

PAVILION REPLACEMENT

THE BARNACLE HISTORIC STATE PARK

INSTRUCTIONS TO BIDDERS

DEP PROJECT NO. 61271C
DEP BID NO. BDC51-23/24

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SECTION A: BID FORM AND REQUIRED DOCUMENT LIST

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BID No. BDC51-23/24

Submit one original, one copy

FROM:

Company Name

Address

City, State and Zip Code

Telephone Number

TO:

Brandon Williams, Contracts Section
Bureau of Design and Construction
Department of Environmental Protection
3800 Commonwealth Boulevard, MS #520
Tallahassee, Florida 32399-3000

The undersigned, hereinafter called "Bidder," having familiarized himself with the local conditions, nature and extent of the Work and having examined carefully the Drawings, Technical Specifications, the Agreement, the General Conditions, the Special Conditions, the Bidding Documents, and all parts of the Contract as defined in Article 5.02, General Conditions, proposes to furnish all labor, materials, equipment and other items, facilities, and services for the proper execution and completion of the **Pavilion Replacement in Barnacle Historic State Park in Miami-Dade County** in full accordance with all of the foregoing documents included in the Contract, as enumerated in Article 5.02, General Conditions, and, if awarded the Contract, to complete said Work within the time limits specified for the following Contract Price.

YOUR BID WILL BE REJECTED IF YOU ADD ANY CONDITIONS TO OR IMPOSE ANY CONDITIONS ON THE BID.

Base Bid:

Lump Sum: \$ _____

Contractor shall provide all labor, materials, equipment, supervision and permitting to remove and replace the existing pavilion per the contract documents.

Write out Base Bid Lump Sum amount: _____

Alternate #1:

Alternate #1: \$ _____

Not Applicable

Write out Alternate #1 amount: _____

Alternate #2:

Alternate #2: \$ _____

Not Applicable

Write out Alternate #2 amount: _____

If a bid contains contradictory terms, typewritten terms will prevail over printed terms, handwritten terms will prevail over both, and words will prevail over numbers. In case of conflict between the calculated total price (Unit Rate times Quantity) and the total submitted amount, DEP will consider the unit price to be correct and will revise the extended total amount accordingly.

THE FOLLOWING FORMS OR DOCUMENTS SHALL BE COMPLETELY FILLED OUT AND SUBMITTED WITH THIS BID FORM. THE BID WILL BE REJECTED FOR FAILURE TO INCLUDE ALL THESE FORMS OR DOCUMENTS IF MATERIAL TO THE BID AND NOT A NON-MATERIAL DEVIATION.

CHECKLIST:

- ☐ 1. **Signed Bid Form (Section A)** - One original, one copy
- ☐ 2. Bid Guaranty in the amount of 5% of the Bid including Alternates if the total equals or exceeds \$100,000.00 (this can be in the form of a bid bond or a cashier's check).
- ☐ 3. Signed copies of all Addenda - Failure to sign and return all Addenda to the Contract administrator will result in rejection of the Bid if it materially affects the Bid and is not a Non-material Bid Deviation.
- ☐ 4. **Three (3) references on Evaluation Form**, one per sheet (following the bid form). Please verify your references' information prior to bid submission.
- ☐ 5. Read and understand all insurance requirements for this project, including Builder's Risk and, if applicable, Longshoreman & Harbormaster's/Jones Act Insurance.
- ☐ 6. Form DBC 5085 - Experience Questionnaire and Contractor's Financial Statement. (Section C) Include only if bid plus all alternates total equals or exceeds \$200,000.00.
- ☐ 7. Statement of which portion of the Work will be performed by Contractor's Employees, if bid equals or exceeds \$500,000.00.
- ☐ 8. Names, titles, companies, addresses, and phone numbers of all Supervisory employees as required if bid equals or exceeds \$500,000.00, as required by B-2(2)G, page 22.
- ☐ 9. ~~Unit Prices as specified in Section 01270, Project Manual, should be attached on separate sheets of paper.~~ N/A

NOTE: Prequalification to submit a bid in accordance with section B-2 is required prior to the bid opening date.

The Bidder hereby agrees that:

- (a) The above bid shall remain in full force and effect for a period of sixty (60) calendar days after the time of the bid opening and that the Bidder will not revoke or cancel this bid or withdraw from the competition within the said sixty (60) calendar days.
- (b) The Bidder has reviewed the Bidder's Representations and Certifications in Section B-4, has provided explanations where applicable, and understands that submission of a Bid without providing explanations constitutes the Bidder's certification that all of the statements contained in Section B-4 are true and correct to the best of Bidder's knowledge and belief.
- (c) In the event the project is awarded to this Bidder, it will enter into a formal written agreement with the Department in accordance with the accepted bid within ten (10) calendar days after said Agreement is submitted to it and it will furnish to the Department a Performance Bond and a Labor and Materials Payment Bond with good and sufficient sureties, satisfactory to the conditions of the Contract and terms of which shall fully comply with Section 255.05, Florida Statutes. The Bidder further agrees that in the event of the Bidder's default or breach of any of the requirements of this proposal, the Bid Guaranty shall be forfeited as liquidated damages.

NOTE: Bidder shall be in compliance with Chapter 489, Florida Statutes, and/or all other Licensure Requirements and the Rules promulgated by the Department of Business and Professional Regulation. Bidder holds the following described license:

(Name of Holder) (Certificate No.)

In witness whereof, the Bidder has hereunto set its signature this _____ day of _____
20_____.

By: _____

***This individual must have the authority to bind the Bidder.**

Print Name and Title: _____

Print Name of Firm: _____

Address: _____

Contact Person: _____ Telephone #: _____

FEID #: _____ Email: _____

Continuous Years in Operation: _____ Fiscal Year Ending Date: _____

Please list all Associated Business Entities, the definition of which can be found in Instructions to Bidders Section B-1, in the space provided below:

**EVALUATION OF PAST PERFORMANCE –
ENCLOSE THREE (3) REFERENCES WITH THE BID**

(Please type or clearly print below)

To be completed by the BIDDER:

Bidder or Associated Business Entity's Name: _____

Company Representative: _____

Bidder's Phone Number: _____

To be completed by the BIDDER:

Reference Organization Name: _____

Reference Contact: _____

Reference Phone Number: _____

Reference Email Address: _____

Briefly describe the work performed for the above Reference:

To be completed by the REFERENCE:

The following questions are asked of the client reference, as chosen at the discretion of the Department.

1. How well did the contractor adhere to the agreed upon schedule?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

2. How would you rate the contractor's overall quality of work?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

3. How would you rate the contractor's use of adequate personnel in quantity, experience and professionalism?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

4. How would you rate the contractor's use of appropriate equipment and methods?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

SCORING:

Excellent = 4 points

Above Satisfactory = 3 points

Satisfactory = 2 points

Fair = 1 point

Poor = 0 points

Total Score = _____

Average (Total Score/4) = _____

Reference Signature: _____ Date: _____

**EVALUATION OF PAST PERFORMANCE –
ENCLOSE THREE (3) REFERENCES WITH THE BID**

(Please type or clearly print below)

To be completed by the BIDDER:

Bidder or Associated Business Entity's Name: _____

Company Representative: _____

Bidder's Phone Number: _____

To be completed by the BIDDER:

Reference Organization Name: _____

Reference Contact: _____

Reference Phone Number: _____

Reference Email Address: _____

Briefly describe the work performed for the above Reference:

To be completed by the REFERENCE:

The following questions are asked of the client reference, as chosen at the discretion of the Department.

1. How well did the contractor adhere to the agreed upon schedule?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

2. How would you rate the contractor's overall quality of work?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

3. How would you rate the contractor's use of adequate personnel in quantity, experience and professionalism?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

4. How would you rate the contractor's use of appropriate equipment and methods?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

SCORING:

Excellent = 4 points

Above Satisfactory = 3 points

Satisfactory = 2 points

Fair = 1 point

Poor = 0 points

Total Score = _____

Average (Total Score/4) = _____

Reference Signature: _____ Date: _____

**EVALUATION OF PAST PERFORMANCE –
ENCLOSE THREE (3) REFERENCES WITH THE BID**

(Please type or clearly print below)

To be completed by the BIDDER:

Bidder or Associated Business Entity's Name: _____

Company Representative: _____

Bidder's Phone Number: _____

To be completed by the BIDDER:

Reference Organization Name: _____

Reference Contact: _____

Reference Phone Number: _____

Reference Email Address: _____

Briefly describe the work performed for the above Reference:

To be completed by the REFERENCE:

The following questions are asked of the client reference, as chosen at the discretion of the Department.

1. How well did the contractor adhere to the agreed upon schedule?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

2. How would you rate the contractor's overall quality of work?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

3. How would you rate the contractor's use of adequate personnel in quantity, experience and professionalism?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

4. How would you rate the contractor's use of appropriate equipment and methods?

Excellent _____ Above Satisfactory _____ Satisfactory _____ Fair _____ Poor _____

Comments: _____

SCORING:

Excellent = 4 points

Above Satisfactory = 3 points

Satisfactory = 2 points

Fair = 1 point

Poor = 0 points

Total Score = _____

Average (Total Score/4) = _____

Reference Signature: _____ Date: _____

SECTION B: SPECIAL CONDITIONS

Special Conditions

The Special Conditions shall prevail over General Conditions in the Bidding Documents.

- The Department's estimate for this project is **\$450,000.00**. This number is strictly an estimate, and each Bidder's bid price should be based on their firm's assessment of the project.
- Bidder must submit as part of their bid a preliminary Schedule of Values for review evaluation purposes using the format below. Final Schedule of Values will be negotiated after contract execution. Upon acceptance, the Final Schedule of Values will be used as a basis of payment.
- **BID SUBMITTAL DUE DATE:** No later than **3:30 pm (ET), Thursday, August 1, 2024**, to the below address: Florida Department of Environmental Protection, Bureau of Design and Construction, 3800 Commonwealth Boulevard, MS #520, Tallahassee, Florida, 32399-3000, Attention: Brandon Williams, Bureau of Design and Construction, (850) 245-2535. (For hand delivery: Carr Building, Welcome Desk.) The Department reserves the right to reject any or all bids.
- **BID POSTING DATE:** No later than **3:30 pm (ET), Tuesday, August 13, 2024**, unless extended by the Department for good cause.
- **SPECIAL CONDITIONS:**
 - Vehicle clearance to get into the park is about 8 feet wide and 10 feet tall, it is winding and there are some low points on the pathway into the park.

Preliminary Schedule of Values

DEP Bid No.: _____

Bidder: _____

Project: _____

DIVISION 1- GENERAL CONDITIONS	\$	-
DIVISION 2 - SITEWORK	\$	-
DIVISION 3 - CONCRETE	\$	-
DIVISION 4 - MASONRY	\$	-
DIVISION 5 - METALS	\$	-
DIVISION 6 - WOODS & PLASTICS	\$	-
DIVISION 7 - THERMAL & MOISTURE PROTECTION	\$	-
DIVISION 8 - DOORS & WINDOWS	\$	-
DIVISION 9 - FINISHES	\$	-
DIVISION 10 - SPECIALTIES	\$	-
DIVISION 11 - EQUIPMENT	\$	-
DIVISION 12 - FURNISHINGS	\$	-
DIVISION 13 - SPECIAL CONSTRUCTION	\$	-
DIVISION 14 - CONVEYING SYSTEMS	\$	-
DIVISION 15 - MECHANICAL	\$	-
DIVISION 16 - ELECTRICAL	\$	-
TOTAL	\$	-

Bidder's Signature: _____

Date: _____

SECTION C: INSTRUCTIONS TO BIDDERS

This Invitation to Bid consists of Instructions to Bidders; Section C (Experience Questionnaire), Section A (Bid Form), Section E (Special Conditions), Section F (Sample Agreement), Section G (General Conditions)

if applicable, Drawings, and Specifications. Additional definitions are found in Article I, General Conditions, Chapter 255, Florida Statutes (“F.S.”) and Chapter 60D-5, Florida Administrative Code (“F.A.C.”). Once a contract has been awarded, only the Bidding Documents named in Article 5.02, General Conditions, will be incorporated into the Contract.

B-1 Bid Terminology

Definitions.

The definitions found in rule 60D-5.002, Fla. Admin. Code, shall apply to this solicitation, and when not defined in said rule, shall have the meanings provided in Chapter 255, Florida Statutes. The foregoing notwithstanding, the definitions for terms (or pronouns that replace these terms) and phrases below shall apply unless specifically indicated otherwise:

Agreement: See Article I, General Conditions.

Alternate Bid Item: A separate optional bid item for more or less project requirements or alternate construction techniques or materials, which the Department may or may not accept as additional to the Base Bid, depending on available funding. Not included in the Base Bid.

Allowances: An amount included in the Contract Price to cover the cost of prescribed items not specified in detail, with the condition that variations between such amount and the final determined cost of the prescribed items will be reflected in Change Orders appropriately adjusting the Contract Price.

Associated Business Entity: A Business Entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Bidder; including, but not limited to, the following:

1. A business entity 20 percent or more of whose outstanding voting securities, membership interests or partnership interests are directly or indirectly owned, controlled, or held with power to vote, by the Bidder.
2. A business entity which directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of whose outstanding voting securities, membership interests or partnership interests are directly or indirectly owned, controlled, or held with power to vote, by the Bidder.

Base Bid: The Bid amount exclusive of any Alternate Bid Item amounts

Bid: The offer or proposal of the Bidder on the Bid Form, stating the price for performing the Work submitted to the Department in accordance with the Instructions to Bidders. The Bid includes the cost of Alternates, if applicable.

Bid Form: The official form on which the Department requires Bids be submitted, a copy of which is found in Section A.

Bid Guaranty: The five percent good faith deposit required by Chapter 255, Florida Statutes, to place a bid for a Project over \$100,000, the form of which is specified by section 60D-5.004, Florida Administrative Code.

Bid Opening: The date and time the Department has specified in its public notice that it will open the Bids.

Bidder: Any person or Business Entity that submits a Bid for the Work in accordance with the Instructions to Bidders.

Bidding Documents: The Bidding Documents consist of the Instructions to Bidders, the Drawings, the Specifications, the Sample Agreement, the General Conditions, and the Special Conditions, if any, promulgated for purposes of the Invitation to Bid; and all relevant portions of Chapter 255, F.S., and Chapter 60D-5, F.A.C. Only those Bidding Documents named in Article 5.02 of the General Conditions will become part of the Contract.

Business Entity: This term includes firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, companies, fiduciaries, corporations, and all other groups or combinations.

