs, including but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR or persons employed or utilized by the CONTRACTOR in the performance of this Agreement or from liability to third parties for claims asserted under such contract.

ARTICLE 11
TERMINATION

11.1 Notwithstanding any other provision of this Agreement, the CONTRACTOR may be held in default of its contractual obligation under this Agreement if the CONTRACTOR:

A. refuses or fails to supply enough properly skilled workers or proper and sufficient materials and equipment;

B. fails to make payment to subcontractor for materials or labor in accordance with the respective agreements between the CONTRACTOR and the subcontractors;

C. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;

D. performs the Work that does not conform to Contract Documents requirements;
E. fails to meet the Contract Schedule or fails to make progress on the Work so as to endanger performance of the Agreement;

F. abandons or refuses to proceed with any or all the Work; or

G. otherwise breaches, fails to comply fully with, or is in default of any provision of the Contract Documents.

11.2 The COUNTY must provide written notice to the CONTRACTOR notifying it that the COUNTY is declaring it in default and providing the CONTRACTOR with 3 (three) business days after receipt of such written notice of default, to cure such default. In the event that the CONTRACTOR fails to cure the default within the 3 (three) business day default period, the COUNTY may:

A. take possession of the Work site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR; and

B. accept assignment of subcontracts pursuant to this Agreement; and

(i) finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs against any monies owed or to be owed to the CONTRACTOR, or back charge the CONTRACTOR for any and all such completion costs, or

(ii) terminate the CONTRACTOR and hire a completion contractor to finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs, including costs for construction, architectural, engineering, project management, and any other expenses, against any monies owed or to be owed to the CONTRACTOR, or back charge the CONTRACTOR for any and all such completion costs, or

C. set off any and all such completion costs against any monies then due or to become due on any other projects that the COUNTY has with the CONTRACTOR.

11.3 Upon default, the CONTRACTOR shall not be entitled to receive further payment until the Work is finished.

11.4 If, after notice of termination, it is determined for any reason that the CONTRACTOR was not in default, or that the delay was excusable under the provisions of the Contract Documents, the rights and obligations of the parties shall be the same as if the notice of termination had been a Termination by the COUNTY for Convenience.

11.5 Termination by the COUNTY for Convenience. Notwithstanding any other provision to the contrary in the Contract Documents, the COUNTY reserves the right at any time and in its sole and absolute discretion to terminate the services of the CONTRACTOR with respect to the Work by giving written notice to the CONTRACTOR. In such event, the CONTRACTOR shall be entitled to, and the COUNTY shall reimburse the CONTRACTOR for, an equitable portion of the Contract Price based on the portion of the Work completed prior to the effective date of termination and for any other reasonably expended costs attributable to such termination. However, the CONTRACTOR shall not be entitled to receive its anticipated profits for any unperformed Work.

ARTICLE 12
SUSPENSION OF WORK

The COUNTY may, without cause, order the CONTRACTOR in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the COUNTY may determine.
ARTICLE 13
CHANGES IN THE WORK

13.1 The COUNTY may, at any time or from time to time, order additions, deletions, or revisions in the Work by requesting a proposal from the CONTRACTOR detailing the proposed additions, deletions, or revisions to the Work. The proposal shall include such details as man-hours, man-hour rates, quantities, quantity unit rates, equipment, equipment unit rates, and mark-ups. The CONTRACTOR shall complete and return the proposal to the COUNTY within 10 (ten) calendar days from receipt thereof. The proposal shall include any increases or decreases in Contract Time or Contract Price and shall include any additional modifications required by virtue of the requested change, whether or not such additional modifications were specifically identified in the request for proposal. The proposal may then be: (A) issued as a Change Order in accordance with the provisions of the Contract Documents; (B) modified and thereafter issued as a Change Order in accordance with the provisions of the Contract Documents; or (C) withdrawn.

13.2 The COUNTY may authorize minor changes or alterations in the Work not involving extra cost or time and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the CONTRACTOR believes that any minor change or alterations authorized by the COUNTY entitles it to an increase in the Contract Price or extension of Contract Time, it shall treat the Field Order as a request for proposal and issue a proposal for the change in Contract Price and Contract Time prior to proceeding with the Work covered in the Field Order. The procedures outlined in the Contract Documents shall then be followed. Acceptance of the Final Payment by the CONTRACTOR shall constitute acknowledgment by the CONTRACTOR that all payments due for modifications required under Field Orders have been incorporated into the Final Payment.

13.3 Additional Work performed by the CONTRACTOR without authorization of a written Change Order will not entitle it to an increase in the Contract Price or an extension of the Contract Time.

13.4 It is the CONTRACTOR's responsibility to notify its Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The CONTRACTOR shall furnish proof of such adjustment to the COUNTY.

13.5 The COUNTY may, at any time, without notice to the Surety, by Field Order or by properly executed Change Order, make any change in the Work within the general scope of the Contract Documents, including but not limited to changes:

A. in the Drawings and designs, and Specifications;
B. in the method or manner of performance of the Work;
C. directing acceleration in the performance of the Work.

13.6 Except as herein provided, no order, statement, or conduct of the COUNTY shall be treated as a Change Order or Field Order or entitle the CONTRACTOR to an equitable adjustment hereunder.

13.7 No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

13.8 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways at the sole discretion of the COUNTY:
A. where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;

B. by negotiated lump sum; or

C. cost plus. If this option is selected, the COUNTY reserves the right to request any and all documentation from the CONTRACTOR in support of its foregoing Actual Costs, and the CONTRACTOR agrees promptly to supply such information.

13.9 For changes in the Work performed by the CONTRACTOR’s own forces, the CONTRACTOR shall be entitled to a percentage 10% (ten percent) mark-up for Actual Costs as defined in Section 1.

13.10 For changes in the Work performed by subcontractors: (A) the subcontractor shall be entitled to mark-up the cost of the change(s) by 10% (ten percent); and (B) the CONTRACTOR shall be entitled to mark-up the subcontractor’s total by 5% (five percent). The foregoing shall be the maximum amount allowable for subcontractor’s and the CONTRACTOR’s Actual Costs as defined in Section 1.

ARTICLE 14
MATERIALS, EQUIPMENT AND WORKMANSHIP; SUBSTITUTIONS

14.1 Only new, unused items of recent manufacture, of designated quality, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by the COUNTY to order removal of rejected materials and equipment shall not relieve the CONTRACTOR from responsibility for quality of the materials supplied or from any other obligation under the Contract Documents.

14.2 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications, will be acceptable regardless of the COUNTY’s failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve the CONTRACTOR from responsibility for the quality and securing progress of the Work as required by the Contract Documents.

14.3 Prior to proposing any substitute item, the CONTRACTOR shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in the COUNTY’s interest, and will in no way have a detrimental effect upon the Project completion date and schedule.

A. The burden of proof of equality of a proposed substitution for a specified item shall be upon the CONTRACTOR. The CONTRACTOR shall support its request with sufficient test data and other means to permit the COUNTY to make a fair and equitable decision on the merits of the proposal. The CONTRACTOR shall submit drawings, samples, data and certificates and additional information as may be required by the COUNTY for proposed substitute items as required by the Contract Documents.

B. Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. The COUNTY will be the sole judge of whether or not the substitution is equal in quality, utility, and economy to that specified.
C. The CONTRACTOR shall allow an additional 15 (fifteen) calendar days for the COUNTY’s review of requested substitutions. All requests for substitutions with submittal data must be made at least 50 (fifty) calendar days prior to the time the CONTRACTOR must order, purchase or release for manufacture or fabrication. Approval of a substitution shall not relieve the CONTRACTOR from responsibility for compliance with all requirements of the Agreement. The CONTRACTOR shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

D. If the COUNTY rejects the CONTRACTOR’s requested substitute item on the first submittal, the CONTRACTOR may make only one additional request for substitution in the same category. Upon the second request, the CONTRACTOR shall be invoiced the expenses of the COUNTY allocable to the review of such submittal data. The foregoing amounts shall be deducted, as applicable, from the next succeeding partial payment to the CONTRACTOR, or from the final payment.

ARTICLE 15
COMPLIANCE

15.1 All work, labor, materials and equipment provided under this Agreement shall be performed in strict compliance with any and all applicable building and fire, life and safety codes and strictly in accordance with plans and specifications. The CONTRACTOR must satisfy itself that the Plans, Drawings and Specifications in fact comply with all applicable codes. The CONTRACTOR shall notify the COUNTY prior to commencement of the Work of any requirement of the plans and specifications not in strict compliance with such codes. There will be no extra payment for compliance to existing codes or any item of interpretation regarding enforcement of existing codes. The CONTRACTOR is representing by acceptance of this Agreement that it has thoroughly researched all applicable codes and regulations affecting the Project.

15.2 If, during the term of this Agreement, there are any changed or new laws, ordinances or regulations not known or foreseeable at the time of signing this Agreement which become effective and which affect the cost or time of performance of the Agreement, the CONTRACTOR shall immediately notify the COUNTY in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Agreement. Upon concurrence by the COUNTY as to the effect of such changes, an adjustment in the Contract Price and/or time of performance will be made. If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, the CONTRACTOR shall immediately report the same in writing to the COUNTY who will issue such instructions as may be necessary. However, it shall not be grounds for a Change Order that the CONTRACTOR was unaware of or failed to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work.

15.3 The CONTRACTOR shall give all notices and at all times comply with all applicable laws, codes, ordinances, rules and regulations in effect during the time of performance of the Work.

15.4 The CONTRACTOR shall deliver a product which will meet or exceed the Design package standards, provide a complete and functional facility including but not limited to all necessary interfaces between this facility and adjacent existing facilities, and/or anticipated future facilities. All built-in equipment, systems, controls, devices and finishes necessary for the efficient use and maintenance of the facility and its related site work (if applicable), except as otherwise noted and/or clarified herein, shall be included in the Work.
ARTICLE 16
NON-DISCRIMINATION

The CONTRACTOR covenants and agrees that the CONTRACTOR shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with the respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, physical handicaps (except where based on a bonafide occupational qualification) marital status, race, color, religion, national origin or ancestry.

ARTICLE 17
DEFECTIVE WORK

17.1 The COUNTY shall have authority to disapprove or reject the Work which is "defective" (which term is hereinafter used to describe the Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to final acceptance). Such parties shall also have authority to require special inspection or testing of the Work as such parties may individually or severally deem necessary, whether or not the Work is fabricated, installed or completed.

17.2 Upon presentation of a Defective the Work Notice to the CONTRACTOR or the CONTRACTOR's the Project Superintendent, the CONTRACTOR shall meet within 24 (twenty four) hours with the COUNTY to discuss and develop a plan of remedial action and time-line to correct the defective the Work. The CONTRACTOR shall have no more than 5 (five) working days to begin corrective action and repairs in accordance with the agreed upon schedule; provided, however, all repairs to natural gas, telephone, radio, computer security, water, waste water, electric air conditioning services and all emergency services shall be commenced within 12 (twelve) hours of notification, or by 7:00 a.m. whichever is earlier, and the CONTRACTOR shall complete the repairs in an expeditious manner befitting the nature of the deficiency. If the CONTRACTOR refuses to comply with the 24 (twenty four) hour meeting requirement, or the agreed upon correction schedule, the COUNTY has the right to do any of the following: (A) correct any the Work so performed by the CONTRACTOR and deduct the expenses for doing so from the final payment due the CONTRACTOR; or (B) hold back final payment due the CONTRACTOR until such time as the Work is completed to the satisfaction of the COUNTY and in compliance with the Contract Documents. The COUNTY shall have the sole discretion to determine if the Work is satisfactory and in compliance with Contract Documents. The foregoing remedies are not exclusive and the COUNTY reserves the right to pursue any and all other remedies it deems applicable.

ARTICLE 18
BONDS AND INSURANCE

18.1 Payment and Performance Bonds. The CONTRACTOR shall, upon execution and return of this Agreement to the COUNTY, furnish a Public Payment Bond and a Performance Bond, pursuant to §255.05, Florida Statutes, in at least an amount equal to the Contract Price, for any Agreement over $200,000 (two hundred thousand dollars), covering the faithful performance of this Agreement and all the CONTRACTOR’s faithful performance and payment of all the CONTRACTOR’s obligations under the Contract Documents. The Bonds shall be recorded at the Martin County Clerk of the Circuit Court’s Office at the CONTRACTOR’s expense. The Surety must be included in the most recent United States Department of the Treasury List of Acceptable Sureties, authorized to issue surety bonds in Florida, and which maintains a surety rating of “A-” or better. A complete copy of the fully executed Payment Bond shall be posted in a conspicuous place at the Project site. If the Surety on any Bond furnished by the
CONTRACTOR is declared bankrupt, becomes insolvent, its authorization to do business in the State of Florida is terminated, it ceases to be listed on the United States Department of Treasury List of Acceptable Sureties, or its surety rating ceases to be an “A-” or better, the CONTRACTOR shall within 5 (five) days thereafter substitute another Payment Bond, Performance Bond, and Surety, each of which shall be in accordance with the Contract Documents and acceptable to the COUNTY. An action to enforce any claim against a payment bond must be brought within one year from the last furnishing of labor, services, or materials, or as otherwise stated in §95.11 (5)(e), Florida Statutes. An action to enforce any claim against a performance bond must be brought within five years in accordance with §95.11(2)(b), Florida Statutes, and applicable case law.

18.2 Insurance

A. Certificate of Insurance. 1 (One) certified true copy of the policy(s) must be furnished by the CONTRACTOR to the COUNTY prior to commencement of any demolition, Site Work, Site preparation or construction Work. The Certificate(s) of Insurance must indicate Martin County Board of County Commissioners as Additional Insured on all policies except the Workers Compensation. The statement “Additional Insured” is to be listed in the Description Block of the Insurance Certificate along with the Project name. The indication that Martin County Board of County Commissioners is a Certificate Holder is not sufficient for this issue. The Additional Insured endorsement must be attached to the Certificate of Insurance and shall include coverage for Completed Operations under the General Liability policy.

B. General Insurance Requirements. The CONTRACTOR and, where designated, each of its subcontractors and sub-subcontractors shall obtain and maintain during the full duration of the Work required under this Agreement, and through any period of limitation allowed by law for actions for personal injury, bodily injury, disease, death, property damages and other losses or damages required to be insured hereunder, the following insurance coverages, in the type, amounts, terms and in conformance with the following minimum requirements.

(i) All policies and endorsements shall be issued on Insurance Service Office (ISO) forms or on forms providing broader and no less restrictive coverage. Notwithstanding the foregoing, the form and content of all policies and endorsements must be acceptable to the COUNTY. All insurance carriers must carry an A.M. Best Rating of A:IX or better and coverage should apply on a Primary and Noncontributory basis. At the discretion of the COUNTY, other coverage types and/or specific endorsements may be required depending upon the type and scope of work to be performed. All insurance must be acceptable by and approved by the COUNTY as to form and types of coverage.

(ii) The policy(s) shall provide for 30 (thirty) days prior written notice to the COUNTY, by registered or certified mail, if cancellation or any change that will reduce the coverages required herein.

(iii) The policy(s) shall be written for the Contract Times, commencing with the initial demolition, Site Work and/or Site preparation, and ending at the Final Completion and shall contain an endorsement providing for extension of the policy(s) for up to 2 (two) years. The Products and Completed Operations portions of the General Liability shall extend for a period of 10 (ten) years after the Final Acceptance of the Project by the COUNTY and shall include an “Additional Insured” endorsement.

(iv) All liability policies required herein shall be written on an occurrence basis.
(v) The policies shall name the COUNTY, its commissioners and staff as additional insured (including Completed Operations coverage under the General Liability) as their interest may appear under this Agreement.

(vi) All insurers shall agree to waive all rights of subrogation against the COUNTY and each individual member of the Board of County Commissioners, Constitutional Officers, or staff.

(vii) It is the responsibility of the CONTRACTOR to ensure any independent contractors and subcontractors utilized on the project also comply with these insurance requirements.

C. Premiums. The CONTRACTOR shall be solely responsible for payment of all premiums for insurance required under this Agreement and shall be solely responsible for the payment of all deductibles to which such policies are subject.

D. Specific Insurance Limits

(i) Workers' Compensation. The CONTRACTOR shall carry Workers' Compensation insurance on behalf of all employees who are required to provide a service under this Agreement, as required by Chapter 440, Florida Statutes, and Employers Liability of limits no less than:

- $500,000 each accident
- $500,000 disease - policy limit
- $500,000 each employee

Should the scope of work performed by the CONTRACTOR qualify its employees for benefits under Federal the Worker's Compensation Statute (i.e. Longshoreman & Harbor the Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

(ii) Commercial General Liability, with limits of not less than:

- $1,000,000 each occurrence
- $1,000,000 personal/advertising injury
- $2,000,000 products/completed operations (per project aggregate)
- $2,000,000 general aggregate (per project aggregate)
- $100,000 fire damage legal (any 1 fire)
- $10,000 medical expense (any 1 person)

Coverage to include include bodily injury, property damage liability, personal and advertising injury, products and completed operations, fire damage legal liability and medical expense coverage. Contractual Liability is to be included to cover the hold harmless agreement set forth in the Agreement. Coverage is to extend to independent contractors and fellow employees. XCU coverage is to be included. Coverage is to include a cross liability or severability of interest provision as provided under the standard ISO form separation of insureds clause. There should be no "damage to your work" exclusion for work performed by subcontractors. Policy is to include coverage for pollution release at project location in which the insured is performing non-environmental operations. There shall be no exclusion for mold, silica or respirable dust or bodily injury or property damage arising out of heat, smoke, fumes or ash from a hostile fire. If the project involves environmental exposures, Environmental Impairment Liability coverage shall be maintained.
(iii) **Automobile Liability** - $1,000,000 (one million dollars) Combined Single Limit coverage for all owned, hired, leased and non-owned vehicles.

(iv) **Umbrella Liability** - to include the Employers Liability, general liability and automobile in underlying policy schedule, with limits of not less than $1,000,000 (one million dollars).

(v) **Hazardous Material** - if the Work being performed involves hazardous materials, the need to procure appropriate insurance coverage will be addressed in a modification to the Agreement. However, if hazardous materials are identified while carrying out this Agreement, no further the Work is to be performed in the area of the hazardous material until the COUNTY has been consulted as to the need to procure and maintain such coverage.