Buyer: The entity that has released the solicitation. The term may also mean the “Customer” or “Owner.”

Certificate for Payment: See Article I, General Conditions.

Change Order: See Article I, General Conditions.

Consultant: See Article I, General Conditions.

Contract Documents: See Article I, General Conditions.

Contracts Administrator: Person employed by the Department of Environmental Protection who performs ministerial tasks related to contract administration, which may include bidding; contract review, approvals, and execution; verifying proof of insurance; approving bonds; preparing amendments; and receiving notices. (Generally, this is not the same person as the Project Manager--see definition below.)

Contract Term: See Article I, General Conditions.

Contractor: See Article I, General Conditions.

Contractor’s Employee: An individual employed directly by the Contractor and on its direct payroll at the time of the Bid Opening.

Control: The ability, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise, including through common officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of an entity.

Convicted Vendor: Person found guilty of a Public Entity Crime, as specified in chapter 287, Florida Statutes.

Day: See Article I, General Conditions.

Department: See Article I, General Conditions.

Drawings: See Article I, General Conditions.

Final Completion: See Article I, General Conditions.

Owner: See Article I, General Conditions. This term may also mean “Buyer” or “Customer.”

Pay Request: See Article I, General Conditions.

Performance and Payment Bonds: The security furnished by the Contractor and its surety as a guarantee that the Contractor will fulfill the terms of the Agreement in accordance with the Drawings, Specifications and other Contract Documents.

Person: This shall include any individual, partnership, legal association, joint venture, corporation, estate, receiver, trustee, assignee, Bidder, Contractor, referee, government of any level including the federal government, and other legal entity, whether appointed by a court or otherwise constituted, and any lawful combination of the foregoing parties.

Principal: When used in the Bid Bond, the word "Principal" means the same as the word "Bidder." When used in the Performance and Payment Bonds, the word "Principal" means the same as the word "Contractor."

Procurement Officer: The Owner's contracting personnel, as identified in the solicitation.

Project: See Article I, General Conditions.

Project / Contract Manager: Person employed by the Department designated in the Agreement to be the contact point and liaison with the Contractor in all matters related to the Work and the Contract, unless otherwise specified in the Contract. The Contract Manager for this Contract is named in Section 11 of the Agreement.

Provide: See Article I, General Conditions.

Public Entity Crime: A violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

Respondent: The entity that submits materials to the Owner in accordance with the instructions provided in the solicitation, as well as the entity that is ultimately selected by the Owner to provide the commodities, construction, or services contemplated by the contract. This term may also mean the "Bidder."

Response: The materials submitted by the Bidder in accordance with the instructions provided in the solicitation. This term may also mean the "Bid."

Specifications: See Article I, General Conditions.

State: State of Florida.

Subcontractor: See Article I, General Conditions.

Substantial Completion: See Article I, General Conditions.

Superintendent: See Article I, General Conditions.

Surety: The corporate body which is bound by a Bid Bond, if any, and the Performance and Labor and Material Payment Bonds with and for the Contractor (who is primarily liable) and which agrees to be responsible for acceptable performance of the Work and for prompt payment of all debts pertaining thereto.

Unit Price: An amount stated in the Contract as a price per unit of measurement for materials or services as described in the Contract Documents.

Work: See Article I, General Conditions.

B-2 Bidder's Qualification Requirements and Procedures

NOTICE TO BIDDERS: For the bidding procedure only, for this Project, please submit all required or requested items and your Bid to:

**Brandon Williams, Contracts Section
Department of Environmental Protection
Division of Recreation and Parks
Bureau of Design and Construction
3800 Commonwealth Boulevard, MS #520
Tallahassee, FL 32399-3000**

Contact information only (no bids):

Phone: 850-245-2535

E-mail: Brandon.D.Williams@FloridaDEP.gov

NOTICE TO BIDDERS: All forms used in conjunction with the bid or the Contract are subject to change, in accordance with Department requirements. The forms included herein are representative of the forms that will be used. The Project Manager will advise the Contractor of all form updates or additions during the Contract Term. Further, the blocks or portions of a form marked or delineated "For Department Use Only," "For Office Use," or some similar designations are not part of the Contract.

Bidder prequalification requirements and procedures are established by the Bidding Documents in accordance with Chapter 255, Florida Statutes ("F.S."), and Chapter 60D-5, Florida Administrative Code ("F.A.C."). Failure of the Bidder to comply strictly with all such requirements and procedures will result in the rejection of its bid. For the Bidder's convenience, the provisions of qualification requirements and procedures of the statute and the rule cited above are explained below. If anything stated in this document conflicts with Chapter 255, F.S. (statute), or Chapter 60D-5, F.A.C. (rule), the statute will prevail over the rule and this document, and the rule shall prevail over this document.

(1) Bidder Prequalification is required for all bids: Each bidder shall provide a copy of its biennial pre-qualification letter from FDEP's Bureau of Design and Construction. If not pre-qualified, the bidder must submit the following items with its bid:

A. Current State Contractor license certification or registration.

A copy of each license, certification or registration needed to perform the Work shall be submitted with your bid. If the Work is not governed by Chapter 399, 455, 489, or 633, F.S., this item is not required. If there is any dispute about whether the Work is governed by one of these chapters, the Bidder must present proof from the Department of Business and Professional Regulation, or the appropriate licensing board, that such license, certification or registration is not required to perform the Work.

AND

B. Current Corporate Charter registration.

If the Bidder is a corporation, partnership, limited partnership, limited liability company, or joint venture, it must submit evidence that the entity is properly registered with the State of Florida, Department of State, Division of Corporations, and holds a current corporation charter number, is active and is in good standing, in accordance with Florida Statutes. The Out-of-state (foreign) corporations and fictitious names must be registered to do business in the State of Florida prior to Bid Opening, or they will be non-responsive.

Each state agency is responsible for prequalification of its prospective Bidders. Prequalification with any other agency does not prequalify a firm with the Department of Environmental Protection.

Bids will be accepted only from those firms that have met the prequalification criteria. Firms that have not met the above-stated prequalification criteria within the time limits set forth above shall be non-responsive by the Department, and the notice of intended award of contract posted shall state "non-responsive—not prequalified." The Bidder shall submit the prequalification criteria to the Contracts Administrator, at the address shown in B-2, above. All information shall indicate the full name, address and telephone number of the individual, corporation, or other legal entity, and the name of the person to contract for inquiries about the information provided. No phone calls regarding prequalification will be taken. If you do not have your DEP letter stating you are prequalified or you have any doubt as to whether you are prequalified, you should resubmit the information required above.

(2) Bidder Qualifications for all Bidders:

All Bidders who have prequalified, if required, must satisfy the following requirements to be eligible to enter into an Agreement with the Department for this Project:

Bids exceeding \$100,000

A. For all Bids exceeding \$100,000 Bidders shall submit a good faith deposit (Bid Guaranty) with the Bid in the amount of five percent (5%) of the bid by a Bid Bond from a Surety, which meets the requirements of section 287.0935, F.S. Bidder shall provide upon request written proof from the Surety and/or the Department of Financial Services of the State of Florida that it meets all of the statutory requirements. The Department does not require the bond to be on any particular form as long as the information complies with the Statute. Bidders can also submit a certified check, cashier's check, treasurer's check or bank draft of any national or state bank. No personal checks will be accepted.

1. Bidders shall, with the Bid, or within two working days of being notified that they are the low, responsive, qualified Bidder, provide evidence of their ability to provide 100% performance and payment bonds for the project by providing a letter of intent to provide such bonds in accordance with these Instructions to Bidders.
2. All Bidders are responsible to notify their Surety of all of the requirements for bid, performance and payment bonds in these Instructions to Bidders.
3. A Bid Bond must be signed by a Florida licensed Agent who holds a current Power of Attorney from the Surety Company issuing the Bond. The Bid Guaranty is to be made payable to the Department of Environmental Protection.
4. Such Bid Guaranty shall be submitted with the understanding that it shall guarantee that the Bidder (i) will not withdraw its bid for a period of **sixty (60) days** after the Bid Opening; (ii) if its Bid is

accepted, it will enter into a written Contract with the Department substantially similar to the Sample Agreement; (iii) it will give the required Performance Bond and Labor and Materials Payment Bond, which conform to these Instructions to Bidders; (iv) it will maintain said Bonds throughout the life of the Contract; and (v) in the event of the withdrawal of said bonds within the sixty-day period, or Bidder's failure to enter into said Agreement and give said bonds in accordance with Article 8, General Conditions, the Bidder shall forfeit the full amount of the Bid Guaranty as compensation for such default in lieu of the Department's damages, which cannot be determined with any degree of certainty.

5. If the required Agreement and Bonds have not been executed within **sixty (60) days** after the Bid Opening due to the Department's or contract awardee's delays, the Bid Guaranty of any other Bidder will be returned upon its request, provided it has not been notified of the acceptance of its Bid prior to the date of such request.

6. Failure to submit a Bid Guaranty for a Bid over \$100,000 is a Material Bid Deviation, and the Bidder shall be disqualified.

Bids exceeding \$200,000

B. If the total Bid exceeds \$200,000, in addition to the good faith deposit required by A., above, the Bidder must complete and submit with the Bid the enclosed form entitled, "Experience Questionnaire and Contractor's Financial Statement", Form Number DBC-5085, Section C. The completed Form DBC-5085 must be enclosed with the Bid Form despite the statement in the form itself that it must be sent in "prior to the award." The Bidder's financial statement must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform this project as follows: The value of liquid assets must be no less than one-twentieth of the amount of the Base Bid. Liquid assets shall include cash, stocks, bonds, pre-paid expenses and receivables, but shall not include the value of equipment. The Bidder may substitute a financial statement less than one year old in lieu of the Financial Statement portion of Form DBC-5085, but it must still complete the Experience portions of the Form.

Bids exceeding \$500,000

For bids exceeding \$500,000, in addition to the requirements of A and B, above, the Bidder shall meet all of the following criteria:

- C. For bids exceeding \$500,000 the surety that will provide the Performance Bond and Labor and Materials Payment Bond shall have and maintain at least an "A-" rating in A.M. Best Company's online rating guide. Reinsurance company ratings are not applicable and will not be considered as meeting this requirement.
- D. Familiarity with local conditions. By executing the Bid Form, the Bidder acknowledges that it is familiar with local conditions at the Project Site and has considered them in preparing the Bid.
- E. Work force. The Bidder shall provide with the Bid an agreement to perform no less than fifteen percent (15%) of the project management and construction work utilizing Contractor's Employees. (See definition of "Contractor's Employee" in Section B-1, above.) The Bidder must indicate in its Bid for which portion of the Work it will utilize its own employees.
- F. Firm experience. Bidder must provide proof, in its Experience Questionnaire, or attached to that form, that it has successfully completed no less than three (3) projects of similar size and complexity within the three (3) years prior to Bid Opening.
- G. Superintendent. The Bidder must name in the Bid a Superintendent to provide on-site supervision for each of the general, concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing

trades, either through the use of Contractor's Employees, or in the instance of mechanical, plumbing, electrical and roofing trades, through the use of employees of the Subcontractor. In addition, the contractor shall assign and name a qualified employee to provide scheduling for the entire project. Supervisory employees (including field superintendents, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of a substantially equivalent level on a similar project for at least two years within the last five years preceding Bid Opening. To that end, the contractor shall include a resume of experience for each of those employees identified by it to supervise each trade, and for scheduling, with its submittal of the Experience Questionnaire, Form BDC 5085 (Section C). The Contractor shall not allow any changes in the persons designated in its Bid as required in this section without prior written approval of the Department.

All Projects

H. For Projects that require a contractor with specific expertise and experience, the Department shall state additional qualification requirements relating to demonstrated performance of similar work, size, and complexity and the possession or availability of facilities or equipment needed for performance of this Project. Such conditions may include a deadline date for submittal of additional qualification data. Additional qualification requirements for this Project may be included in Special Conditions.

I. The Bidder shall submit the following with its Bid:

1. In the spaces provided on the attached Section A, Bid Form, the Bidder shall provide the required information to include the Bidder's name, address, telephone number and continuous years in operation.
2. Provide a minimum of three (3) separate and verifiable clients, other than the DEP, for work similar in nature and scope to that specified in this solicitation performed the last three (3) years. The same client may not be listed for more than one (1) reference (for example, if the bidder has completed one project for the Florida Department of Transportation – District One and one project for the Florida Department of Transportation – District Two, only one (1) of the projects may be listed because the client, the Florida Department of Transportation, is the same). These references should be available to be contacted during normal working hours. The DEP will attempt to contact each selected reference by phone up to four (4) times. In the event that the contact person cannot be reached following the specific number of attempts, the respondent shall receive a score of zero (0) for that reference evaluation. The DEP will not attempt to correct incorrectly supplied information. References shall be listed on the Client References Form, Pages 1-3 of Attachment D, attached hereto. Do not list work performed for the DEP.
3. A list of all names under which the Bidder and its Associated Business Entities have operated during the past eight (8) years (including those of predecessors through merger) and list any contracts which the Bidder or any of its Associated Business Entities have been a party to with the Department within the last eight (8) years, where either the Bidder or its Associated Business Entity was the prime contractor. In addition to the information provided, the Department may review its records to 1) verify listed contracts, and identify and unlisted contracts, if applicable, that the Bidder or any Associated Business Entity was a party to with the Department during the previous eight (8) years. The Department will contact, at its discretion, one of the Department Contract Managers for a contract with the Bidder or Associated Business Entity in order to complete the evaluation questionnaire provided in Section D, Evaluation of Past Performance. This same evaluation questionnaire will be filled out by the Department's Project Manager at the end of the contracted work and saved as a reference for future bids.

Failure to provide any of the information requested in this section shall result in the Bid being deemed non-responsive by the Department and, therefore, rejected.

J. Any other provisions the Department sets forth in the Bidding Documents.

Bids over \$25,000

K. **Public Entity Crimes.** "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or Consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO [\$25,000] for a period of 36 months from the date of being placed on the convicted vendor list." The Contractor must sign a document stating it is not on the convicted vendor list, and that it agrees to ensure that its subcontractors and suppliers are not on the convicted vendor list maintained by the Department of Management Services on its Vendor Information Portal.

B-3 Familiarity with Laws

The Bidder is required to be familiar with all federal, state and local laws, ordinances, rules, regulations, and codes that in any manner affect the Work. Ignorance of the law on the part of the Contractor will in no way relieve it from responsibility.

B-4 Bidder's Representations and Certifications

In submitting a response, each Bidder understands, confirms, and certifies that it has read each of the following statements, that the response to each statement is true and correct to the best of its knowledge and belief, and that it understands and acknowledges that the Owner will rely on the accuracy of each statement in the award of any contract under the solicitation. If Bidder cannot so certify, it shall submit with its response a written explanation of the facts and circumstances which prevent it from doing so:

- A. Neither Bidder nor Associated Business Entity (or their respective employees) is currently under suspension or debarment by the State, any agency of the State, the United States or any agency thereof, or of any other governmental authority.
- B. Neither the Bidder nor any Associated Business Entity (or their respective employees) is currently under investigation by any governmental authority or has, in the last ten (10) years, been convicted or found liable for any act prohibited by law in any jurisdiction that involves conspiracy or collusion with respect to the submission of a Bid on any public contract.
- C. Neither the Bidder nor any Associated Business Entity (or their respective employees) is delinquent and or alleged to be delinquent in any financial contractual obligation, including any permit obligations to the Buyer or any Water Management District, including any pending litigation with or any claim by the Buyer or any Water Management District for penalties, damages, reimbursable costs, liquidated damages, violation of permit or breach of contract.
- D. Bidder's submission of materials in response to the solicitation is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- E. The prices and amounts submitted by Bidder have been determined independently and without consultation, communication, or agreement with any other bidder or potential bidder, and none of the prices or amounts – actual or approximate – have been disclosed to any bidder or potential bidder and will not be so disclosed before the solicitation opening.

- F. The Bidder has fully informed the Owner, in writing, of all convictions of Bidder, its Associated Business Entities, affiliates (as the term affiliates is defined in § 287.133(1) (a), Fla. Stat.), successors, assigns, and their respective employees (both current and former or while in the employ of another company) for violation of any state or federal antitrust or other law involving fraud, bribery, collusion, conspiracy, or material misrepresentation with respect to a public entity contract.
- G. Neither Bidder nor any Associated Business Entity, nor any person associated with the same in the capacity of officer, director, member, partner, employee, investigator, project director, manager, auditor or other position involved in the administration of federal or state funds:
 - 1. Has, within the preceding three (3) years been convicted of or had a civil judgment rendered against it or is presently indicted for or otherwise criminally or civilly charged with commission of fraud or a criminal offence in connection with obtaining or attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
 - 2. Has, within a three (3) year period preceding this certification, had one or more federal, state, or local government contracts terminated for cause or default.
- H. The Work offered by the Bidder will conform to the specifications without exception.
- I. The Bidder has read and understands the contract terms and conditions, and this submission is made in conformance with those terms and conditions.
- J. If an award is made to Bidder, it agrees that it will be legally bound to the contract that is formed with the State.
- K. The Bidder has reviewed its records and made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting its Response and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act, or other conduct inconsistent with any of the statements and representations made in its Response.
- L. The Bidder agrees to indemnify and hold Owner harmless against any cost, damage, or expense, which Owner may incur or which may be caused by any error, omission, or misstatement in Bidder's Bid preparation.

B-5 Litigation, Administrative Proceeding, or Alternate Dispute Resolution

Each Bidder submitting a response understands, confirms, and certifies that the Bidder and Associated Business Entity are not currently a party to any litigation, administrative proceeding, or alternative dispute resolution that is adverse to the Department regarding interpretation of the terms of the Department's Agreement for Construction Contract and incorporated General Conditions. Bidders that are a party to such litigation, administrative proceeding, or alternative dispute resolution will be deemed to have a conflict of interest with the Department and, therefore, not responsive. Further, the Department will not enter a contract for construction with any party who subsequently enters into any litigation, administrative proceeding, or alternative dispute resolution that is adverse to the Department, until such adverse relationship is resolved either by agreement or by final non-appealable order of a court.

B-6 Misrepresentations

All information submitted and representations made by Bidder are material and important and will be relied upon by the Owner in awarding the contract. Any misstatement or omission (a "Misrepresentation") shall be treated as a fraudulent concealment of the true facts relating to submission of the solicitation. A misrepresentation shall be a basis for Owner to disqualify the Bidder from participating in this solicitation, and any re-solicitation pertaining to this subject matter (regardless of whether the re-solicitation resulted from Bidder's misrepresentation) and shall be punishable under law, including, but not limited to, Chapter 817, Fla. Stat.

B-7 Termination for Cause

The Owner may terminate the contract if the Bidder fails to (1) deliver the product within the time specified in the contract or any extension; (2) maintain adequate progress, thus endangering performance of the contract; (3) honor any term of the contract; or (4) abide by any statutory, regulatory, or licensing requirement. In addition, the Owner may terminate the contract if it discovers or determines that Bidder made a Misrepresentation in its response to the solicitation, which led to award of the contract to Bidder.

B-8 Discrimination; Americans with Disabilities Act Requirements

Any Bidder submitting a Bid or proposal to the Department for providing contractual services may not exclude any person(s) from participating in; deny any person(s) the proceeds or benefits of; nor otherwise subject any person(s) to any form of discrimination based on the grounds of race, creed, color, national origin, age, sex or disability.

Any person with a qualified disability shall not be denied equal access and effective communication regarding any bidding/proposal documents or the attendance at any related meeting or Bid Opening. If accommodations are needed because of a disability, please contact the Contracts Administrator at (850) 245-2781 (See B-2). If you are hearing or speech impaired, please contact the Florida Relay Service by calling (800) 955-8771 (TDD) or (800) 955-8770 (Voice).

All Project facilities and related amenities shall be in compliance with the Americans with Disabilities Act and the Florida Building Code, Chapter 11 (2004). Further, the Department may require that the Contractor to go above and beyond the requirements of said laws by so stating in the Contract Documents.

B-9 Florida Products and Labor

Section 255.04, Florida Statutes, requires that for Florida public building contracts Florida products and labor shall be used wherever price and quality are equal. The employment of unauthorized aliens by any Contractor is considered a violation of section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Contract by the Department.

B-10 Special Requirements

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Agreement shall be purchased from the Corporation identified under Chapter 946, F.S., in the same manner and under the same procedures set forth in Section 946.515(2), and (4), Florida Statutes; and for purposes of the Agreement the person, firm or other business entity carrying out the provisions of the Agreement shall be deemed to be substituted for the Owner insofar as dealings with the Corporation is concerned. Any products purchased shall be of equal or better quality and comparable in price to the products required by the Bidding Documents.

The "Corporation identified" is PRISON REHABILITATIVE INDUSTRIES & DIVERSIFIED ENTERPRISES, INC. (P.R.I.D.E.) which may be contacted at:

P.R.I.D.E.

12425 28th Street North, Suite 103

St. Petersburg, Florida 33716
(727) 572-1987
Toll Free: 1-800-643-8459
Website: www.pride-enterprises.org

It is understood and agreed that any articles that are the subject of or required to carry out this Agreement shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of the Agreement the person, firm, or other business entity carrying out the provisions of the Agreement shall be deemed to be substituted for the Department insofar as dealing with such qualified nonprofit agency is concerned.

The “nonprofit agency” identified is RESPECT of Florida which may be contacted at:

RESPECT of Florida
2475 Apalachee Parkway
Suite 205
Tallahassee, Florida 32301-4946
(850) 487-1471
Website: www.respectofflorida.org

B-11 Taxes

Although the Department is not subject to the Florida Sales and Use Tax, any Contractor who purchases materials and services that will be used in the construction of State-owned buildings **will not** be exempted from the tax on these materials and services.

If materials to be incorporated in the Work are subject to Federal Excise Tax, the Department will furnish to the Contractor the necessary Federal Excise Tax Exemption Certificate upon receipt of a copy of the supplier's invoice showing the item or items, the new price, and Federal Excise Tax separately.

The Bidder shall take the above-stated factors into consideration in preparing its proposal, including therein the cost of the State Sales Tax and Use Tax on materials, but excluding the cost of those taxes not applicable.

B-12 Alternates

If the Department wishes to learn the relative or additional construction cost of an alternative method of construction, an alternative use of type of material or an increase or decrease in scope of the Project, these items will be defined as Alternates. The Bidder shall clearly state what sums he will add to (or deduct from) the Base Bid for each Alternate on the Bid Form. The Department will determine, in its sole discretion, whether such Alternates are of comparable character and quality to the specified items.

The Order of the Alternates may be selected by the Department in any sequence so long as such acceptance out of order does not alter the designation of the low Bidder.

B-13 Addenda

If the Department finds it would be expedient to supplement, modify or interpret any portion of the Bidding Documents prior to Bid Closing, such procedure will be accomplished by the issuance of written Addenda to the Bidding Documents. It is the responsibility of the vendor to verify with the Department of Management Services' Vendor Information Portal website (VIP) for any future addendums, questions, revisions, etc., prior to the bid opening. Failure to do so will be the sole responsibility of the vendor. Addenda will be posted only on the

Vendor Information Portal website. Addenda will not be sent directly to plan holders, except in limited circumstances and at the discretion of the Department. When the Department determines that circumstances warrant sending addenda directly to plan holders, a notice will be posted on the website notifying vendors that addenda have been sent. Addenda must be acknowledged with a signature and included in each vendor's bid package. Failure to include acknowledged addenda in the bid package is grounds to disqualify the vendor's bid.

To access the postings, go to <https://vendor.myfloridamarketplace.com/>. Once at this site, the steps listed below should be followed to access the MyFloridaMarketPlace Vendor Information Portal (VIP).

- Click on "Search Advertisements."
- Under "Search Criteria," click on "Organization" and choose "Department of Environmental Protection."
- Under "Agency Advertisement Number," enter "BDC##-###/##."
- Click on "Search."
- Find the appropriate "Title" and click on the "Number" to the right.

B-14 Interpretation of Bidding Documents

The Bidding Documents are complementary, and what is required by any single document shall be as binding as if required by all.

The Bidder shall carefully study and compare all Bidding Documents with each, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to Brandon Williams (at the address/phone/e-mail stated in section B-2, above) any errors, inconsistencies or ambiguities discovered. The Bidder shall be responsible for any errors in construction that could have been avoided by such examination and notification and shall correct at its own expense all work improperly constructed through failure to notify Brandon Williams and request specific instructions.

No interpretation of the meaning of the Bidding Documents and no correction of any apparent ambiguity, inconsistency or error therein will be made to any Bidder orally or by any person other than the Contracts Administrator named in section B-2. Every request for such interpretation or correction shall be in writing and addressed to the Contracts Administrator (see address in section B-2). All such interpretations and supplemental instructions will be posted in writing, Addenda to the Bidding Documents.

Only the interpretation or correction so given by the Department in writing shall be binding, and prospective Bidders are advised that no other source (including other Department staff) is authorized to give information concerning, or to explain or interpret, the Bidding Documents.

Protest of Bid Specifications—Notice of Rights. Notice of Intent to Protest the Bid Specifications must be filed with (received by) the Agency Clerk, Lea Crandall, Department of Environmental Protection, Office of General Counsel, 3900 Commonwealth Blvd., MS #35, Tallahassee, Florida, 32399-3000, (850) 245-2242, FAX (850) 245-

2303, Lea.Crandall@dep.state.fl.us during the 72-hour period (time and date) after Bid Specifications are posted on the Vendor Information Portal. If addenda are posted, bidder has 72 hours from the time and date the addenda was posted on the Vendor Information Portal. Failure to file a Notice of Intent to Protest or a formal, written Protest in accordance with Rule 28-110, F.A.C., within ten days after the 72-hour period ends, as prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of your right to an administrative hearing on the Bid Specifications under Chapter 120, Florida Statutes. Rules for bid protests can be found in sections 120.569 and 120.57, F.S., and Chapter 28-110, Florida Administrative Code. A bid protester shall comply with these statutes and rules.

B-15 Examination of Bidding Documents and Project Site

Bidders are requested, before submitting their bids, to visit the Project Site and completely familiarize themselves with the nature and extent of the Work, any local conditions that may in any manner affect the Work, and the equipment, materials and labor required for the Work. Failure of the Bidder to inspect the site will not result in alterations of Bids or Change Orders for additional payment. Bidders are required to examine carefully the Bidding Documents to inform themselves thoroughly regarding any and all conditions and requirements that may in any manner affect the Work.

B-16 Basis for Bidding - Trade Names

For clarity of description and as a standard of comparison, certain equipment, materials, or other requirements may have been specified by one trade name or manufacturer. To ensure a uniform basis for bidding, the Bidder shall base its Bid on the particular equipment, material, or other requirement specified. After the Agreement is awarded, other equipment or materials manufactured by other manufacturers will be accepted only if, in the sole opinion of the Department, they are equivalent in quality and workmanship and will perform its intended purpose as well or better than the equipment or material specified. For approval of an equal product, the Contractor shall utilize the shop drawing submittal processes described in Article 24 of the General Conditions.

B-17 Preparation and Submission of Bids

Bids must be received by the Department's Bureau of Design and Construction at the address below by the date specified in the public advertisement on the Department of Management Services' Vendor Information Portal, in the Florida Administrative Weekly and in the newspaper, if applicable. If such dates conflict, the date specified on the Vendor Information Portal shall prevail. The Sealed Bid envelope shall be plainly marked on the outside with the bid number, date and time of Bid Opening and Project Name for which the Sealed Bid is intended. The Department is not responsible for the premature opening of any envelope not marked as stated herein. Submit the Sealed Bid to:

**Brandon Williams, Contracts Section
Department of Environmental Protection
Division of Recreation and Parks
Bureau of Design and Construction
3800 Commonwealth Boulevard, MS #520
Tallahassee, FL 32399-3000**

Each Bidder shall use the Bid Form provided as **Section A**, indicating its bid prices thereon in proper spaces for the Base Bid and all Alternates on which he bids. Any erasure, alteration, or other correction on the Bid Form must be initialed by the Bidder. Bids containing any conditions, omissions, uninitialed erasures, alterations, or corrections, addition of items not called for, or irregularities of any kind will be rejected by the Department if they materially affect the Bid.

Each Bidder must give its proper legal name, full business address, state its form of organization, name three references, and complete all other required data on the Bid Form and must sign the Bid Form. Failure to sign the Bid Form shall be a Material Deviation for which Bidder will be disqualified.

After the Bid Opening, the Department may require the Bidder to submit, in addition to the three references given on the Bid Form, a list of and brief description of similar work satisfactorily completed with the location, date of contracts, and names and addresses of owners. For projects over \$500,000, the Department may require the Bidder to complete an additional experience questionnaire or submit other more detailed information.