E. **Waiver of Subrogation.** The CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent.

**ARTICLE 19**

**PERFORMANCE GUARANTEE AND WARRANTY**

19.1 All materials and equipment incorporated into any Work shall be warrantied and guaranteed as new quality and of the highest grade of quality for their intended use. All Work shall be performed in good workmanship and shall be in accordance with all Contract Documents and industry standards. The Work shall be functionally sound, technically proficient, developed with structural integrity, and shall be in compliance with all governing laws, regulations, and applicable codes. The CONTRACTOR warrants all Work against defects for a period of 1 (one) year (unless longer guarantees or warranties are provided for elsewhere in the Agreement or at law, in which case the longer periods of time shall prevail) from the date of Substantial Completion, regardless of whether the Work was performed by the CONTRACTOR or any of its subcontractors.

19.2 If defects are identified during the warranty period, the CONTRACTOR shall repair or replace the defect and cure such defect within 48 (forty eight) hours of receipt of written notice. The CONTRACTOR warrants such repaired or replaced Work for a period of 1 (one) year from the completion of the warranty work or the warranty period specified, whichever is longer. Should the CONTRACTOR fail to timely cure such defects, the COUNTY may proceed to perform the work at the CONTRACTOR's expense and may back charge the CONTRACTOR for all costs associated with the work.

19.3 The CONTRACTOR agrees to require that all of its subcontractors, suppliers, and materialmen provide warranties in their agreements at least sufficient to satisfy the CONTRACTOR’s obligations in this Agreement and the CONTRACTOR shall assign all such warranties to the COUNTY as a condition precedent to the receipt of Final Payment. The CONTRACTOR agrees to defend and indemnify the COUNTY against all fees and costs should the CONTRACTOR fail to obtain the warranty protections required herein.

19.4 For all equipment that has a manufacturer's warranty, the CONTRACTOR shall assign such warranty to the COUNTY. The manufacturer's warranty period shall be concurrent with the CONTRACTOR's warranty to the COUNTY. In the event that the equipment manufacturer or supplier is unwilling to provide such a warranty, the CONTRACTOR shall obtain a 2 (two) year equipment warranty commencing at the time of acceptance of the equipment by the COUNTY.
ARTICLE 20
SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

20.1 Documents and Samples at the Site. From and after commencement of the Construction of the Work, the CONTRACTOR shall maintain at the site one record copy of the Construction Documents and any and all amendments thereto, in good order and marked, to record changes to the Contract Documents as approved during the construction of the Project. In addition, the CONTRACTOR shall maintain at the site approved shop drawings, product data, samples, and similar required submittals. These shall be provided to the COUNTY upon completion of the Work.

20.2 Shop Drawings, Product Data and Samples.

A. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way the CONTRACTOR proposes to conform the construction to the Contract Documents.

B. The CONTRACTOR shall review and take appropriate action upon Shop Drawings, Product Data, Samples, and similar submittals. The COUNTY shall review Shop Drawings, Product Data, Samples, and similar submittals for compliance with the Design Documents and shall provide comments, if any, within 15 (fifteen) days of receiving such documents.

C. The CONTRACTOR shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the COUNTY’s approval of Shop Drawings, Product Data, Samples, or similar submittals unless the CONTRACTOR has specifically informed the COUNTY of such deviation at the time of the submittal and the COUNTY has given written approval to the specific deviation. The CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals to the COUNTY for approval thereof.

ARTICLE 21
SAFETY

21.1 The CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees, and licensees of the COUNTY and users who may be affected thereby.

21.2 All the Work, whether performed by the CONTRACTOR, its subcontractors or sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

A. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970 and the Trench Safety Act, as amended, and all state, Martin County and, where the Project is located in a municipality, municipal, rules and regulations now or hereinafter in effect; and
B. all codes, rules, regulations and requirements of the COUNTY and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

21.3 Should the CONTRACTOR fail to provide a safe area for the performance of the Work or any portion thereof, the COUNTY shall have the right, but not the obligation, to suspend the Work in the unsafe area. All costs of any nature resulting from the suspension, by whomever incurred, shall be borne by the CONTRACTOR.

21.4 The CONTRACTOR shall provide, or cause to be provided, to each worker on the Work site, the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Work site who fails or refuses to use the same. The COUNTY shall have the right, but not the obligation, to order the CONTRACTOR to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the CONTRACTOR shall promptly comply.

21.5 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the COUNTY, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss. If the CONTRACTOR believes that additional Work done by it in an emergency which arose from causes beyond its control entitles it to an increase in the Contract Price or an extension of the Contract Time, it may make a claim therefore as provided in the Contract Documents.

ARTICLE 22
PROTECTION OF WORK AND PROPERTY

22.1 The CONTRACTOR: (A) shall, throughout the performance of the Agreement, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause; (B) shall protect the property of the COUNTY and third parties from loss or damage from whatever cause arising out of the performance of the Agreement; and (C) shall comply with the requirements of the COUNTY and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The COUNTY, its insurance carriers or representatives, may, but shall not be required to, make periodic patrols of the Work site as a part of its normal safety, loss control, and security programs. In such event, however, the CONTRACTOR shall not be relieved of its aforesaid responsibilities and the COUNTY shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the CONTRACTOR by this Agreement.

22.2 Before the CONTRACTOR disposes of any existing improvements or equipment which are to be removed as a portion of the Work and for which disposition is not specifically provided for elsewhere in the Contract Documents, the CONTRACTOR shall contact the COUNTY and determine if the removal items are to be salvaged. Items to be salvaged by the COUNTY shall be neatly stockpiled or stored in a neat and acceptable manner at the construction site easily accessible to the COUNTY. Equipment and materials which will not be salvaged by the COUNTY shall become the property of the CONTRACTOR to be removed from the site and disposed of in an acceptable manner. To the extent the CONTRACTOR intends to temporarily store materials at a site near or adjacent to the Project site prior to ultimate removal or disposal, the CONTRACTOR must first obtain written authorization from the COUNTY, as well as, the property owner.

22.3 Preservation of Trees. Those trees which are designated on the Drawings for preservation shall be carefully protected from damage. The CONTRACTOR shall erect and maintain such protections such as barricades, guards, and enclosures as is necessary for the protection of the trees during all
construction operations. The CONTRACTOR shall replace any and all trees damaged during construction activities (other than trees specified to be removed) at no expense to the COUNTY.

22.4 Preservation of Private Property. The CONTRACTOR shall exercise extreme care to avoid unnecessary disturbance of private property as applicable. Trees, shrubbery, gardens, lawn and other landscaping that must be removed shall be replaced and replanted to restore the construction easement to the condition existing prior to construction. All soil preparation procedures and replanting operations shall be under the supervision of a nurseryman experienced in such operations. Any vegetation requiring relocation, temporary or otherwise, which is damaged or destroyed, shall be replaced at no cost to the COUNTY. The CONTRACTOR shall replace any and all such vegetation damaged during construction activities (other than vegetation specified to be removed) at no expense to the COUNTY.

22.5 Until final acceptance of the Work by the COUNTY pursuant to this Agreement, the CONTRACTOR shall have full and complete charge and care of and, except as otherwise provided in this subparagraph, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including the COUNTY-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever.

22.6 Existing manholes, fire alarms, etc., shall not be obstructed by the CONTRACTOR, unless called for in the Contract Documents. The CONTRACTOR is to make no connections to or operate valves on water mains or otherwise interfere with the operation of the water system, without first giving written approval from the appropriate governmental entity.

ARTICLE 23
TESTS AND INSPECTIONS

23.1 If any Work (including the work of others) that is to be inspected, tested, or approved is covered without written concurrence of the COUNTY, it must be uncovered for observation if requested by the COUNTY. Such uncovering shall be at the CONTRACTOR's expense.

23.2 The CONTRACTOR shall be liable for any additional testing or inspections necessitated by defective work performed or materials supplied by the CONTRACTOR or by any of its subcontractors or vendors of any tier.

ARTICLE 24
UTILITY COORDINATION

24.1 The CONTRACTOR shall be responsible for making all necessary arrangements with governmental departments, utilities, public carriers, service companies and corporations owning or controlling roadways, railways, water, sewer, gas, electrical, cable television, telephone, and telegraph facilities such as pavements, tracks, piping, wires, cables, conduits, poles, guys, etc., including incidental structures connected therewith, that are encountered in the Work in order that such items may be properly shored, supported, and protected, or the CONTRACTOR shall be solely responsible for coordinating their relocation. The CONTRACTOR: shall (A) give all proper notices; (B) comply with requirements of such parties in the performance of its the Work; (C) permit entrance of such parties on the Work site in order that they may perform their necessary the Work; and (D) pay all charges and fees made by such parties for this the Work. The CONTRACTOR's attention is called to the fact that there may be delays on the Project due to the Work to be done by governmental departments, public utilities, and others in repairing or moving poles, conduits, etc. The CONTRACTOR shall cooperate with the above parties, in every way possible, so that the construction can be completed in the least possible time.
24.2 At all points where the Work constructed by the CONTRACTOR connects to existing utilities and services, the actual the Work of making the necessary connection to the existing service or utility shall be arranged for by the CONTRACTOR at no expense to the COUNTY (unless specifically indicated otherwise). Services and utilities included within (but not limited to) this responsibility are roads, ditches, electrical, sewer, mechanical utilities, water, fencing, etc. Connections shall be made at a time that will result in the least possible interference with existing services.