Bids by a corporation or other Business Entity shall include the legal name and seal of the corporation (or other Business Entity) followed by the name of the state of its incorporation and the manual, original signature, printed name and title of an officer, director, agent or other person authorized to bind the corporation or Business Entity.

B-18 Submission of All Questions

All questions concerning the Bidding Documents shall be directed in (legible) writing (including bid number, Project name, company name, address, contact name and phone number, facsimile number or electronic mail address) by mail, facsimile or e-mail to:

Brandon Williams, Contracts Section
Department of Environmental Protection
Bureau of Design and Construction
3800 Commonwealth Boulevard, MS #520
Tallahassee, FL 32399-3000
Phone: 850-245-2535
E-mail: Brandon.D.Williams@FloridaDEP.gov

All questions shall be submitted at least 10 calendar days prior to the Bid Opening.

B-19 Bid Modification

Bid modifications will be accepted from Bidders, if addressed as indicated in Advertisement for Bids and if received prior to the Bid Opening. No bid modifications will be accepted after the Bid Opening. Bid modifications will only be accepted if addressed in written or printed form submitted with the original Bid in a sealed envelope. Telegrams, facsimiles, e-mails, separate sealed envelopes, and written or printed modifications on the outside of the sealed envelopes **will not** be accepted. All bid modifications must be signed by an authorized representative of the Bidder. Modifications will be read by the Department at the Bid Opening.

B-20 Withdrawal of Bids

Bids may be withdrawn by written request of the Bidder prior to Bid Opening.

B-21 Rejection of Bidders

More than one Bid from a Person, as defined herein, under the same or different names will not be considered. If the Department has reasonable grounds for believing that a Bidder has an interest or stake in more than one Bid for the same Work, it shall reject all Bids in which such Bidders are believed to have an interest or stake.

B-22 Receipt and Opening of Bids

Bids will be opened publicly at the time and place stated in the invitation to bid on the Department of Management Services' Vendor Information Portal Bid System, in the Florida Administrative Weekly, and in the newspaper, if applicable. If those dates conflict, the date specified on the Vendor Information Portal date shall prevail. The agent whose duty it is to open Bids will decide when the specified time has arrived and no bids received thereafter will be considered. The agent will announce prices and, upon request, release the name of each bidder and its price submitted pursuant to section 255.0518, Florida Statutes.

B-23 Disqualification of Bids

Any or all bids will be rejected if there is reason to believe that collusion exists between or among Bidders. No participants in such collusion will be considered in future proposals for the same Work. Bidders also will be disqualified for failure to prequalify.

Misrepresentation or falsification of any entry made on the Bid Form or any attached documents will be deemed a Material Bid Deviation and will be grounds for rejection of that Bid.

B-24 Rejection of Bids

The Department has the right to reject all bids when such rejection is in the interest of the Department, and to reject the Bid of a Bidder whom the Department determines, after a review of the Bid Form, Past Performance Evaluations, the Experience Questionnaire, and such other data as is available to the Department, is not in a position to perform the Work. If the Department rejects all bids and simultaneously announces it will rebid the Work, the initial bids shall not be public records until a subsequent bid is awarded.

The Department reserves the right to waive any Non-material Bid Deviations received when such waiver is in the interest of the Department.

B-25 Posting of Bid Tabulation and Bid Protest

Bid Tabulation with recommended award will be posted at the location where bids were opened and electronically on VIP for review by interested parties. Directions to the Department of Management Services' VIP are given in B-12. The posted bid results will remain posted for a period of seventy-two (72) hours, not including weekends or State holidays.

Notice of Intent to Protest must be filed with (received by) the Agency Clerk, Lea Crandall, Department of Environmental Protection, Office of General Counsel, 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida, 32399-3000, (850) 245-2242, FAX (850) 245-2303, Lea.Crandall@dep.state.fl.us during the 72-hour posting period. Failure to file a Notice of Intent to Protest or a formal, written Protest in accordance with Rule 28-110, F.A.C., within ten days after posting ends, as prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of your right to an administrative hearing under Chapter 120, Florida Statutes. Rules for bid protests can be found in sections 120.569 and 120.57, F.S., and Chapter 28-110, Florida Administrative Code. A bid protester shall comply with these statutes and rules.

A copy of the Bid Tabulation will be provided upon receipt of a written request and a self-addressed, stamped envelope. Other requests for documents must be made in accordance with the Public Records Act, Chapter 119, F.S.

If the Department determines it will reject all bids, and concurrently announces that it will rebid the Project, bids made are not public records until after the rebid posting is made.

B-26 Award of Bid

The lowest bid will be that bid which is the lowest Base Bid together with any selected Alternates. The recommendation for award of a Contract will be for the qualified, responsive Bidder submitting the lowest bid, *provided* it is in the best interest of the Department to accept it and the following criteria are met:

- A. If the work requires a State Contractor's License, the successful Bidder must have a current Qualified Business License from the Florida Department of Business and Professional Regulations prior to contract execution.

- B. Bidders on this project must be licensed and insured to work in the county in Florida in which the Work will take place.
- C. Qualifications based on information provided in response to Sections B-2 (2) F, G, H and I and B-4. If the Bidder fails to meet the qualification requirements as outlined in those sections, the Department shall disqualify the bidder from further consideration, and the next lowest bid shall be considered in accordance with the provisions of this section.
- D. Client References/DEP Past Performance. The Department shall contact two prior client references, which shall include, if available, one (1) of the Department Contract Managers for a Department contract with Bidder for any Associated Business Entity, to evaluate Bidder's past performance. The reference or Department Contract Manager, as applicable, will be asked the questions shown on Section D, Evaluation of Past Performance. The average scores for all individual references (Department and non-Department) will be totaled and averaged. Failure to receive an above-satisfactory or excellent performance evaluation (a score of 2.75 or above) for this overall average, or any single reference's average score below 1.50 shall result in the Bid being rejected and the next lowest bid shall be considered in accordance with the provisions of this

section. References should be available to be contacted during normal working hours. The Department will attempt to contact each selected reference up to four (4) times. In the event that the contact person cannot be reached following the specified number of attempts, the Bidder shall receive a score of zero (0) for that reference evaluation. The Department will not attempt to correct incorrectly supplied information.

The Agreement will only be entered into by the Department with a responsible Bidder, which is found to meet all requirements of the Bidding Documents, including being qualified by experience and past performance, and in a financial position to do the Work specified.

Each bidder shall, if requested by the Department, present additional evidence of its experience, qualifications and ability to carry out the terms of the Agreement, as specified in B-2 and B-16, above.

B-27 Utility Connections; Permits; Notice to Proceed; Substantial and Final Completion; and Liquidated Damages

Utility Fees - The Contractor will secure and pay for utility connections, if such connection fees are required before construction can start.

Permit Fees - The Bidder shall include as part of the Base Bid the cost of all permits unless otherwise stated in the Bidding Documents.

Permits - Local building permits are required, and special permits due to zoning and ordinances also may be required. Water Management District, Department of Environmental Protection, and other local, state, or federal environmental permits may be necessary before construction can start. The Bidder shall include as part of the Base Bid the cost of all permits unless otherwise stated in the Bidding Documents. **The Contractor shall obtain and pay for any permits required by Miami-Dade County.**

The Notice to Proceed, to Mobilize On-site and to Proceed with Construction (Notice to Proceed) will then be issued by the Department in accordance with Article 6.02, General Conditions.

The Work to be performed under the Agreement shall commence within the time set in the Notice to Proceed and shall reach **Substantial Completion within One-Hundred and Eighty (180) days** after the date set in the Notice to Proceed, and shall reach **Final Completion within Thirty (30) days** after the date of Substantial Completion.

If the Contractor fails to complete the Work within the time set for Substantial Completion, the Contractor shall pay the Department as **liquidated damages** for such delay, and not as a penalty, **\$150.00** for each and every day elapsing between the date set for Substantial Completion and the date such Substantial Completion was fully accomplished. If the Work does not reach Final Completion within the time set in the Agreement, the Contractor shall pay to the Department as liquidated damages for such delay, and not as a penalty, one-half of the rate indicated for Substantial Completion. Said liquidated damages, not-to-exceed twenty percent (20%) of the total Contract Price, shall be payable by the Contractor to the Department under the provisions of Article 26, General Conditions, and shall not exclude the recovery of damages by the Department under other provisions of the Contract, except for the Contractor's delay.

B-28 LEED Costs (If Applicable)

Not Applicable

B-29 Contractor's Insurance

The Department shall not execute the Agreement until the Contractor has obtained all the required insurance specified in Article 9, General Conditions, and such insurance has been approved by the Department. Contractor shall not allow any Subcontractor to commence work on its subcontract until all similar insurance required of the Subcontractor has been so obtained and approved.

B-30 Vendor Registration

Prior to entering into a contract with the Department, the selected contractor must be registered with the Florida Department of Management Services (DMS) MyFloridaMarketPlace Vendor registration system. Information about the registration process is available, and registration may be completed, at the MyFloridaMarketPlace website (link available under BUSINESS at www.myflorida.com). Prospective contractors who do not have Internet access may request assistance from MyFloridaMarketPlace Customer Service at (866) 352-3776.

B-31 Payment by Direct Deposit

In order to expedite payment, the State offers payments using the Automated Clearing House (ACH) network and the CTX record format. Instructions can be obtained from the Department.

***SECTION D: EXPERIENCE QUESTIONNAIRE AND CONTRACTOR'S
FINANCIAL STATEMENT***

(DEPARTMENT OF MANAGEMENT SERVICES FORM DBC-5085)

**Submit this completed form with sealed bid only if
the base bid plus all alternates totals \$200,000 or more.**

Department of Management Services

EXPERIENCE QUESTIONNAIRE AND CONTRACTOR'S FINANCIAL STATEMENT

OWNER'S INSTRUCTIONS

The information listed in the Experience Questionnaire and Contractor's Financial Statement is required to be filed with soliciting agencies prior to award of any contract. In order to expedite the processing of contracts, please complete the enclosed forms in accordance with these instructions.

The bidder is required to complete all the attached forms. If the bidder is a Joint Venture, then each Corporation, Partnership or Individual that is a party to the Joint Venture must complete, individually, each form. All references to "fiscal year" in this questionnaire will mean the fiscal year of the bidder filing this form.

Heading:

Project Title - Indicate title of project as shown in the specifications.

Location - Project location as shown in the specifications.

Sections 1&2:

Trades or Trades Being Bid - Insert in box(es) on Page 1 the code number(s) listed below which represent the trade(s) for which you are qualified to bid:

<u>Trade</u>	<u>Code Number</u>
Building Construction	1
Electrical	2
Elevator	3
Food Service	4
Heating, Ventilating & Air Conditioning	5
Laboratory Equipment	6
Landscaping	7
Plumbing	8
Power Plants (Boilers, Equipment & Piping)	9
Refrigeration	10
Roofing	11
Sanitary (Sewage Treatment Plants, Pumping Stations, etc.)	12
Other _____	13

Sections 3-52:

Complete in accordance with form.

Section 53:

Under "c," list previous business name or names and the number of years you have done business under these names within the past 10 years.

Section 54:

From your present payroll indicate the number of individuals in each category in the "Current" column.

Estimate the maximum and minimum number of employees over the previous 3 fiscal years in each category.

Sections 55-61:

Complete in accordance with form.

Section 62:

- 1) In Column C insert "S" if a subcontractor or "P" if a prime-contractor. The balance of section is to be completed in accordance with form.
- 2) Billings for 3 fiscal years - insert year and amount.
- 3) Work in progress at the end of the past 3 fiscal years - same as above.

If additional space is required, please attach supplementary pages.

(The rest of this page had been left blank intentionally)

EXPERIENCE QUESTIONNAIRE AND CONTRACTOR'S FINANCIAL STATEMENT

Project Title: _____

Location: _____

1.

2.

Insert code number of trade or trades for which you are qualified to bid on the basis of previous experience in accordance with attached detailed instructions, each in its respective box above.

3. Is your organization currently pre-qualified with any governmental agency? _____
If so, please list:

4. Have you, in the previous five years, been denied a contract award on which you submitted the low bid in competitive bidding, or been refused prequalification?

If so, please list and describe: _____

5. Submitted by: _____

Address: _____

Date: _____

6. (Check below)

A Corporation ()

A Co-partnership ()

An Individual ()

A Joint Venture ()

The contractor acknowledges that this Experience Questionnaire and Financial Statement is made for the express purpose of inducing the Owner to whom it is submitted to award a contract to the contractor. Further, the contractor acknowledges that the agency may at its discretion, by means which the Owner may choose, determine the truth and accuracy of all statements made by the contractor herein.

SECTION "A" -- FINANCIAL STATEMENT

As of _____

(Date)

ASSETS

7. CASH* \$ _____

ACCOUNTS RECEIVABLE

8. From Government Contracts Completed _____

9. From Non-Government Contracts Completed _____

10. Claims included in 8 and 9 not yet approved or in litigation _____

11. From Government Contracts in Process _____

12. From Non-Government Contracts in Process _____

13. Claims included in 11 and 12 not yet approved or in litigation _____

14. Retainage included in 11 and 12 _____

15. Other** (list) _____

NOTES RECEIVABLE

16. Due within 90 days** _____

17. Due after 90 days** _____

INVESTMENTS

18. Listed securities - present market value _____

19. Unlisted securities - present value _____

BID DEPOSITS

20. Recoverable within 90 days _____

21. Recoverable after 90 days _____

ACCRUED INTEREST

22. Receivable on notes _____

23. Receivable on Investments _____

24. Other (list) _____

25. REAL ESTATE (BOOK VALUE OR MARKET, WHICHEVER IS LESS) _____

26. INVENTORIES (NOT INCLUDED IN RECEIVABLE BILLING AND
AT PRESENT VALUE) _____

27. EQUIPMENT-NET BOOK VALUE
(SUPPLY LIST BY COST, DEPRECIATION, NET BOOK VALUE) _____

OTHER ASSETS

28. Contract Costs in excess of Billings \$ _____
29. Cash Surrender Value of Life Insurance _____
30. Receivables from Officers and Employees _____
31. Other (list) _____

32. TOTAL ASSETS \$ _____

*Do not include deposits for bids or other Guarantees

**Do not include receivables from officers and employees

ACCOUNTS PAYABLE

33. Due within 1 year _____
34. Due after 1 year _____

NOTES PAYABLE

35. Due within 1 year _____
36. Due after 1 year _____
37. Officers and Employees _____

38. TAXES PAYABLE _____

39. ACCRUED AND ACTUAL PAYROLL PAYABLE _____

40. MORTGAGES PAYABLE _____

OTHER LIABILITIES

41. Federal Income Tax Provision _____
42. Deferred Income _____
43. Other (list) _____

NET WORTH

44. (If individual proprietorship or partnership) _____

CAPITAL STOCK

45. Common Issued and Outstanding _____
46. Preferred Issued and Outstanding _____
47. Treasury Stock _____

CAPITAL SURPLUS

48. Earned Surplus Prior Years _____
49. Earned Surplus Current Year _____

50. TOTAL LIABILITIES AND NET WORTH

\$ _____

NOTE: IF ADDITIONAL SPACE IS REQUIRED, PLEASE NOTE AND ATTACH SCHEDULE TO STATEMENT.