24.3 FPL calls attention to the fact that there may be energized, high voltage electric lines, both overhead and underground, located in the area of this Project. The CONTRACTOR must visually survey the area and take the necessary steps to identify all overhead and underground facilities prior to commencing construction to determine whether the construction of any proposed improvements will bring any person, tool, machinery, equipment, or object closer to FPL’s power lines than the OSHA-prescribed limits. If the CONTRACTOR identifies such, it shall re-design the Project to allow for safe construction given the pre-existing power line location, or make arrangements with FPL to, either deenergize and ground its facilities, or relocate them. The CONTRACTOR must do this before allowing any construction near power lines. If it is necessary for the CONTRACTOR and/or subcontractor to operate or handle cranes, digging apparatus, draglines, mobile equipment, or any other equipment, tools or materials in such a manner that they might come closer to underground or overhead power lines than is permitted by local, state or federal regulations, the CONTRACTOR or subcontractor must notify FPL in writing of such planned operation prior to the commencement thereof and make all necessary arrangements with FPL in order to carry out the work in a safe manner. Any work in the vicinity of the electric lines should be suspended until these arrangements are finalized and implemented. The CONTRACTOR shall be required to complete a “Notification of FPL Facilities” form prior to the commencement of the Work.

ARTICLE 25
HAZARDOUS MATERIALS

The CONTRACTOR shall obtain all required Federal, State, and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage, and use of any explosive or hazardous materials brought onto or encountered within the Project, and at its expense, make good any damage caused by its handling, transporting, storage, and use. The CONTRACTOR will notify the COUNTY immediately if explosive or hazardous materials are encountered on the Project site. Transporting explosive or hazardous materials onto the site will require prior written approval from the COUNTY. The CONTRACTOR shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of its work. In the event that hazardous material is improperly handled or stored by the CONTRACTOR, its subcontractors, or any employee or agent of any of the aforementioned, which results in contamination of the site, the CONTRACTOR shall immediately notify the COUNTY and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the CONTRACTOR's sole cost and expense.

ARTICLE 26
AUDIT

The CONTRACTOR agrees that the COUNTY, or any of its duly authorized representatives, shall have access to and the right to examine any and all books, documents, papers, and records of the CONTRACTOR, and may at its option conduct an audit of the CONTRACTOR’s financial books and records concerning this the Project. The CONTRACTOR agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto, which are found on the basis of audit examination, to constitute non-allowable costs under this Agreement. The CONTRACTOR shall
promptly refund by check payable to the COUNTY the amount of such reduction of payments. All required records shall be maintained until the latter of the completion of the audit and all questions arising therefore are resolved, or six (6) years after completion of the Work and issuance of the Final Payment.

ARTICLE 27
PUBLIC RECORDS

27.1 The CONTRACTOR shall comply with the provisions of Chapter 119, Fla. Stat. (Public Records Law), in connection with this Agreement and shall provide access to public records in accordance with §119.0701, Fla. Stat. and more specifically Contractor shall:

27.1.1 Keep and maintain public records required by the County to perform the Agreement.
27.1.2 Upon request from the County’s custodian of public records, provide the County 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 Chapter 119, Fla. Stat. or as otherwise provided by law.
27.1.3 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 County.
27.1.4 Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of the CONTRACTOR or keep and maintain public records required by the County to perform the Agreement. If the CONTRACTOR transfers all public records to the County 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 County, upon request from the County’s custodian of public records, in a format that is compatible with the information technology systems of the County.

27.2 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (772) 419-6959, public_records@martin.fl.us, 2401 SE MONTEREY ROAD, STUART, FL 34996.

27.3 Failure to comply with the requirements of this Article shall be deemed a default as defined under the terms of this Agreement and constitute grounds for termination.

ARTICLE 28
ASSIGNMENT

28.1 The COUNTY and the CONTRACTOR each binds itself, its officers, directors, qualifying agents, partners, successors, assigns, and legal representatives to the other party hereeto and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Agreement.
28.2 The CONTRACTOR shall not assign, transfer, convey, or otherwise dispose of the Agreement or its right, title, or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the COUNTY and Surety.

28.3 If for any reason the COUNTY terminates its Agreement with the CONTRACTOR, the CONTRACTOR hereby assigns this Agreement to the COUNTY. The CONTRACTOR shall include in each of its subcontracts language that requires its subcontractors to agree to such assignment and to perform their responsibilities and to fully complete the work required by this Agreement directly for the COUNTY.

**ARTICLE 29**
**ATTORNEY'S FEES AND COSTS**

29.1 In the event the CONTRACTOR defaults in the performance of any of the terms, covenants, and conditions of this Agreement, the CONTRACTOR agrees to pay all damages and costs incurred by the COUNTY in the enforcement of this Agreement, including reasonable attorney's fees, expert fees, court costs, and all expenses, even if not taxable as court costs, including, at the State Court, Appellate Court, and in Bankruptcy Proceedings.

29.2 In cases other than outlined in Section 29.1, the parties expressly agree that each party will bear its own attorney’s fees incurred in connection with this Agreement.

**ARTICLE 30**
**NOTICES**

All notices under this Agreement shall be in writing and shall be (as elected by the person giving such notice) mailed solely by Certified Mail, Return Receipt Requested, Hand Delivery with Proof of Service, or by Overnight Courier to the COUNTY and the CONTRACTOR at the addresses listed on page one of this Agreement. Either party may change its address, for the purposes of this Section, by giving the other party 30 (thirty) days written notice.

**ARTICLE 31**
**RESOLUTION OF CLAIMS AND DISPUTES**

31.1 As a condition precedent to the filing of any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 (fifteen) days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the COUNTY shall select the mediator, who, if selected solely by the COUNTY, shall be a mediator certified by the Supreme Court of Florida. The mediator’s fee shall be paid in equal shares by each party to the mediator.

31.2 Non-jury trial. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.

31.3 The parties expressly and specifically hereby waive all tort claims and limit their remedies to breach of Agreement as to any issue in any way connected with this Agreement.

**ARTICLE 32**
**MISCELLANEOUS**

32.1 Taxes. The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The CONTRACTOR shall not be exempt from paying sales tax to its suppliers for materials used to fulfill
contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY’s Tax Exemption Number in securing such materials. The CONTRACTOR shall be responsible for payment of all federal, state, and local taxes and fees applicable to the Work and same shall be included in the Contract Price.

32.2  **Pledge of Credit.** The CONTRACTOR shall not pledge the COUNTY’s credit or make it a guarantor of payment or surety for any Agreement, debt, obligation, judgment, lien or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of the Agreement.

32.3  **Remedies and Choice of Law.** This Agreement is to be governed by the law of the state in which the Project is located. Venue for any lawsuit to enforce the terms and obligations of this Agreement shall lie exclusively in Martin County, Florida.

32.4  **Entirety of Agreement.** All prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein are merged into this Agreement. No modification, amendment, or alteration of this Agreement may be made unless made in writing pursuant to the terms of this Agreement.

32.5  **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, then the remaining provisions survive and are fully binding and enforceable.

IN WITNESS WHEREOF, the COUNTY and the CONTRACTOR have executed this Agreement as of the last date written below.
EXHIBIT A
FEDERAL AND STATE CONTRACT CLAUSES

1. Definitions
   a. **State Highway Agency (SHA).** All references to State Highway Agency (SHA) shall also mean Martin County and/or Local Agency (LA).
   b. **State Highway Agency (SHA) Contracting Officer.** All references to the State Highway Agency (SHA) Contracting Officer shall also mean Martin County and/or Local Agency (LA).

2. Owner force account contracting is not applicable to this CONTRACT.

3. Subcontracting
   a. **CONTRACTOR** shall perform, with its own organization, contract work amounting to not less than thirty percent (30%) of the total original contract price, excluding any specialty items designated by the State as indicated in Form FHWA-1273 Section VI – Subletting or Assigning the Contract which is attached hereto and incorporated herein as Exhibit B to this Agreement.
   b. **CONTRACTOR** shall not permit any of the CONTRACT work to be performed under a subcontract, unless such arrangement has been authorized by the COUNTY in writing. Prior to authorizing a subcontract, the COUNTY shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime CONTRACT.
   c. **CONTRACTOR** shall submit FDOT Form 700-010-36, Certification of Sublet Work, to the COUNTY prior to, or at, the mandatory Pre-Construction Meeting. During the Project if a subcontractor is added or deleted from the previously submitted Certification, an updated Certification of Sublet Work must be submitted to the COUNTY. For added subcontractors, the revised Certification must be submitted a minimum of five (5) working days prior to the subcontractor beginning work on the Project site. The FDOT Form 700-010-36 may be updated during the Project by the FDOT. **CONTRACTOR** is to check the FDOT website for the most recent version of Form 700-010-36, Certification of Sublet Work, at http://www2.dot.state.fl.us/proceduraldocuments/forms/ByNumber.asp.

4. FHWA-1273
   a. The **CONTRACTOR** shall insert into each subcontract Form FHWA-1273 (Exhibit B to this Agreement) in its entirety and with no modifications to, and further require Form FHWA-1273 to be included in any lower tier subcontract or purchase order that may in turn be made. Form FHWA-1273 may not be incorporated by reference in any case. The **CONTRACTOR** shall be responsible for compliance by any subcontractor or lower tier subcontractor with the federal provisions outlined in Form FHWA-1273.
   b. Certified Payroll Statements are required each week by the **CONTRACTOR** and all subcontractors for all contracts exceeding $2,000. The **CONTRACTOR** shall be responsible for submitting his and all subcontractors certified payrolls to the COUNTY within seven (7) calendar days of CONTRACTOR’s and subcontractor’s pay day. For example, if pay day is on Tuesday each week, the certified payrolls are due to the COUNTY by the following Tuesday. Failure to submit certified payrolls by their due dates will result in sanctions by the
COUNTY which include but are not limited to withholding progress payments.

c. The CONTRACT is assisted by federal U.S. Department of Transportation funds. The CONTRACTOR is responsible for following 49 CFR 26. The CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. Good faith efforts shall be made to encourage subcontracts with State of Florida Department of Transportation (FDOT) Certified Disadvantaged Business Enterprises (DBEs). For a list of certified DBEs please go to the Equal Opportunity Office on the FDOT website.