51. Dated this _____ day of _____, _____
(Date) (Month) (Year)

Name of Organization

By: _____

Title: _____

SECTION "B" -- EXPERIENCE QUESTIONNAIRE

52. If a Corporation, answer information below:

Date of incorporation _____

In what State _____

Name of Officers:

President _____

Vice President _____

Vice President _____

Secretary _____

Treasurer _____

If a Partnership or Individual proprietorship,
answer information below:

Date of organization _____

If a partnership, state whether partnership is
general, limited association

Name and Address of Partners:

53. a. How many years has your organization been in the construction business? _____

b. How many years under your present business name? _____

c. How many years under previous business name? (List other names)

**SUBSIDIARY OR AFFILIATED COMPANIES
IN WHICH PRINCIPALS HAVE FINANCIAL INTEREST**

54. NAME AND ADDRESS OF SUBSIDIARY
OR AFFILIATED COMPANIES

EXPLAIN IN DETAIL THE PRINCIPAL'S
INTEREST IN THIS COMPANY AND
NATURE OF BUSINESS

SECTION "B" -- EXPERIENCE QUESTIONNAIRE
(Continued)

55. Number of full time personnel within your organization:

	Current	Maximum	Minimum
a. Clerical Personnel	_____	_____	_____
b. Engineers & Architects	_____	_____	_____
c. Supervisors, Foremen, or Superintendents	_____	_____	_____
d. Skilled Employees including Technicians	_____	_____	_____
e. Unskilled Employees	_____	_____	_____
f. Estimators	_____	_____	_____
g. Total number of full time personnel	_____	_____	_____

56. What is the construction experience of the principals and supervisory personnel of your organization?
(asterisk any personnel likely to be assigned to project being bid.)

Principal's Name, Title	Years of Construction	In What Capacity and With Whom	Experience
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

57. Supervisory Personnel, Title	Years of Construction	In What Capacity and With Whom	Experience
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

58. Within the previous 3 fiscal years has your organization or predecessor organizations ever failed to complete a project? If so, state name of organization and reason thereof.

59. Within the previous 3 fiscal years has your organization been involved in litigation? _____. If so, please list and explain nature and current status.

SECTION “B” -- EXPERIENCE QUESTIONNAIRE
(Continued)

60. List all contracts completed by your organization in the previous 3 fiscal years. (If more than 10, list the 10 most recently completed.)

Name of Owner	Name, Location & Description of Project	Type of Work	Name of Design Architect and/or Design Engineer	Original Contract Price	Completion Dates:		
				Final Contract Price	Original	Revised	Actual

SECTION “B” -- EXPERIENCE QUESTIONNAIRE
(Continued)

With reference to all contracts completed by your organization in the previous fiscal years, as listed above, answer the following questions:

61. Explain differences in original contract price and in completion dates, if any.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

62. Were there any liquidated damages, penalties, liens, defaults or cancellations imposed or filed against your organization?

If so, list the name and location of the project, as shown in Column A (on next page), then explain.

STATUS OF UNCOMPLETED CONTRACTS

As of _____
(DATE)

63. Give full information about all of your present contracts. In Column C insert "S" if a subcontractor or "P" if a prime contractor, whether in progress or awarded but not yet begun, and regardless of with whom contracted.

A Project Description Location and Owner	B Design Architect and/or Design Engineer	C Total Amount of Contract or Subcontract	D Amount in Column C Sublet to Others	E Uncompleted Amount of Contract
Total				

COMPLETE THE FOLLOWING:

Net Total Billings for Previous 3 Fiscal years:

YEAR	DOLLAR AMOUNT
_____	\$ _____
_____	\$ _____
_____	\$ _____

Average Backlog for Previous 3 Fiscal Years:
(Estimated total value of uncompleted work on
outstanding contract)

YEAR	DOLLAR AMOUNT
_____	\$ _____
_____	\$ _____
_____	\$ _____

SECTION E: SAMPLE AGREEMENT

DEP Contract No. _____

AGREEMENT FOR CONSTRUCTION CONTRACT

THIS AGREEMENT for CONSTRUCTION CONTRACT is entered between the **State of Florida Department of Environmental Protection**, an agency of the State of Florida (hereinafter referred to as the "Department"), 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000, and _____, a _____/Corporation (hereinafter referred to as the "Contractor"), _____.

In consideration of the mutual promises and benefits set out herein, the Department and the Contractor do hereby agree as follows:

1. The Contract

The Department retains the Contractor to perform all construction services required to complete _____ in _____ **State Park** in _____ **County**, Florida (hereinafter "Management Unit"), and the Contractor agrees to perform such Work in accordance with the following: [i] the Bidding Documents listed in Article 5.02, General Conditions for DEP Bid Number **BDC**_____; [ii] this Agreement; [iii] General Conditions included in DEP Bid Number **BDC**_____; [iv] Special Conditions included in Bid Number **BDC**_____; [v] Drawings, and Technical Specifications included in Bid Number **BDC**_____; [vi] all Change Orders; [vii] all Construction Change Directives; [viii] the Notice to Proceed; [ix] bonds and insurance coverages and conditions; and [x] all other documents specified in Article 5.02, General Conditions, all of which are incorporated herein by reference as constituting the "Contract." All terms and conditions of the foregoing documents are included herein by reference as if set out verbatim. Definitions in the General Conditions apply to all the Contract Documents. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract Documents are enumerated in Article 5, General Conditions.

2. Conflict among Documents

Article 5.15, General Conditions, sets forth the controlling provisions when conflicts between Contract Documents occur.

3. Contractor Obligation

The Contractor shall perform the Work within the Contract Term and for the Contract Price set out in the Contract of which this Agreement is a part. The Contractor shall perform the Work to the satisfaction of the Department. The Contractor shall supply all labor, equipment, and materials necessary to perform the Work unless otherwise specified in the Contract Documents. The Contractor shall perform the Work in accordance with the Contract Documents for which the Contractor shall be paid the Contract Price set out in Section 7 of this Agreement in the manner provided in Article 7, General Conditions.

4. The Project and the Work

The "Project" is the entirety of the installation, including construction. There may be several contracts to complete the Project. The "Work" is the entirety of all construction activities required by the Contract,

including warranty work, at any stage of progress. The Work shall include application of all labor, materials, equipment, and the Contractor's services, comprising the total improvement to the Property, generally described as follows: all items called for in the Drawings and Specifications, including but not limited to _____ and all collateral amenities, to be completed at the Management Unit.

5. Independent Contractor

The Contractor shall perform the Work as an independent contractor and not as an agent, representative, or employee of the Department.

6. Contract Effective Upon Signing; Contract Term; Substantial Completion; Liquidated Damages.

The Contract shall be effective upon signing of this Agreement by both parties, and its term shall end twelve months after Substantial Completion of all of the Work.

Work shall not begin before the date set out in the Notice to Proceed.

The Contractor shall not be eligible for any payment for any services rendered prior to complete execution of this Agreement by both parties. The Contractor shall not be eligible for any payment prior to issuance of the Notice to Proceed, except that after execution of this Agreement, the Contractor may submit a Pay Request for actual cost for insurance, indemnification riders, bonds, permits, impact fees, and utility payment fees, if such fees are allowed under the Contract. Dates for Substantial Completion and Final Completion are set out in Article 6, General Conditions. The Contractor agrees to pay liquidated damages if the Work is not completed in the time allowed by the Contract in the amounts and manner provided in Article 26, General Conditions.

7. Contract Price (Consideration)

As consideration for construction services required to be performed in the Contract, the Department shall make periodic payments to the Contractor totaling _____ (\$ _____), which includes the Base Bid, and Alternate Bids when applicable, in accordance with the schedule set out in Article 7, General Conditions, less retainage. Article 7.02.05 of the General Conditions does not apply to this Contract. Instead, the Department shall retain five percent of the final amount approved by the Department of each Pay Request until Final Completion, when, upon the Department's approval of the final Pay Request, all retained sums still unused for completion of the Work shall be paid to the Contractor. All periodic Pay Requests for amounts due hereunder shall be supported by detail sufficient for pre-audit and post-audit.

8. Payment Contingency

THE STATE OF FLORIDA'S PERFORMANCE AND OBLIGATION TO PAY UNDER THIS CONTRACT IS CONTINGENT UPON AN ANNUAL APPROPRIATION BY THE LEGISLATURE.

9. Payment of Periodic Pay Requests, Frequency, Form, and Time

Periodic Pay Requests shall be submitted on the form attached as **Exhibit A** to the General Conditions no more frequently than monthly. Pay Requests shall contain all of the items specified in the Article 7, General Conditions. The Contractor agrees that the Department may modify, delete, or add forms and other documents required for Pay Requests, according to the needs of the Department.

Pursuant to Section 215.422, Florida Statutes, the Department's Project Manager shall process the Pay Request in an expeditious manner, but, if necessary under the circumstances, shall have up to **thirty days** to inspect the Work and approve the Pay Request. The Department shall have **twenty additional days** to request a warrant from the State of Florida Department of Financial Services for payment. Disputed portions of a Pay Request shall be handled in accordance with the General Conditions.

Days are calculated from the date the Department receives a proper and correct Pay Request for construction services completed during the designated period. Pay Requests are deemed received when they are date-stamped by the Department.

The Contractor acknowledges that Pay Requests the Department must return for corrections, omissions, or other changes will result in delay of payment.

10. Termination

Termination for Cause

The Department shall give written notice to the Contractor of its intent to terminate the Contract for cause. In the notice, the Department shall provide an opportunity to cure the deficiencies cited by the Department in its notice within **fifteen calendar days** of the date of such notice. If the Contractor does not cure the deficiencies to the Department's satisfaction within the **fifteen calendar days**, the Contract will be considered terminated for cause on the **first business day** after the fifteen calendar day opportunity to cure. At that time, the Department will send notice to the Contractor that the Contract has been terminated. The Department may, in its sole discretion, extend the time to cure the deficiencies in writing. The Contractor's damages for termination for cause shall be limited to the cost of Work actually performed and approved by the Department.

Termination without Cause

Notwithstanding any other provision of this Agreement, the Department may terminate at any time and without cause, by giving thirty days written notice to the Contractor. Upon receipt of such notification, the Contractor shall within thirty days present a final Pay Request for all Work performed under the Contract up and through the date the Contractor received the Department's notice, including charges for any nonreturnable stored materials.

Upon termination without cause, the Contractor shall be entitled to payment only as follows: 1) the actual cost of Work completed in conformity with the Contract; plus, 2) such other costs actually incurred by the Contractor as are permitted by this Contract and approved by the Department; plus, 3) fifteen percent (15%) of the cost of the work referred to in subparagraph 1) above for overhead and profit. Any payments made to the Contractor prior to the date of the termination shall be deducted from the sums provided in this subparagraph above. The Contractor shall not be entitled to any claim against the Department for any additional compensation or damages in the event of such termination and payment. The Contractor shall not be entitled to damages for delay over and above the amounts provided in this subparagraph above.

Pay Requests not timely or properly submitted within thirty days of notice of termination with or **without cause shall be deemed waived, and shall not be paid.**

11. Addresses

All notices and written communication between the parties shall be sent by email, U.S. Mail, or a courier delivery service at the following address:

Contractor

_____, Title _____
Company Name _____
Address _____

Email: _____

Department

_____, or successor, Contract Manager
State of Florida
Department of Environmental Protection
_____ Commonwealth Boulevard, MS # _____
Tallahassee, Florida 32399-3000
Email: _____

Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt or when acknowledged by recipient.

Any change in address shall be noticed to the other party within **ten days** after the effective change.

12. Project Representatives

Except for notices, addressed as provided in Section 11, above, **all points of inquiry and all other matters pertaining to the Project shall be directed to the Project Managers** at the addresses shown in this section for appropriate action or disposition, unless another individual is specified in the Contract Documents. The Department's Project Manager is _____, or successor, at 3800 Commonwealth Boulevard, Tallahassee, Florida, 32399, (____) _____. The Contractor's Project Manager is _____ at _____, (____) _____.

Any change of the Project Manager shall be noticed to the other party within ten days of the effective change.

The Superintendent for the Project is n/a. Any change in the Superintendent or any of the key personnel named by the Contractor pursuant to Article 21, General Conditions, shall have prior approval of the Department in writing.

The Clerk of the Works for the Project is n/a.

The Resident Personal Representative for the Project is n/a.

The Unit's Manager of the Management Unit has no authority under the Contract unless explicitly stated otherwise in the Contract Documents. **The Contractor shall be solely responsible for the cost of any change in the Work or extra Work it performs pursuant to direction of any other Department staff person other than the Department's Project Manager.**

13. Subcontracting

Subcontracting shall be in accordance with Article 14, General Conditions. The Contractor shall require all its Subcontractors to meet all of the legal requirements of the Contract applicable to the particular Subcontractor.

14. Contractor's Conflict of Interest; Lobbying

The Contractor covenants that it has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of the Work. The Contractor agrees it will not use any of the proceeds of the Contract for lobbying.

15. Permitting

The Contractor shall be responsible for obtaining at its cost all permits and approvals necessary for completion of the Work unless otherwise specified in the Contract Documents.

16. Controlling Law and Venue

The Contract has been executed and delivered in the State of Florida and shall be construed in accordance with Florida law. Wherever possible, each provision of the Contract shall be interpreted in such manner as to be effective and valid under Florida law, but if any such provision is judicially determined to be invalid, it shall not invalidate the remaining provisions of the Contract.

Venue for any action hereon shall be Leon County, Florida.