The FDOT’s current DBE Program race-neutral goal is 10.65%. To view their plan, methodology for determining their goal and learn more about the DBE Program visit FDOT’s website at http://www.dot.state.fl.us/equalopportunityoffice/dbeplan.shtm

The FAA’s current DBE Program race-neutral goal is 13.12%.

The FDOT Equal Opportunity Office implemented a new system called the Equal Opportunity Compliance (EOC) that replaced the current Bizweb application. EOC was made available to the public for use on October 3rd, 2012. This application is used statewide by FDOT Contractors and Consultants to collect, review, and report DBE Commitments, Payments and the submission of Bidder Opportunity list.

Contractors will be responsible for submitting Bidder Opportunity List, DBE Commitments and Payments in EOC. For more information visit FDOT’s website at http://www.dot.state.fl.us/equalopportunityoffice/eoc.shtm

5. Payment Applications

a. Each payment application shall include:

1. FDOT Form #700-020-02 (Construction Compliance with Specifications and Plans).
2. FDOT Form #700-011-13 (Certification Compliance w/EEO Provisions on Federal Aid Contracts)

b. Beginning with the second Application for Payment, each Application shall include:

1. FDOT Form #700-010-38 (Certification Disbursement of Previous Periodic Payment to Subcontractors)
2. Disadvantaged Business Enterprise {DBE} Payment Certification) if applicable

6. The CONTRACTOR shall comply with the cost principles and procedures set forth within 48 CFR 31. Reasonable costs of renting construction equipment are allowable; but the allowability of charges of equipment rentals from any division, subsidiary of organization under common control of the CONTRACTOR will be determined in accordance with 48 CFR 31.205-36(b)(3).

7. CONTRACTOR purchased equipment for State or Local Ownership is not allowed. Use of publicly owned equipment is not allowed on the PROJECT.

8. Materials produced by convict labor are prohibited from use on the PROJECT unless specific written
authority for such use is obtained from FDOT and/or FHWA and such materials are produced by
convicts on parole, supervised release or probation from prison.

9. The CONTRACTOR must furnish all materials to be incorporated in the PROJECT and the
CONTRACTOR shall be permitted to select the sources from which the materials are to be obtained.
The COUNTY shall not impose any requirement or enforce any procedure which operates to require
the use of, or provides a price differential in favor of, articles or materials produced within the State
of Florida.

10. There will be no credit to the Project as a result of salvaged materials or equipment.

11. Source of Supply-Steel (Federal-Aid Contracts Only): For Federal-aid Contracts, only use steel and
iron produced in the United States, in accordance with the Buy America provisions of 23 CFR
635.410, as amended. Ensure that all manufacturing processes for this material occur in the United
States. As used in this specification, a manufacturing process is any process that modifies the
chemical content, physical shape or size, or final finish of a product, beginning with the initial
melting and mixing and continuing through the bending and coating stages. A manufactured steel or
iron product is complete only when all grinding, drilling, welding, finishing and coating have been
completed. If a domestic product is taken outside the United States for any process, it becomes
foreign source material. When using steel and iron as a component of any manufactured product
incorporated into the project (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.),
these same provisions apply, except that the manufacturer may use minimal quantities of foreign
steel and iron when the cost of such foreign materials does not exceed 0.1% of the total Contract
amount or $2,500, whichever is greater. These requirements are applicable to all steel and iron
materials incorporated into the finished work, but are not applicable to steel and iron items that the
Contractor uses but does not incorporate into the finished work. Provide a certification from the
producer of steel or iron, or any product containing steel or iron as a component, stating that all steel
or iron furnished or incorporated into the furnished product was manufactured in the United States
in accordance with the requirements of this specification and the Buy America provisions of 23 CFR
635.410, as amended. Such certification shall also include (1) a statement that the product was
produced entirely within the United States, or (2) a statement that the product was produced within
the United States except for minimal quantities of foreign steel and iron valued at $ (actual value).
Furnish each such certification to the Engineer prior to incorporating the material into the project.
When FHWA allows the use of foreign steel on a project, furnish invoices to document the cost of
such material, and obtain the Engineer’s written approval prior to incorporating the material into the
project.

12. CONTRACTOR must follow 23 CFR 635.411 for payment of any premium or royalty fees on any
patented or proprietary material, specification or process set forth in the plans and/or specifications
of the PROJECT.

13. Prequalification – For projects with an original contract award amount that is equal to or greater than
$250,000 and is on either the National Highway System (NHS) or the State Highway System (SHS),
the CONTRACTOR certifies that it is on the FDOT’s Prequalified Contractor List.

14. Buy America – All steel or iron used must be produced in the United States, in accordance with 23
CFR 635.410, as amended. The CONTRACTOR has completed the Buy America Certification of
Compliance form attached hereto and made a part hereof as Exhibit D.
15. Suspension and Debarment - The CONTRACTOR agrees to comply with 49 CFR 29 for all primary and lower tiered covered transactions as outlined in FHWA-1273 Section X of Exhibit B which is attached hereto and made a part hereof. The CONTRACTOR has completed the certification regarding debarment form attached hereto and made a part hereof as Exhibit F of the AGREEMENT.

16. Drug Free Workplace Certification – The CONTRACTOR, in accordance with Florida Statute 287.087, certifies that it has and will maintain a drug-free workplace. The CONTRACTOR has completed the included Drug-Free Workplace Certification form included in and made a part hereof as Exhibit H of the AGREEMENT.

17. Certification Regarding Lobbying – The CONTRACTOR agrees to comply with 49 CFR 20 for all primary and lower tiered transactions which exceed $100,000 as outline in FHWA-1273 Section XI of Exhibit B of this AGREEMENT. The CONTRACTOR has completed the certification regarding lobbying form attached hereto and made a part hereof as Exhibit G of the AGREEMENT.

18. Non-Collusion Affidavit – The CONTRACTOR has completed the Non-Collusion Affidavit attached hereto and made a part hereof as Exhibit E of the AGREEMENT.

19. The COUNTY has no local or State of Florida hiring preference for this PROJECT.

20. This PROJECT does not allow for Indian hiring preference according to 23 CFR 635.117.

21. No public agencies are allowed to submit bid proposals to the COUNTY or to the CONTRACTOR. The CONTRACTOR shall not enter into any subcontract, lower tier transaction or purchase order with a public agency unless in the case of a concession agreement as defined in 23 CFR 710.703.

22. Access to Records

   a. The Contractor agrees to provide USDOT FDOT, FHWA, the Comptroller General of the United States and COUNTY or any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.

   b. The CONTRACTOR agrees to maintain all books, records, accounts and reports required under the contract for a period of not less than five years after the date of termination or expiration of the contract, except in the event of litigation or settlement of claims arising from the performance of the contract, in which case CONTRACTOR agrees to maintain same until Martin County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

   c. Program fraud and false or fraudulent statements or related acts:

      1. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FHWA assisted project for which
this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

2. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FHWA, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

3. The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. 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.

23. CONTRACTOR agrees to comply with Section II of FHWA-1273 (Exhibit B to this AGREEMENT) which outlines the CONTRACTOR’s responsibilities to ensure non-discrimination, equal employment opportunities and civil rights during the performance of the CONTRACT.

24. The CONTRACTOR will accept as his operating policy the following statement:

“It is the policy of this Company to assure that applicants are employed and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship and/or on-the-job training.”
EXHIBIT B
FEDERAL TRANSIT ADMINISTRATION
THIRD PARTY CONTRACT PROVISIONS

1. Fly America Requirements
2. Buy America Requirements
3. Cargo Preference Requirements
4. Seismic Safety Requirements
5. Energy Conservation Requirements
6. Clean Water Requirements
7. Lobbying
8. Access to Records and Reports
9. Federal Changes
10. Bonding Requirements
11. Clean Air
12. Recycled Products
13. Davis-Bacon and Copeland Anti-Kickback Acts
14. Contract Work Hours and Safety Standards Act
15. No Government Obligation to Third Parties
16. Program Fraud and False or Fraudulent Statements and Related Acts
17. Termination
18. Government-wide Debarment and Suspension (Nonprocurement)
19. Privacy Act
20. Civil Rights Requirements
21. Breaches and Dispute Resolution
22. Patent and Rights in Data
23. Transit Employee Protective Agreements
24. Disadvantaged Business Enterprises (DBE)
25. Drug and Alcohol Testing
1. **FLY AMERICA REQUIREMENTS**  
   **49 U.S.C. § 40118**  
   **41 CFR Part 301-10**

**Applicability to Contracts**
The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier’s designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

**Flow Down Requirements**
The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Model Clause/Language**
The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

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

2. **BUY AMERICA REQUIREMENTS**
   **49 U.S.C. 5323(j)**  
   **49 CFR Part 661**

**Applicability to Contracts**
The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000).

**Flow Down**
The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The $100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.
Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

3. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241
46 CFR Part 381

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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

4. SEISMIC SAFETY REQUIREMENTS
   42 U.S.C. 7701 et seq. 49
   CFR Part 41

Applicability to Contracts
The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down
The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language
The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

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

5. ENERGY CONSERVATION REQUIREMENTS
   42 U.S.C. 6321 et seq.
   49 CFR Part 18

Applicability to Contracts
The Energy Conservation requirements are applicable to all contracts.