17. Waiver of Claim

Anything herein to the contrary notwithstanding, any claim by the Contractor arising from performance or interpretation of the Contract or any document comprising part of the Contract, including, but not limited to, subsurface conditions; matters referenced by change order or proposed change order; construction change directives; shop drawings; requests for information; Pay Requests; scheduling; rain or weather delays; permitting delays; allocation of forces assigned to the Work; or any other matter which, in the sole opinion of the Department, could affect progress of the Work will be subject to the time limitations set out in Article 28, General Conditions. **Claims not made in strict accordance with Article 28 shall be deemed waived by the Contractor.**

The Contractor's signature on Change Orders (or Change Directives) constitutes waiver of any claim arising from interpretation thereof, and acceptance of final payment by the Contractor constitutes waiver of all claims except those previously made in accordance with Article 28, General Conditions.

18. Time Limits for Claims

In no event shall the Department consider or have any liability for any claim for extra compensation or additional compensation, any increase in the Contract Price, any reimbursement, damages, or any other sum whatsoever unless [i] the claim is in writing and is received by the Department pursuant to Section 11 above and Article 28, General Conditions, within **ten days** of the event or condition giving rise to it, or within **ten days** of the Contractor becoming aware of the event or condition giving rise to the claim; and [ii] the claim is based upon or authorized by a Change Order or a Construction Change Directive duly signed by the Department.

19. Indemnification

To the extent permitted by Florida law, the Contractor shall be fully liable for the actions of its contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier, or their respective employees; and shall fully indemnify and hold harmless the State of Florida, the Department, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund, and their officers, agents, and

employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

20. Department Exempt from Taxes, Property Exempt from Lien

The Contractor acknowledges that Property being improved is titled in the Trustees, belongs to the State of Florida, and is not subject to lien of any kind for any reason. The Contractor shall include notice of such exemptions in any subcontracts and purchase orders issued hereunder.

21. Records Required

The Contractor shall maintain books, records and documents pertinent to performance under the Contract in accordance with generally accepted accounting principles consistently applied.

The Department and its authorized representatives shall have access to such records for audit purposes during the term of the Contract and for five years following the end of the warranty period or completion of any pending action, claim, or unresolved issue related to the Contract.

The Contractor shall require each Subcontractor to maintain and allow the Department and its authorized representatives access to such records for audit purposes for a like period.

22. Public Access

Contractor shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Contract are public records under Florida law, as defined in Section 119.011(12), F.S. Contractor shall keep and maintain public records required by the Department to perform the services under this Contract.

This Contract may be unilaterally canceled by the Department for refusal by the Contractor to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Contractor in conjunction with this Contract and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution. **Section 119.071(3), Florida Statutes, provides exemptions for security systems or plans, emergency evacuation plans, manuals or training for security personnel, building plans, blueprints, schematic drawings and diagrams, including draft, preliminary, and final drawings, which depict the internal layout and structural elements of a building or other structure owned by a state agency.**

If Contractor meets the definition of "Contractor" found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

1. Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Contract for services must be made directly to the Department. If the Department does not possess the requested records, the Department shall immediately notify the Contractor of the request, and the Contractor must provide the records to the Department or allow the records to be inspected or copied within a reasonable time. If Contractor fails to provide the public records to the Department within a reasonable time, the Contractor may be subject to penalties under s. 119.10, F.S.

2. Upon request from the Department's custodian of public records, Contractor shall provide the Department 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, Florida Statutes, or as otherwise provided by law.
3. Contractor shall identify and ensure that all 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 Contract term and following completion of the Contract if the Contractor does not transfer the records to the Department.
4. Upon completion of the Contract, Contractor shall transfer, at no cost to Department, all public records in possession of Contractor or keep and maintain public records required by the Department to perform the services under this Contract. If the Contractor transfers all public records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to Department, upon request from the Department's custodian of public records, in a format that is accessible by and compatible with the information technology systems of Department.

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 DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS by telephone at (850) 245-2118, by email at public.services@dep.state.fl.us, or at the mailing address below:

**Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Blvd., Mail Slot #49
Tallahassee, FL 32399**

23. No Third Parties in Interest

The Contract is neither intended to grant, nor shall it be construed to grant, any right, privilege, or interest in any third party.

24. Insurance and Bonds

The Contractor shall secure and maintain during the Contract Term all insurance required in Article 9, General Conditions. If at any time during the Contract Term the Contract Price exceeds \$100,000.00, the Contractor shall secure and maintain during the Contract Term all bonds required in Article 8, General

Conditions, with a surety company that complies with section 287.0935, Florida Statutes. If the Contract price exceeds \$500,000.00, the Contractor shall secure and maintain during the Contract Term a Performance and Payment Bonds with a surety company that maintains an “A-” rating, as shown on A.M. Best Company’s online Ratings page, on its website.

25. Unauthorized Aliens

The employment of unauthorized aliens by the Contractor or any Subcontractor or sub-subcontractor is considered a violation of the Immigration and Nationality Act, 8 U.S.C.A. 1324a. If the Contractor knowingly employs unauthorized aliens, such violation shall be sufficient cause for termination. The Contractor shall be responsible for including this provision in all subcontracts issued for the Project.

26. Convicted Vendor List/ Prohibition Against Contracting with Scrutinized Companies

The Contractor warrants that it is not an entity, affiliate of, or employer of a person who has been placed on the convicted vendor list following a conviction for a public entity crime, and therefore is not for that reason precluded from performing work as a contractor, supplier, subcontractor, or consultant by Section 287.133, Florida Statutes.

The Contractor certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S, as may be amended from time-to-time. In addition, Contractor agrees to observe the requirements of Section 287.135, F.S. as may be amended from time-to-time, for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement for cause if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list and/or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

27. MyFloridaMarketPlace Fee

The State of Florida, through their Department of Management Services, has instituted MyFloridaMarketPlace (“MFMP”), a statewide electronic procurement system. Pursuant to subsection 60A-1.031(3), Florida Administrative Code, the Contract shall be exempt from the MFMP transaction fee.

28. Waiver of Jury Trial

Should disputes over the Contract arise, the parties knowingly and willingly waive their right to trial by jury in any legal action brought on the Contract.

29. Time of the Essence

Time is of the essence in performance of the Contract, and failure to meet time limitations set out herein and elsewhere in the Contract Documents shall be deemed a material breach.

30. Contract Modifications

Any alterations, variations, changes, modifications or waivers of provisions of the Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties, and attached to the original of this Agreement, unless otherwise provided in the Contract Documents.

31. E-Verify

The Contractor agrees that it will enroll and participate in the federal E-Verify Program for Employment Verification under the terms provided in the “Memorandum of Understanding” governing the program. The Contractor further agrees to provide to the Department, within thirty (30) days of the effective date of this Contract, documentation of such enrollment in the form of a copy of the E-Verify “Edit Company Profile” screen, which contains proof of enrollment in the E-Verify Program (this page can be accessed from the “Edit Company Profile” link on the left navigation menu of the E-Verify employer’s homepage).

The Contractor further agrees that it will require each subcontractor that performs work under this Contract to enroll and participate in the E-Verify Program within ninety (90) days of the effective date of this Contract or within ninety (90) days of the effective date of the contract between the Contractor and the subcontractor, whichever is later. The Contractor shall obtain from the subcontractor(s) a copy of the “Edit Company Profile” screen indicating enrollment in the E-Verify Program and make such record(s) available to the Department upon request.

The Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Department or other authorized state entity consistent with the terms of the Memorandum of Understanding.

Compliance with the terms of this Employment Eligibility Verification provision is made an express condition of this Contract and the Department may treat a failure to comply as a material breach of the Contract.

32. Preference to State Residents

In accordance with Section 255.099, Florida Statutes, contractors must give preference to the employment of state residents in the performance of the work on the project if state residents have substantially equal qualifications to those of nonresidents. Substantially equal qualifications means the qualification of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons. Contractors required to employ state residents must contact the Department of Economic Opportunity to post the contractor’s employment needs in the State’s job bank system. No contract shall be let to any person refusing to execute an agreement containing the provisions required by this section.

33. Florida Lumber

In accordance with F.S. 255.2575(4)(a) contractors must use lumber, timber, and other forest products manufactured in Florida, if wood is a component of the public work, and if such products are available and their price, fitness, and quality are equal. This requirement does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species or if construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacturer.

34. Execution in Counterparts

This Contract may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such

signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

35. Cooperation with the Inspector General

Pursuant to section 20.055(5), Florida Statutes, contractor and any subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

The parties have caused the Contract to be duly executed, the day and year last written below.

CONTRACTOR NAME

By: _____
Contractor's Authorized Signatory

Name and Title

Date: _____

(Corporate Seal)

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Name and Title _____
Address _____
Tallahassee, Florida 32399-3000

Date: _____

Approved as to form and legal sufficiency:

DEP Assistant General Counsel

Date: _____

SECTION F: GENERAL CONDITONS

Part One

The Work shall be subject to all provisions of these General Conditions unless otherwise stated in the Contract Documents.

Article 1. Definitions.

In addition to any terms defined in the Bid Documents incorporated in the Contract, the following terms have the definitions indicated below:

- 1.01 **Addenda:** Any written orders, directives, or instructions issued prior to the bid opening by the Department Consultant relating to the Work. (“Addendum” is the singular of this term.)
- 1.02 **Agreement:** The agreement between the Department and the Contractor that memorializes the Contract for Construction between these parties.
- 1.03 **Bid:** The offer of the Bidder submitted on the Bid Form stating the Bidder’s price for performing the Work.
- 1.04 **Bidder:** Any person or legal entity (such as a corporation, partnership, or limited liability company) who submits a Bid for the Work in accordance with the Instructions to Bidders.
- 1.05 **Bulletin:** A written notice issued by the Department after award of the Contract, requesting an itemized cost quotation for an addition to, deletion from, or revision in, the Work. Bulletins are not orders or authorizations to proceed with any changes in the Work.
- 1.06 **Certificate for Payment:** The fully completed and executed form, attached to these General Conditions as **Exhibit A**, submitted to the Department as part of a Pay Request.
- 1.07 **Change Order:** A modification to the Contract on the form attached to these General Conditions as **Exhibit D**, and executed by the Department and the Contractor authorizing an addition to, deletion from, or revision in, the Work, an adjustment in the Contract Price, or an adjustment to the Contract Term. Change Orders are issued only after execution of the Contract.
- 1.08 **Clerk of the Works:** The Department’s representative, who handles on-site daily tasks such as keeping a copy of the Contract, Drawings, Technical Specifications, and changes thereto at the site; collecting documents such as trip tickets; making routine reports; ensuring daily compliance with federal, state, and local requirements; posting documents on the Project Board; and handling claims. Other specific duties are stated in the Contract Documents.
- 1.09 **Construction Change Directive:** A modification to the Contract in which the Department directs a change in the work, and done if the Change Order is not yet

executed or not agreed upon, on the form attached to these General Conditions as **Exhibit E**. (See “Change Order,” above.)

- 1.10 **Consultant:** The Architect or Engineer registered and licensed in Florida to engage in design work and other administrative duties specified in a Separate Contract with the Department. The Department may, in some cases, use an employee with proper qualifications as a Consultant.
- 1.11 **Contract:** The Contract Documents, as listed in Article 5.02 herein, form the Contract. The Contract constitutes the entire, fully integrated agreement between the parties and supersedes all prior communications, negotiations, representations or agreements, whether written or oral, concerning or relating to the Project.
- 1.12 **Contract Documents:** The documents listed in Article 5.02 herein.
- 1.13 **Contract Modification:** A Contract Modification is: 1) a written amendment on the form attached to these General Conditions as **Exhibit I**, executed by the Contractor and the Department, 2) a Change Order, 3) a Construction Change Directive, or 4) a written order for a minor change in the Work. The Contract shall be changed only by a Contract Modification.
- 1.14 **Contract Price:** The total amount payable by the Department to the Contractor under the terms of the Contract for the proper performance and completion of the Work in accordance with the Contract Documents.
- 1.15 **Contract Term:** The time specified in the Agreement for Substantial Completion of the Work, plus one year for express guaranty of the Work.
- 1.16 **Contractor:** The person or legal entity with whom the Department has executed the Contract to perform and complete the Work.
- 1.17 **Day:** A calendar day, unless expressly provided otherwise in the Contract Documents. A “working day” shall mean Monday through Friday, excluding State of Florida holidays.
- 1.18 **Department:** The Department of Environmental Protection, an agency of the State of Florida, which operates, controls, and manages the Property as set out in Article 2.02. Whenever the word “Department” is used in the Contract Documents in the sense of a place or entity to which Contractor must submit notices, reports, Pay Requests, shop drawings, or to obtain consents or approvals it means the Department’s Project Manager, unless another person is explicitly specified in the Contract Documents. When the word is used in the sense of an entity that must be insured, indemnified, released, or it is clear from the context it is meant in general, it shall mean the entire Department, including its employees and representatives.
- 1.19 **Design Documents:** Drawings, Specifications and related documents detailing size, character, and function of the Project.
- 1.20 **Drawings:** The graphic and pictorial portions of the Contract Documents issued by the Consultant showing the design, location, and dimensions of the Work, generally

including plans, elevations, sections, details, schedules, and diagrams. Note: Drawings may contain technical specifications.

- 1.21 **Final Completion:** The completion by the Contractor of all items required for full completion and inspection of the Work, required no more than 30 days after issuance of the Certificate of Substantial Completion for the Project. An Affidavit for Final Completion is attached to these General Conditions as **Exhibit G**.
- 1.22 **Furnish:** The procurement or fabrication of materials, equipment, or components; or the performance of services to the extent indicated in the Contract Documents. Where used with respect to materials, equipment, or components, the term shall include delivery to the Project site, but is not intended to include the installation of the item, either temporary or final, unless otherwise provided in the Contract Documents.
- 1.23 **General Conditions:** The general requirements under which the parties to the Contract shall perform their duties and obligations; the General Conditions made a part of the Contract.
- 1.24 **Install:** This term means the placement for use of materials, equipment, or components, including the receiving, unloading, transporting, storage, and installing; and the performance of such testing and finish work as is compatible with the degree of installation specified or as otherwise required by the Contract Documents.
- 1.25 **Management Unit:** The Property controlled and administered by one of the divisions or offices of the Department, such as a state park, aquatic preserve, national estuarine research reserve, state greenway or state trail. The Department employee in charge of the Management Unit is referred to herein as the “Unit Manager.”
- 1.26 **Notice:** A written document in which one of the parties states to the other party that it gives direction, takes an action, states it will take an action, or makes a decision to the other party in accordance with the Contract Documents.
- 1.27 **Notice to Proceed:** Written notice to the Contractor issued by the Department to proceed with performance of the Work.
- 1.28 **Owner:** The Department, acting on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.
- 1.29 **Pay Request:** Written documents required for the Department to pay the Contractor, including Contractor’s invoice on letterhead, Schedule of Values, Minority Participation Report, Certificate for Payment, and such other documents as the Department shall specify from time to time.
- 1.30 **Progress Schedule:** The most current, updated construction schedule for the Project prepared by the Contractor and approved by the Department.
- 1.31 **Project:** The total conception, design, and construction of which the Work to be performed in accordance with the Contract Documents may be the whole or a part. .

- 1.32 **Project Representatives:**
- [i] **Department:**
 - [a] Project Manager designated by the appropriate division or office director and authorized by the Secretary to act on behalf of the Department in all matters related to the Project, whose name and contact information are specified in the Agreement.
 - [b] Clerk of the Works and/or the Resident Personal Representative, if applicable to this Contract, whose duties are specified in the Contract Documents and in Separate Contracts with the Department.
 - [ii] **Contractor:**
 - [a] Project Manager designated in writing by the appropriate corporate officer or other person authorized to act on behalf of the Contractor in all matters related to the Project, whose name and contact information are specified in the Agreement.
 - [b] Superintendent designated by the Contractor to oversee operations on the Project Site as stated in the Contract Documents.
 - [c] Other key personnel designated by the Contractor to perform certain duties as stated in the Contract Documents.
- 1.33 **Project Requirements:** All requirements expressed in, or by reasonable inference required by, the Contract Documents, leading to completion of the Project.
- 1.34 **Project Site:** That area of the Property where construction takes place together with limited adjacent areas as indicated in the Contract Documents.
- 1.35 **Property:** The Management Unit in which the Project is to be constructed.
- 1.36 **Provide:** To Furnish and Install, complete and in place, including all accessories, finishes, tests, and services as required to render the item specified completely ready for use in accordance with the Contract Documents.
- 1.37 **Punch List:** The document, completed at Substantial Completion, that enumerates the items required for Final Completion.
- 1.38 **Rain Delay or Weather Delay:** A slowdown caused by severe or unusual rain conditions (such as tropical storms, hurricanes, or abnormally heavy or prolonged rain) resulting in the Contractor's inability to perform any of the Work. Normal rainfall for the season and location shall not be considered Rain Delay.
- 1.39 **Record Drawings:** Drawings revised to show all changes from the original Drawings at the completion of the Work, including design and construction Drawings.

- 1.40 **Resident Personal Representative:** The person who acts on behalf of the Department and who is onsite at all times work is being performed to ensure compliance with the Drawings and the Technical Specifications.
- 1.41 **Schedule of Values (Payment):** A document that allocates the Contract Price to various categories of the Work described as line items, used, among other things, to calculate the amount of progress payments to be made for portions of the Work completed during the pay period. The form for the Payment Schedule of Values is attached to these General Conditions as Exhibit B or B-1. The form for the Master Schedule of Values is attached as Exhibit C.
- 1.42 **Separate Contract:** Any contract for work on the Project awarded by the Department to any party other than the Contractor or its Subcontractors.
- 1.43 **Separate Contractor:** A party who has been awarded a contract by the Department to work on the Project under a Separate Contract.
- 1.44 **Shop Drawings:** All drawings, diagrams, illustrations, brochures, schedules, samples, and other data prepared by the Contractor, its Subcontractors, fabricators, Suppliers, or distributors, which illustrate equipment, material, or some specific portion of the Work.
- 1.45 **Specifications:** Those portions of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work.
- 1.46 **Subcontractor:** Any person or legal entity having a contract or agreement with the Contractor to perform some part of the Work required to be performed by the Contractor under this Contract.
- 1.47 **Substantial Completion:** The degree of completion of the Work, as set forth in Contract Documents, such that the Department can occupy and use the facility for its intended purpose, and for which a Certificate of Substantial Completion may be properly issued to establish acceptance of the Contract Work, in whole or in part, with qualifications for items of a non-critical nature to be completed or corrected. The Certificate so issued will establish a date for the Department's occupancy or use of that portion of the Work deemed to be Substantially Complete. The Certificate of Substantial Completion for the entire Project shall establish the date(s) for the commencement of Guaranties or Warranties. The form for the Certificate of Substantial Completion is attached to these General Conditions as **Exhibit F**.
- 1.48 **Superintendent:** The person the Contractor designates to be in charge of the Project Site, as stated in Article 21 herein.
- 1.49 **Work:** The construction and services required by the Contract Documents, including all labor, materials, equipment, permits, licenses, insurance and services (except for design services) as indicated or required in the Contract to be provided by the Contractor. The Work may constitute all or a part of the Project.

Article 2. The Parties.

- 2.01 Title to the property being improved is in the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (“Trustees”), consisting of the Governor and Cabinet, who hold the property in trust for the people of Florida.
- 2.02 Management of the property is in the Florida Department of Environmental Protection (“Department”), which term shall be understood to:
- [i] include by reference the Trustees, and
 - [ii] encompass traditional notions, and exercise traditional authority, of an Owner in construction contracts.
- 2.03 All activity toward improvement of the property as described herein is to be performed by the Contractor, a person or legal entity licensed to do business in this State and certified or registered in the appropriate contractor category, as determined by the Department of Business and Professional Regulation, to perform the Work.
- 2.04 The Department and the Contractor are the only parties to this Contract. It is specifically and expressly acknowledged between them that:
- .01 The Consultant is not a party to the Contract, and nothing herein shall be deemed to create a relationship between the Consultant and any party, or be read to make the Consultant a third-party beneficiary of the Contract, except that the Consultant has duties arising under its Separate Contract with the Department, which duties may include acting for the Department in furtherance of the Work. Except to the extent that the Consultant is an agent of the Department in dealing with the Contractor at the Project Site, such duties and activities shall not be construed to create a legal relationship between the Consultant and the Contractor.
 - .02 No Subcontractor, sub-subcontractor, material supplier, equipment supplier, or fabricator is a party to this Contract, and nothing herein shall be construed to create any contractual relationship among them, or between them and the Department.

Article 3. The Property.

- 3.01 The property upon which the subject improvements are to be made is that certain tract described on the boundary survey signed and sealed by **WGI on June 20, 2023**, if one is available, or, if not, the Project Site shown in the Contract Documents, and either obtained by the Contractor or made available to the Contractor by the Department under separate cover, and made part hereof as if set out herein verbatim, all lands being so designated within **Miami-Dade County**, Florida.
- 3.02 The Contractor acknowledges that it is aware of the significance of public ownership of the property upon which the Work is to be performed, that it has secured a 100% Performance, Labor, and Material Bond in accordance with Article 8, Part II, of these

General Conditions, and that it will so advise Subcontractors, material suppliers, equipment suppliers, and fabricators, and include a statement substantially similar to this Section in any contract or agreement with them.

Article 4. The Work.

- 4.01 The Work refers to the entirety of all construction activities (except for design activities), at any stage of progress, including application of all labor, materials, equipment, and Contractor services, comprising the total improvement to real property, generally described as stated in Section 4 of the Agreement, in accordance with plans and specifications supplied by the Department, for performance of which the Contractor will be paid the Contract Price set out in Section 7 of the Agreement in the manner provided in Article 7 herein.
- 4.02 The Contractor represents that it has the necessary expertise and qualifications for doing the Work, and will complete the Work in accordance with the requirements of the Contract Documents and within the Contract Term to the satisfaction of the Department.
- 4.03 Layout and Performing the Work:
 - .01 Property lines (when adjacent to the Work), location ties, and elevations of all structures to be built under this Contract are, or shall be, shown on the Drawings. Elevations shown for various parts of the Work are, or shall be, taken from established or assumed benchmark datum, as indicated in the Construction Documents.
 - .02 In case of conflict in property lines, location ties, elevations shown in the Contract Documents, and actual benchmark datum, the Contractor shall notify the Department in writing prior to commencing the Work.
 - .03 The Contractor shall perform all layout of the Work, and shall hire a **professional surveyor and mapper** licensed in Florida to perform the Work.
 - .04 The Contractor shall not damage or remove any existing benchmarks or monuments. If the Contractor damages or removes such benchmarks or monuments, it shall repair the damage or replace or relocate the item as directed by the **surveyor** at no cost to the Department. The Contractor shall be responsible for assuring that such replaced or repaired topographical items are positioned accurately.
 - .05 The Department makes no representations whatsoever as to any benchmarks, datum, or monuments.
 - .06 The Contractor shall accurately lay out the Work in conformance with indicated locations, and shall establish auxiliary benchmarks, stakes, and other markers as may be required for the Work.
 - .07 Plans, diagrams, datum and other information about existing conditions are provided only to show the perceived, but not guaranteed, existence of such

conditions and thereby provide the Contractor with some information to be considered for scope, identification, and scheduling purposes only.

- .08 The Contractor shall not use such plans, diagrams, datum, and other information about existing conditions to lay out any of the Work, unless and until it verifies the accuracy of such information by field measurements or such other means as may be necessary for the Contractor to perform the Work. The Contractor shall use only verified accurate information to layout the Work, and under no circumstance shall the Department be responsible for any errors or omissions related to such layout made by any party, including the Department or its representatives.
- .09 Before ordering material or performing the Work, the Contractor shall verify all measurements as may be required for the proper fitting of the Work to other adjoining work. The Contractor shall be responsible for the correctness of its calculations and measurements, and shall satisfactorily correct without additional cost to the Department any of the Work which does not fit, furnishing new work, if required, for the purpose of assuring that the completed Work conforms to all requirements of the Contract.
- .10 The Contractor shall check all lines, grades, and elevations previously established before proceeding with the Work, and make certain that they are suitable for receiving the Work under this Contract. If any deviations exist, the Contractor shall notify the Consultant and the Department in writing, and shall not proceed until such deviations are corrected.
 - [i] If the Contractor proceeds with the Work without first giving such notification in writing or making such correction, the Contractor, at its cost, shall make all corrections to the Work required to make it conform to all requirements of the Contract Documents.
 - [ii] If, due to failure to give notice or make the corrections referred to above, it is necessary to reconstruct any part of the Work, the Contractor shall remove and rebuild such Work without expense to the Department.
- .11 Before starting the Work, and from time to time as the Work progresses, the Contractor shall examine work installed by others under Separate Contracts, if any, insofar as it affects or influences the Contractor's Work, and shall promptly inform the Consultant and the Department in writing if any condition exists that will prevent the Contractor from performing its Work in accordance with the Contract.
 - [i] If the Contractor performs its Work without giving such written notification, it shall be deemed conclusively to be an acceptance by the Contractor of all such work installed by others, and the Contractor shall have no recourse against the Consultant or the Department for errors or omissions or other claims arising from such work.
 - [ii] The Contractor shall thoroughly familiarize itself with Contract requirements for work to be done by others relating to that part of the

Work to be performed by the Contractor.

- .12 The Contractor shall be responsible for the proper fit and finish of its Work, and the Work of its Subcontractors, and shall, without additional charge, correct any Work that the Department determines does not fit or is not finished properly.
- [i] If the Department so determines, the Contractor shall furnish new replacement Work, so that all components and types of the Work fit and are finished properly in accordance with the Contract Documents.
 - [ii] Where dimensions are governed by conditions already established, or which will have been established prior to installation of the particular Work or materials, the Contractor and its Subcontractors shall depend entirely upon measurements taken or verified by them in the field.
 - [iii] In all cases, the Contractor and its Subcontractors shall verify by field measurement all dimensions of existing conditions prior to fabricating or installing the Work.
 - [iv] The Department shall have no responsibility for any such measurements.
- .13 All Work under the Contract shall be arranged and performed in such manner as to conclude the Work by the date designated for Substantial Completion. It is specifically acknowledged by the Contractor that all deadlines are reasonable, necessary, and material to the Contract if the Work is to be completed within the agreed Term, and that time is therefore of the essence in this Contract.
- .14 The Contractor shall be responsible for its Work, and every part thereof, for the means, methods, and equipment used in performing the Contract, and for all services, materials, tools, machines, equipment, and property of every description used in connection therewith.
- .15 The Contractor shall not load or permit any part of the structure to be loaded with any materials or system of forces that will endanger its safety or the safety of any person or cause any damage to the structure. Should the Contractor determine at any time that such a danger exists; it shall immediately notify the Department and suspend Work until the condition has been addressed and further instructions are issued.
- .16 The Contractor assumes all risks, hazards, and conditions in connection with performance of the Contract, including, without limitation, weather, delays in delivery of materials or equipment, embargoes, strikes or other labor disturbances directed against the Contractor, its Subcontractors, or material suppliers. Even if performance of the Contract requires a greater expenditure of its money, time, or forces than the Contractor expected at the time it entered the Contract, the Contractor shall have no claim for reimbursement on account of such greater expenditure, and shall receive no increase in Contract Price or extension of the Contract Term on account thereof, except where required by the Contract Documents.

- .17 The Contractor shall be responsible for all damage to the Work caused by its acts or omissions or the acts or omissions of its agents, Subcontractors, equipment suppliers, or material suppliers, subject to any right of recovery the Contractor may have under the insurance coverage required in Article 9.
- [i] Proper repair or replacement of the damaged Work, and the proper repair or replacement of other Work affected thereby, shall be done by the party who installed the Work or by the Contractor or by others as directed by the Department.
- [ii] Costs of such repair or replacement shall be paid by the Contractor.
- .18 The Contractor shall provide to the Department with each Pay Request digital color construction progress photographs, drawings, maps, and diagrams, particularly for those items and Work that will not be visible upon completion of the Work, and for temporary controls, facilities and utilities, temporary protection, and Project signage, as required in the Contract Documents, or as reasonably necessary to record the progress of the Project and facilitate the orderly and proper performance of the Work.
- 4.04 **Means and Methods.** Neither the Department nor the Consultant will have control over, or charge of, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since, as noted in Article 4.03.14, these are solely the Contractor's responsibility. The Contractor alone will be responsible for failure to carry out the Work in accordance with the Contract Documents.
- 4.05 **Negligence.** Neither the Department nor the Consultant will have control over, or charge of, or be responsible for acts or omissions of the Contractor, Subcontractors, material suppliers, fabricators, or their agents or employees, or of any other persons performing the Work save and except any persons employed by the Consultant.
- 4.06 **Contract Administration.** Unless otherwise explicitly stated in the Contract Documents, the Department's Project Manager will provide administration of the Contract as described in the Contract Documents. The Consultant will advise and consult with the Department during the construction of the Project, and will have authority to act on behalf of the Department to the extent provided in the Contract Documents, unless otherwise modified in writing by the Department.
- 4.07 **Periodic Pay Requests.** Based on its inspections, observations, and evaluations of the Contractor's Pay Request, the Department's Project Manager and the Consultant will review and certify the amounts due the Contractor, and will submit Pay Requests in such amounts as are properly payable for Work completed in accordance with the Contract Documents.
- 4.08 **Evaluation and Testing of the Work.** The Consultant has authority to reject Work that does not conform to all of the requirements of the Contract Documents, and it shall notify the Contractor and the Department immediately. In the event the Consultant considers it necessary or advisable, considering the intent of the Contract Documents, it has authority to and shall require additional inspection or testing of the Work, whether or not such

Work is fabricated, installed or completed, at no cost to the Department.