Flow Down
The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language
No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

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

6. CLEAN WATER REQUIREMENTS
   33 U.S.C. 1251
**Applicability to Contracts**
The Clean Water requirements apply to each contract and subcontract which exceeds $100,000.

**Flow Down**
The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

**Model Clause/Language**
While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

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

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

**Applicability to Contracts**
The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Flow Down**
The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

**Mandatory Clause/Language**
Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]


- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.


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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

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

8. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

Applicability to Contracts
Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down
FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language
The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

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

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

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

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

### Requirements for Access to Records and Reports by Types of Contract

<table>
<thead>
<tr>
<th>Contract Characteristics</th>
<th>Operational Service Contract</th>
<th>Turnkey Construction</th>
<th>Architectural Engineering</th>
<th>Acquisition of Rolling Stock</th>
<th>Professional Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>I State Grantees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Contracts below SAT ($100,000)</td>
<td>None</td>
<td>Those imposed on state pass thru to Contractor</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>b. Contracts above $100,000/Capital Projects</td>
<td>None unless non-competitive award</td>
<td>None unless non-competitive award</td>
<td>None unless non-competitive award</td>
<td>None unless non-competitive award</td>
<td>None unless non-competitive award</td>
</tr>
<tr>
<td>II Non State Grantees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Contracts below SAT ($100,000)</td>
<td>Yes³</td>
<td>Yes³</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>b. Contracts above $100,000/Capital Projects</td>
<td>Yes³</td>
<td>Those imposed on non-state Grantee pass thru to Contractor</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

³ If non-competitive award or if funded thru 5307/5309/5311.
Sources of Authority:
1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)

9. FEDERAL CHANGES
49 CFR Part 18

Applicability to Contracts
The Federal Changes requirement applies to all contracts.

Flow Down
The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language
No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

10. BONDING REQUIREMENTS

Applicability to Contracts
For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than $1 million;
(2) 40% of the contract price if the contract price is more than $1 million but not more than $5 million; or

(3) $2.5 million if the contract price is more than $5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down
Bonding requirements flow down to the first tier contractors.

Model Clauses/Language
FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.
Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

   (i) Fifty percent of the contract price if the contract price is not more than $1 million.

   (ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

   (iii) Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the
(Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

   (i) Fifty percent of the contract price if the contract price is not more than $1 million;

   (ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

   (iii) Two and one half million if the contract price is increased.

**Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

**Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

**Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of
Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

11. CLEAN AIR
42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts
The Clean Air requirements apply to all contracts exceeding $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year.

Flow Down
The Clean Air requirements flow down to all subcontracts which exceed $100,000.

Model Clauses/Language
No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

12. RECYCLED PRODUCTS
42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

Applicability to Contracts
The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the fiscal year, or has procured $10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases $10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was $10,000.

Flow Down
These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language
No specific clause is mandated, but FTA has developed the following language.

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### 13. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

**Background and Application**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

**Clause Language**

**Davis-Bacon and Copeland Anti-Kickback Acts**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

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

4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The [insert name of grantee] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert name of grantee] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert name of grantee] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

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

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


14. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application
The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from … the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over $2,000 or non-construction contract to which the Act applied over $2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than $100,000.” 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

Clause Language

Contract Work Hours and Safety Standards

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the
contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

15. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

**Applicability to Contracts**

Applicable to all contracts.

**Flow Down**

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

**Model Clause/Language**

While no specific language is required, FTA has developed the following language.

**No Obligation by the Federal Government.**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

16. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**

**AND RELATED ACTS**

31 U.S.C. 3801 et seq.
49 U.S.C. 5307

**Applicability to Contracts**

These requirements are applicable to all contracts.

**Flow Down**

These requirements flow down to contractors and subcontractors who make, present, or submit covered
claims and statements.

**Model Clause/Language**
These requirements have no specified language, so FTA proffers the following language.

**Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**17. TERMINATION**
49 U.S.C. Part 18
FTA Circular 4220.1E

**Applicability to Contracts**
All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of $10,000 shall contain suitable provisions for termination by the grantees including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is $100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

**Flow Down**
The termination requirements flow down to all contracts in excess of $10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

**Model Clause/Language**
FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:
a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination
specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner or performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Dispute clauses.
If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering)** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**j. Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**18. GOVERNMENT-WIDE DEBARMMENT AND SUSPENSION (NONPROCUREMENT)**

**Background and Applicability**
In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed $25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from $100,000 to $25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

**Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

**Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by *{insert agency name}*.

If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to *{insert agency name}*, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**19. PRIVACY ACT**

5 U.S.C. 552

**Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements
apply to all contracts.

**Flow Down**
The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

**Model Clause/Language**
The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

20. **CIVIL RIGHTS REQUIREMENTS**

29 CFR Part 1630, 41 CFR Parts 60 et seq.

**Applicability to Contracts**
The Civil Rights Requirements apply to all contracts.

**Flow Down**
The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

**Model Clause/Language**
The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

**Civil Rights** - The following requirements apply to the underlying contract:

employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

21. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18
FTA Circular 4220.1E

Applicability to Contracts
All contracts in excess of $100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.
**Flow Down**
The Breaches and Dispute Resolutions requirements flow down to all tiers.

**Model Clauses/Language**
FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

**Performance During Dispute** - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**22. PATENT AND RIGHTS IN DATA**

37 CFR Part 401
49 CFR Parts 18 and 19

**Applicability to Contracts**
Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

**Flow Down**
The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

**Model Clause/Language**
The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

**CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

   a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

   b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

   1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

   2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

   c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines
otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in


(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:
(1) **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### 23. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

**49 U.S.C. § 5310, § 5311, and § 5333**

29 CFR Part 215

**Applicability to Contracts**
The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

**Flow Down**
These provisions are applicable to all contracts and subcontracts at every tier.

**Model Clause/Language**
Since no mandatory language is specified, FTA had developed the following language:

**Transit Employee Protective Provisions.** (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those
projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

24. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

Background and Applicability
The newest version on the Department of Transportation’s Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language
The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning
retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation is 13.12%.

b. The contractor 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 this DOT-assisted contract. 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 contractor deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. {If a separate contract goal has been established, use the following} Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following [concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor’s commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

{Bidders][Offerors] must present the information required above [as a matter of responsiveness] [with initial proposals] [prior to contract award] (see 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the {insert agency name}. In addition, {the contractor may not hold retainage from its subcontractors.} [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after
incremental acceptance of the subcontractor’s work by the {insert agency name} and contractor’s receipt of the partial retainage payment related to the subcontractor’s work.]

e. The contractor must promptly notify {insert agency name}, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of {insert agency name}.

26. DRUG AND ALCOHOL TESTING
49 U.S.C. §5331
49 CFR Parts 653 and 654

Applicability to Contracts
The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements
Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language

Introduction
FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses
Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive
employees, has to implement a complex testing program. Therefore, this may be a practical option only
for those recipients which have a testing program for their employees, and can add the contractor's
safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program
that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing
program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules
than it does under option 1. The advantage of this approach is that it places the responsibility for
complying with the rules on the entity that is actually performing the safety-sensitive function.
Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program.
The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the
recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and
alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it
wants to do it. The advantage of this option is that the recipient has more control over the contractor's
drug and alcohol testing program, yet it is not actually administering the testing program. The
disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

**Drug and Alcohol Testing**
**Option 1**

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance
with 49 CFR 653 and 654.

**Drug and Alcohol Testing**
**Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with
49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts
653 and 654, and permit any authorized representative of the United States Department of
Transportation or its operating administrations, the State Oversight Agency of (name of State), or the
(insert name of grantee), to inspect the facilities and records associated with the implementation of the
drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing
process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before
(insert date) and to submit the Management Information System (MIS) reports before (insert date before
March 15) to (insert title and address of person responsible for receiving information). To certify
compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of
Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,"
which is published annually in the Federal Register.

**Drug and Alcohol Testing**
**Option 3**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with
49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts
653 and 654, and permit any authorized representative of the United States Department of
Transportation or its operating administrations, the State Oversight Agency of (name of State), or the
(insert name of grantee), to inspect the facilities and records associated with the implementation of the
drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing
process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before
(insert date) and to submit the Management Information System (MIS) reports before (insert date before
March 15) to (insert title and address of person responsible for receiving information). To certify
compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of
Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c]
(a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement
its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient
wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c)
submit for review and approval before (insert date or upon request) a copy of its Policy Statement
developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to
be determined by the recipient, but may address areas such as: the selection of the certified laboratory,
substance abuse professional, or Medical Review Officer, or the use of a consortium).
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General

II. Nondiscrimination

III. Nonsegregated Facilities

IV. Davis-Bacon and Related Act Provisions

V. Contract Work Hours and Safety Standards Act Provisions

VI. Subletting or Assigning the Contract

VII. Safety: Accident Prevention

VIII. False Statements Concerning Highway Projects

IX. Implementation of Clean Air Act and Federal Water Pollution Control Act

X. Compliance with Governmentwide Suspension and Debarment Requirements

XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1650, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under...
this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.”

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: “An Equal Opportunity Employer.” All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are
applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualified minors and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor
will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

   a. All laborers and mechanics employed or working upon the site of or in connection with any work in progress will be paid according to the rates specified in the contract for the labor performed not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination. Contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conforming under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

   (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

   (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or
will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laboror or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the wages paid by the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee’s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wH347Instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, that such information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laboror or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laboror or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.b.(2) of this section.

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance with any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

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

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government Contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.
VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

   a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

   (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

   (2) the prime contractor remains responsible for the quality of the work of the leased employees;

   (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

   (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

   b. “Specialty Items” shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:
"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency’s determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epis.gov), which is compiled by the General Services Administration.
i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the
Department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.
ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

   a. To the extent that qualified persons regularly residing in the area are not available.

   b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

   c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor’s permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.
EXHIBIT D

Wage Rates

Current wage tables may be obtained at: http://www.dot.state.fl.us/construction/wage.shtm

The wage tables may be updated during the bid process. Please check the website 10 days prior to bid opening for the most current tables before submitting your bids. The wage table current ten (10) days prior to bid opening will be the wage rate table included in the CONTRACT.

General Decision Number: FL180167 01/05/2018 FL167

Superseded General Decision Number: FL20170167

State: Florida

Construction Type: Heavy

County: Martin County in Florida.

HEAVY CONSTRUCTION PROJECTS (Including Sewer and Water Lines)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.35 for calendar year 2018 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, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.35 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 calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
0 01/05/2018

ELEC0728-006 03/01/2017

Rates Fringes

ELECTRICIAN.......................$ 30.50 11.43

ENGI0487-014 07/01/2013

Rates Fringes

OPERATOR: Crane

All Tower Cranes Mobile, Rail, Climbers, Static-
Mount; All Cranes with Boom Length 150 Feet & Over (With or without jib) Friction, Hydraulic, Electric or Otherwise; Cranes 150 Tons & Over; Cranes with 3 Drums (When 3rd drum is rigged for work); Gantry & Overhead Cranes; Hydraulic Cranes Over 25 Tons but not more than 50 Tons; Hydraulic/Friction Cranes; & All Types of Flying Cranes; Boom Truck........$ 29.05 8.80

Cranes with Boom Length Less than 150 Feet (With or without jib); Hydraulic Cranes 25 Tons & Under, & Over 50 Tons (With Oiler); Boom Truck................$ 28.32 8.80

OPERATOR: Drill......................$ 25.80 8.80
OPERATOR: Oiler......................$ 22.99 8.80

* IRON0402-004 02/01/2017

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>IRONWORKER, STRUCTURAL AND REINFORCING..........................$ 23.00 10.99</td>
<td></td>
</tr>
</tbody>
</table>

LABO1652-004 06/01/2013

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>LABORER: Grade Checker........$ 14.50 4.92</td>
<td></td>
</tr>
</tbody>
</table>

PAIN0452-007 08/01/2014

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAINTER: Brush, Roller and Spray............................$ 19.50 8.83</td>
<td></td>
</tr>
</tbody>
</table>

SUFL2009-163 06/24/2009

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>CARPENTER, Includes Form Work....$ 15.50 0.00</td>
<td></td>
</tr>
<tr>
<td>CEMENT MASON/CONCRETE FINISHER...$ 16.46 0.00</td>
<td></td>
</tr>
<tr>
<td>LABORER: Common or General.......$ 10.44 0.00</td>
<td></td>
</tr>
<tr>
<td>LABORER: Landscape................$ 7.25 0.00</td>
<td></td>
</tr>
<tr>
<td>LABORER: Pipelayer................$ 13.93 0.00</td>
<td></td>
</tr>
<tr>
<td>LABORER: Power Tool Operator (Hand Held Drills/Saws,</td>
<td></td>
</tr>
<tr>
<td>Operation</td>
<td>Rate</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Jackhammer and Power Saws Only</td>
<td>$ 10.65</td>
</tr>
<tr>
<td>OPERATOR: Asphalt Paver</td>
<td>$ 11.59</td>
</tr>
<tr>
<td>OPERATOR: Backhoe Loader Combo</td>
<td>$ 16.10</td>
</tr>
<tr>
<td>OPERATOR: Backhoe/Excavator</td>
<td>$ 21.70</td>
</tr>
<tr>
<td>OPERATOR: Bulldozer</td>
<td>$ 16.07</td>
</tr>
<tr>
<td>OPERATOR: Grader/Blade</td>
<td>$ 16.00</td>
</tr>
<tr>
<td>OPERATOR: Loader</td>
<td>$ 19.75</td>
</tr>
<tr>
<td>OPERATOR: Mechanic</td>
<td>$ 14.32</td>
</tr>
<tr>
<td>OPERATOR: Roller</td>
<td>$ 11.25</td>
</tr>
<tr>
<td>OPERATOR: Scraper</td>
<td>$ 11.00</td>
</tr>
<tr>
<td>OPERATOR: Trackhoe</td>
<td>$ 20.92</td>
</tr>
<tr>
<td>OPERATOR: Tractor</td>
<td>$ 10.54</td>
</tr>
<tr>
<td>TRUCK DRIVER, Includes Dump Truck</td>
<td>$ 10.60</td>
</tr>
<tr>
<td>TRUCK DRIVER: Lowboy Truck</td>
<td>$ 12.73</td>
</tr>
<tr>
<td>TRUCK DRIVER: Off the Road Truck</td>
<td>$ 12.21</td>
</tr>
<tr>
<td>TRUCK DRIVER: Servicer</td>
<td>$ 12.00</td>
</tr>
</tbody>
</table>

**WELDERS** - Receive rate prescribed for craft performing operation to which welding is incidental.

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 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) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "Identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers
Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

--------------------------------------------------------------------------------

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

The request should be accompanied by a full statement of the interested party's position and by any information (wage
payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

   Administrative Review Board
   U.S. Department of Labor
   200 Constitution Avenue, N.W.
   Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

================================================================

END OF GENERAL DECISION
TITLE VI/ NONDISCRIMINATION POLICY STATEMENT

The Martin County Board of County Commissioners assures the Florida Department of Transportation that no person shall on the basis of race, color, national origin, sex, age, disability, family or religious status, as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987 and the Florida Civil Rights Act of 1992 be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity.

The Martin County Board of County Commissioners further agrees to the following responsibilities with respect to its programs and activities:

1. Designate a Title VI Liaison that has a responsible position within the organization and access to the Recipient’s Chief Executive Officer.

2. Issue a policy statement signed by the Chief Executive Officer, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the Recipient’s organization and to the general public. Such information shall be published where appropriate in languages other than English.

3. Insert the clauses of Appendix A of this agreement in every contract subject to the Acts and the Regulations.

4. Develop a complaint process and attempt to resolve complaints of discrimination against sub-recipients. Complaints against the Recipient shall immediately be forwarded to the FDOT District Title VI Coordinator.

5. Participate in training offered on Title VI and other nondiscrimination requirements.

6. If reviewed by FDOT or USDOT, take affirmative action to correct any deficiencies found within a reasonable time period, not to exceed ninety (90) calendar days.

7. Have a process to collect racial and ethnic data on persons impacted by your agency’s programs.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal funds, grants, loans, contracts, properties, discounts or other federal financial assistance under all programs and activities and is binding. The person whose signature appears below is authorized to sign this assurance on behalf of the Recipient.

Dated: 1/30/2018

By: [Signature]
APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

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

(2.) Nondiscrimination: The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3.) Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.

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

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

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

(6.) Incorporation of Provisions: The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the Contractor may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
CONTRACTOR PERFORMANCE EVALUATION

Report Type: □ Interim □ Completion of Construction

Project Name:

Project Location:

Contractor Name:

Contractor Project Manager Name:

Contractor Address:

Bid #: Contract Dates: to

Project Complexity: □ Difficult □ Routine

Description of Work:

<table>
<thead>
<tr>
<th>Description</th>
<th>Excellent</th>
<th>Good</th>
<th>Average</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of Basic Contract: $</td>
<td>Date of Award:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount of Change Orders: $</td>
<td>Original Contract Completion Date:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liquidated Damages Assessed: $</td>
<td>Revised Contract Completion Date:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Amount Paid to Contractor: $</td>
<td>Date Work Accepted:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Performance Elements

<table>
<thead>
<tr>
<th>Element</th>
<th>Excellent</th>
<th>Good</th>
<th>Average</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality of Work</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Timely Performance</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Effectiveness of Management</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Compliance with Labor Standards</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Compliance with Safety Standards</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

Overall Rating: □ Excellent (explain) □ Good □ Average □ Poor (explain)

This evaluation represents the opinion of the project manager in the County department responsible for this project.

Preparer’s Name: __________________________ Title: __________________________

Preparer’s Signature: __________________________ Date: __________________________

Department Director Signature: __________________________

Signed copy to: Contractor (upon final payment)

Save document in P:/project_evaluation using naming convention: contractorname MM-YY.

NOTE TO CONTRACTOR: AN OVERALL RATING OF POOR WILL RESULT IN DETERMINATION OF “NON-RESPONSIBLE VENDOR” BY MARTIN COUNTY AND REJECTION OF BID FOR FUTURE PROJECTS.
This is the front page of the performance bond issued in compliance with Florida Statute Chapter 255.05

Surety Name:  

Bond Number:  

Contractor Name:  

Owner Name:  

Project Number:  

Project Description:  

Project Address:  

Legal Description of Property:  

This is the front page of the bond. All other pages are subsequent regardless of the pre-printed numbers.
PERFORMANCE BOND NO.__________

BY THIS BOND, _____, as Principal and _____ as Surety, are bound to Martin County Board of County Commissioners, as Owner and obligee, in the sum of $______ for payment of which Principal and Surety bind themselves, their heirs, personal representatives, successors, and assigns, jointly and severally.

WHEREAS, Principal has by written agreement dated _____, 20____, entered into a contract which may be referenced by Project Name, _____, Contract # _____, in accordance with Drawings and Specifications prepared by , which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, Principal and Surety agree as follows:

Condition of Bond

1. The condition of this bond is that if Principal:

   1.1. Timely and satisfactorily performs, and complies with, all of the terms and conditions of the Contract being incorporated into this Bond by reference, at the times and in the manner prescribed in the Contract;

   1.2 Pays Owner all losses, damages (including but not limited to any damages resulting from Principal’s delays to the Work), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by the Principal under the Contract; and

   1.3. Performs the guaranty/ warranty of all work and materials furnished under the Contract for the time specified in the Contract; then this Bond is void; otherwise it remains in full force.

Surety’s Obligations:

2. The Surety’s obligation under this Bond shall arise after:

   2.1 The Owner has declared a Contractor Default and formally terminated the Principal’s right to complete the contract, and so advised the Surety in writing; and

   2.2 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

3. The Surety shall promptly and at the Surety’s expense take one of the following actions:

   3.1 Arrange for the Principal, with consent of the Owner, to perform and complete the Construction Contract; or

   3.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract; arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages incurred in excess of the Balance of the Contract Price, resulting from the Principal’s default; or

3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the Circumstances:

   a. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment to the Owner; or

   b. Deny liability in whole or in part and notify the Owner citing reasons therefore.

4. If the Surety does not proceed as provided in Paragraph 3 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 3.4, and Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce and remedy available to the Owner.

5. After the Owner has terminated the Principal’s right to complete the Construction Contract; and if the Surety elects to act under Subparagraph 3.1, 3.2, or 3.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Principal under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages of the Construction Contract, the Surety is obligated without duplication for:

   5.1 The responsibilities of the Principal to correct defective work and complete the Construction Contract;

   5.2 Additional legal, design professional and delay costs resulting from the Principal’s Default, and resulting from the actions or failure to act of the Surety under Paragraph 3; and

   5.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract actual damages caused by delayed performance or non-performance of the Principal.

6. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

7. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located.
8. Notice to Surety, the Owner or the Principal shall be mailed or delivered to the Address shown on the signature page.

9. DEFINITIONS:

9.1 Balance of the Contract Price: The total amount payable by the Owner to the Principal under the Construction contract after all proper adjustments have been made, including allowance to the Principal or any amount received or to be received by the Owner in settlement of insurance or other claims for damages to which the Principal is entitled, reduced by all valid and proper payments made to or on behalf of the Principal under the Construction Contract.

9.2 Construction Contract: The agreement between the Owner and the Principal identified on the signature page, including all Contract Documents and changes thereto.

9.3 Contractor Default: Failure of the Principal, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

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

DATED on this _____ day of _____, 20____.

PRINCIPAL (IF CORPORATION):

____________________________

PRESIDENT

____________________________

SECRETARY
PAYMENT BOND

BY THIS BOND, ____ as Principal and ____ as Surety, are bound to Martin County Board of County Commissioners, as Owner and obligee, in the sum of $____ for payment of which Principal and Surety, as well as, their heirs, personal representatives, successors, and assigns, shall be jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. 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 Contract # ___, (project name), in accordance with Drawings and Specifications prepared by ___ (architect/engineer), all of the terms and conditions of the Contract being incorporated into this Bond by reference, at the times and in the manner prescribed in the Contract; and

2. Pays County all losses, damages, expenses, costs, and attorneys' fees, including appellate proceedings, that County sustains because of a default by Principal under the Contract, then this Bond is void; otherwise it remains in full force and effect.

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

4. Principal and Surety expressly acknowledge that any and all provisions relating to liquidated damages contained in the Contract are expressly covered by and made a part of this Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this Bond.

5. Pursuant to Section 255.05, Florida Statutes as amended from time to time, a claimant, except a laborer, who is not in privity with the Principal shall, before commencing or not later than 45 days after commencing to furnish labor, materials, or supplies for the prosecution of the Work, furnish the Principal with a notice that he or she intends to look to this bond for protection. A claimant who is not in privity with the Principal and who has not received payment for his or her labor, materials, or supplies shall deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the Work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. Notices required or permitted under this section may be served in accordance with Section 713.18, Florida Statutes. An action, except for an action exclusively for recovery of retainage, must be instituted against the Principal or the Surety on this bond within 1 year after the performance of the labor or completion of delivery of the materials or supplies. An action exclusively for recovery of retainage must be instituted against the Principal or the Surety within 1 year after the performance of the labor or completion of delivery of the materials or supplies, or within 90 days after receipt of final payment (or the payment estimate containing the Owner's final reconciliation of quantities if no further payment is earned and due as a result of deductive adjustments) by the Principal or Surety, whichever comes last.
DATED on this _____ day of _____, 20____.

PRINCIPAL (IF CORPORATION):

_________________________________
PRESIDENT

_________________________________
SECRETARY

(SEAL)

SURETY:

By: ____________________________________
(As Attorney in Fact)
[Attach Copy of Power of Attorney]
WAIVER OF RIGHT TO CLAIM AGAINST PAYMENT BOND AND 
MARTIN COUNTY (OWNER) 
(PROGRESS PAYMENT)

Project No: 

STATE OF FLORIDA, COUNTY OF MARTIN 

WHEREAS the undersigned has been employed by (1) CONTRACTOR (AGENT) to furnish (2) MATERIALS/ SERVICES for the Premises known as (3) PROJECT NAME/ ADDRESS of which (4) MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, is Owner.

The undersigned does hereby certify and warrant that the following statement of contract account is correct and complete to and including the date hereof, and that all charges and amounts now due to the undersigned and all charges and costs heretofore incurred by or for the undersigned for labor and materials in connection with the above described premises or improvements therein have been paid in full:

Statement of Contract Account

| Total Contract Amount  | $_______________________ |
| Total Net Payments to Date | $_______________________ |
| Total Amount of Retention Properly Withheld | $_______________________ |

The undersigned, for and in consideration of $_______________________ and other good and valuable considerations, receipt of which is hereby acknowledged, does hereby waive and release any and all claim or right of claim under the statutes of the State of Florida relating to Payment Bonds, on the above described premises and improvements thereon, and on the monies or other considerations due or to become due from the Agent, on account of labor services, material, fixtures or apparatus heretofore furnished to this date by the undersigned for the above described premises. The undersigned further covenants and agrees to save and hold harmless Owner, its agents, partners, lenders, successors, and assignees from any and all liability or expenses on account of any charges or claims for labor and/or materials furnished to or by the undersigned on or for said job on or prior to the date hereof.

Done this ____ day of _________________________, 20__.

Attest or Witness: 

Firm: ________________________________

_____________________________ 

By: ________________________________

Title: ________________________________

NOTE: All waivers must be for the full amount paid. If the waiver is for a corporation, corporate names should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.
FINAL WAIVER OF RIGHT TO CLAIM AGAINST PAYMENT BOND AND 
MARTIN COUNTY (OWNER)

Contract No:

STATE OF FLORIDA, COUNTY OF MARTIN

WHEREAS the undersigned has been employed by (1) CONTRACTOR (AGENT) to furnish (2) MATERIALS/ SERVICES for the Premises known as (3) PROJECT NAME/ ADDRESS of which (4) MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, is Owner.

The undersigned, for and in consideration of $__________________, and other good and valuable considerations, receipt of which is hereby acknowledged, does hereby waive (i) rights to claim against the payment bond for labor, services, or materials on the above described premises and improvements thereon, and (ii) any other claim or cause of action of any other nature, whether known or unknown, arising directly or indirectly as a result of labor, services, materials and/or equipment, fixtures, or apparatus heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the above described premises. This release includes any claim for monies due, or to become due, from the Owner. Further, the undersigned states that it has not assigned any claim for payment against the Owner, its agents, partners, lenders, successors, and assignees, and that no security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures, or furnishings placed upon or installed on the above described premises. Further, the undersigned agrees to indemnify and hold harmless Owner, its agents, partners, lenders, successors, and assignees, from any and all charges, costs, expenses, demands, suits, and legal fees, directly or indirectly relating to any lien or claim by any other party for work, labor, services, materials, and/or equipment which relates to that which the undersigned performed or should have performed, and from and against any lien or claim relating to any work, labor, services, material, and/or equipment allegedly performed by or for the undersigned. The undersigned hereby certifies and warrants that it has fully paid for the work, labor, services, materials, and/or equipment provided to it in connection with the above-described improvements. Finally, the undersigned states that it has the right, power, and authority to execute this instrument, which shall be an independent covenant.

Done this _____ day of __________________, 20__.

Attest or Witness: Firm:________________________

______________________________ By:________________________

Title:________________________

NOTE: All waivers must be for the full amount paid. If the waiver is for a corporation, corporate names should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.