- .01 Neither the exercise or non-exercise of this authority shall give rise to a duty or responsibility of the Consultant to the Contractor, its Subcontractors, material and equipment suppliers, agents or employees, or other persons performing portions of the Work.
- .02 The Contractor shall not be relieved in any way from full responsibility for proper performance of the Work in compliance with all requirements of the Contract Documents by anything that the Consultant does or fails to do under the provisions of this Article.

4.09 **Inspections of the Work.** The Consultant or the Department will conduct inspections to determine, among other things, the following:

- .01 The date of Substantial Completion of the entire Project, or, where determined by the Consultant and the Department to be appropriate, the date of Substantial Completion of part of the Work; and
- .02 The date of Final Completion of the Project, or, where determined by the Consultant and the Department to be appropriate, the date of Final Completion of part of the Work.

4.10 **Initial Claims Determination.** The Department's Project Manager shall initially decide all claims of the Contractor, and shall make the initial decision on all other matters relating to interpretation of the Contract Documents, timeliness of the claim, or conformity of the Contractor's Work to requirements of the Contract Documents.

- .01 The Contractor shall provide all information reasonably requested by the Project Manager with respect to claims or other matters to be decided by the Department.
- .02 The Department's decision shall be made within a reasonable time after receiving all requested information regarding the claim or other matters to be decided, and promptly reported to the Contractor.
- .03 The Department's decisions on matters relating to aesthetic effect will be final, and conclusively determine the intent expressed in the Contract.

4.11 **Construction Change Directive.** The Contractor shall promptly perform, or delete as the case may be, all Work described in any Construction Change Directive, and submit a claim to the Department for an equitable adjustment in the Contract Price and Term, if any.

- .01 To the extent that the Department determines such adjustments to be warranted, its Project Manager shall prepare and submit a Change Order to the Parties for their signatures.
- .02 Should either of the parties not agree to the Change Order, the claim for equitable adjustment shall be negotiated, or, if necessary, subjected to good-faith mediation in accordance with Article 39, General Conditions.

- 4.12 **Minor Changes.** The Department has authority to order minor changes in the Work not involving an adjustment in the Contract Price or an extension of Contract Term, and not inconsistent with the intent of the Contract Documents.
- .01 Such changes shall be effected by Construction Change Directive, and shall be binding on the Contractor.
 - .02 The Contractor shall carry out such Change Directive promptly.
- 4.13 **Contractor Controls Means and Methods.** As expressed in Article 4.03.14 and implied in Article 4.04, the Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, safety practices, safety management, safety programs, overall site safety supervision and procedures and for coordinating all portions of the Work under the Contract.
- .01 Neither the Consultant nor the Department shall be responsible for the Contractor's means of construction, methods, techniques, devices, or procedures, or for the implementation of safety precautions, practices or management and programs in connection with safety of the Work.
 - .02 Neither the Consultant nor the Department shall be responsible for the Contractor's failure to carry out the Work in accordance with the Contract.
- 4.14 **Right to Reject Work Shall Not Affect Contractor Responsibility.** The Consultant and the Department shall have the authority granted in the Contract Documents, including, as noted in Article 4.08, the right to reject all materials provided, furnished, or installed, and all Work performed, which, in the judgment of the Department, does not conform to requirements of the Contract Documents.
- .01 Such rights and powers shall not be construed by the Contractor as undertaking supervisory control of the construction or safety supervision or management for the Work.
 - .02 Nor shall such rights and powers relieve the Contractor of its sole responsibility for the proper performance and safety of the Work.
 - .03 Nor shall such rights and powers relieve the Contractor of its sole responsibility to supervise the Work, or its obligations to perform the Work in accordance with the Contract Documents.
- 4.15 **Late-Discovered Defects and Non-Conforming Work.** The fact that the Department, prior to the date of Substantial Completion, has not discovered defective Work, or Work that otherwise fails to conform to requirements of the Contract Documents, or incomplete or omitted Work, shall not bar the Department from subsequently rejecting faulty Work, or Work, which, while completed, otherwise fails to conform with the Contract Documents. Nor does it bar the Department from insisting that the Contractor correct such Work and complete the incomplete or omitted Work.
- .01 Regardless of when such defective, incomplete, or omitted Work is discovered or rejected, and regardless of when the Contractor is ordered to correct or complete

such Work, the Contractor shall have no claim for any consequent increase in the Contract Price or Contract Term.

- .02 Nor shall the Contractor, its Subcontractors, material suppliers, equipment suppliers, fabricators, or any persons directly or indirectly engaged or employed by any of them, have any claim against the Department for payment or allowance of any kind on account of increased cost, damage, or loss that may be incurred in correcting defective, incomplete, or omitted Work, or Work that otherwise fails to comply with the Contract Documents.

4.16 **Use of the Project Site.**

- .01 The Contractor shall confine its equipment, machinery, storage of materials, and the operations of its workers to limits required by applicable law, ordinances, permits, Department statutes and rules, directions of the Department's Project Manager, and this Article.
- .02 The Contractor shall not unnecessarily encumber the Project Site or the Management Unit with its materials, or obstruct access to and egress from adjacent areas.
- .03 The Contractor shall comply with and enforce among Subcontractors and material suppliers all instructions of the Department pertaining to all items referenced herein, as well as signage, advertisements, dust control, fires, smoke, and access at the job site, staging areas, and material storage sites. The Project Manager shall have the authority to approve both onsite and offsite material storage.
- .04 ~~Sanitary Provisions: The Contractor shall provide and maintain portable toilet facilities in a neat and sanitary condition for the use of its employees as may be necessary to comply with regulations of the local government and the Department of Health. No nuisance will be permitted.~~
- .05 ~~Temporary Electrical Power: The Contractor shall provide temporary electrical power meeting all safety requirements of the National Electric Code, and local code requirements. All electricity for light and power necessary for construction and testing of electrical and mechanical systems required for the Project shall be paid for by the Contractor. The Contractor shall make all necessary arrangements and perform the work required for such service.~~
- .06 Conduct of Workers: The Contractor shall inform its Subcontractors, laborers, workers and other persons on the Project Site that any sexual harassment, obscene speech, swearing and cussing, fighting, lewd behavior, or any similar inappropriate acts or speech are prohibited in the Management Unit. Workers shall dress appropriately so they do not offend the public. Management Units are family oriented and the above requirement will be strictly enforced. Illegal drug use and use of alcohol are prohibited in the Management Unit. Smoking inside any Department building is prohibited. Smoking shall only occur in areas designated by the Department for that purpose.

- .07 Parking: Parking available to construction workers shall be as designated by the Department.
- .08 Construction Climate Control: It shall be the responsibility of the Contractor to provide at its expense, the power, fuel and equipment necessary to maintain climatic conditions and humidity when specified, required for work in progress, or required to protect materials, finishes, equipment or systems installed until the acceptance of the Work by the Department.
- .09 ~~Water: When required by the Department in the Contract Documents, water necessary for construction and testing shall be furnished by the Contractor. If required, the Contractor shall make all connections, install a meter, obtain and pay for all permits necessary, for all piping and clear away all evidence of it after the job is completed.~~
- .10 Project Board and Signs: The Contractor shall erect a Project Board for state and federal postings, permits and the like in a location approved by the Department, and it shall maintain it throughout the Project. A Project Sign and a sign for Public Project Nonpayment Procedures shall be erected prominently at project site and shall remain until the project reaches completion. The signs shall be erected and installed at the site by the Contractor, which shall be constructed using exterior grade plywood ($\frac{3}{4}$ " x 4' x 8' for the Project Sign and $\frac{3}{4}$ " x 4' x 6' for the Public Project Nonpayment Procedures Sign) mounted on 4" x 4" PT posts that are adequately anchored to/embedded in a stable surface and installed in a prominent location approved by the DEP Project Manager. Information to be on these signs is located in these specifications as Exhibit M and N respectively.
- Permanent signs and plaques, if required in the Contract Documents, shall contain information as directed by the Department
- .11 Telephone, Facsimile and Internet Access: A telephone number at which the Department can contact the Contractor's Project Manager is required. A cellular phone will be adequate for communication from the project site. When required by the Contract Documents, a fax machine and high-speed Internet hookup shall be installed in the Contractor's office and it shall remain until the Final Completion of the Work. All charges in connection with such hookups and use shall be paid for by the Contractor.
- .12 ~~Contractor's Field Office: The Contractor, within ten days of receiving the Notice to Proceed, shall provide and maintain a watertight office at the project for the use of the Consultant and its representatives, not less than 12' x 12' in size, one room with at least one window in each exterior wall and an independent outside entrance door fitted with hardware and lock, artificial light, a bench with one drawer, a blueprint rack, a heater and an air conditioner. The Field Office shall include adequate space to house the Clerk of the Works and the Resident Personal Representative, if any. Prior to installation of the office, the Contractor shall coordinate location with the Project Manager and the Unit Manager. Trailers may be used for field offices, but their use as living quarters for personnel shall be limited to one person such as a night watchman or a superintendent.~~

- .13 **Site Security:** The Contractor shall pay for and be responsible to secure the Project Site and the Project, as well as offsite materials storage (if allowed by the Department), against theft, vandalism, fire, spoilage, and for public safety at all times (24 hours per day) from the date of the Notice to Proceed until Substantial Completion.

4.17 **Storage and Movement of Materials.**

- .01 Materials, both packaged and bulk items, stored at the Project site before installation shall be protected from damage or defects that would cause rejection of use or incorporation of the material into the Work.
- [i] Such damage or defects include, but are not limited to, mildew, oxidation, corrosion, freezing, staining, dirt, water damage, or other contamination or spoilage.
 - [ii] Protection of stored material shall include storage in sheds, or weathertight enclosures such as tarpaulins.
 - [iii] Any damage or reduction in value of such items shall be the sole responsibility of the Contractor. The Department shall not agree to increase the Contract Price, Schedule of Values, or monthly progress payments for any damage to such items.
- .02 Materials and equipment normally delivered to the Project Site packaged, such as boxes, cartons, crates, pallets, or other containers, shall be:
- [i] prominently labeled as to product, manufacturer, delivery date, and receipt markers indicating compliance with applicable standards, codes, and regulations as appropriate; and
 - [ii] retained in such packaged form at the job site until ready for installation.
- .03 Shipments of all materials and equipment shall be addressed to the Contractor who shall be responsible for receiving, unloading, handling, and storing at the Project Site. The Department will not accept deliveries on behalf of the Contractor, its Subcontractors, and material or equipment suppliers.
- .04 If it becomes necessary at any time during performance of the Contract to move materials or equipment that have been placed temporarily on the Project Site, the Contractor or Subcontractor furnishing such items shall cause them to be moved to the directed location without delay as directed by the Department.

4.18 **The Department's Occupancy Rights; Installation of Equipment.**

- .01 The Department reserves the right to occupy any portion of the Project before it has been entirely completed if such portion of the Project has reached Substantial Completion and is separable from the rest of the Project.

- .02 Such occupancy shall not be claimed by the Contractor to be beneficial occupancy of and shall not in any way attest to the completion or correctness of other portions of the Work that have not reached Substantial Completion.
- .03 Neither shall such occupancy signify final acceptance of the Work by the Department.
- .04 The Contractor agrees that the Department, either through use of its own forces or a Separate Contractor, may place and install equipment during the construction, but before Substantial Completion, of the Work.
 - [i] Placement and installation of such equipment by the Department shall not be construed as or claimed by the Contractor to be beneficial occupancy, or in any way attest to completion or correctness of the Work, or any portion thereof, or signify final acceptance of the Work; nor shall it be a waiver of any warranty or guaranty claim by the Department.
 - [ii] If placement or installation of equipment in the Project by the Department prior to completion of the Work results in increased premiums for the Contractor's insurance against property damage or liability, or causes undue and unreasonable interference with, and delay to, scheduled completion of the Work within the Contract Term, the Contractor may submit a claim for extension of the Contract Term and for reimbursement of additional insurance premium costs in accordance with these General Conditions.
- .05 If the Contractor accepts materials from a Separate Contractor or from the Department for storage, erection, or installation, the Contractor shall give a receipt for the items accepted and will thereafter be responsible for their care, storage, and replacement due to damages incurred after such acceptance.
- 4.19 **Clerk of the Works.** When a Clerk of the Works is assigned to a Project, as specified in the Agreement, the Contractor and its Subcontractors will provide all documents and other information required by the Clerk of the Works. The Contractor and its Subcontractors shall at all times cooperate fully with the Clerk of the Works as he/she performs the duties defined and stated in the Contract Documents.
- 4.20 **Resident Personal Representative ("RPR").** When a Clerk of the Works is assigned to the Project, as specified in the Agreement, the Contractor and its Subcontractors will provide all documents and other information required by the RPR. The Contractor and its Subcontractors shall at all times cooperate fully with the RPR as he/she performs the duties defined and stated in the Contract Documents.

Article 5. The Contract.

- 5.01 The Contract shall be the entire, fully integrated agreement between the parties to it, superseding all prior communications, offers, negotiations, representations, and agreements, written or oral.

- 5.02 The intention of the Contract Documents is to include all labor, materials, equipment, services, licenses, permits, and other things necessary for proper execution and completion of the Work. The Contract consists of the following:
- .01 The following Bidding Documents:
 - [a] Invitation For Bids (advertisement) and Addenda
 - [b] Base Bid of Contractor with Alternates
 - [c] Experience Questionnaire and Contractor's Financial Statement
 - [d] Bid Award
 - .02 Agreement for Construction Contract,
 - .03 General Conditions
 - .04 Special Conditions
 - .05 Bonds and Insurance
 - .06 Notice to Proceed
 - .07 Change Orders
 - .08 Construction Change Directives
 - .09 Design Documents
 - [a] Drawings
 - [b] Specifications
 - .10 Survey, if available
- 5.03 Any discrepancies in the Contract Documents or in field conditions shall be reported by the Contractor in writing to the Department. The Contractor shall secure written instructions from the Department before proceeding with Work affected by any ambiguity, omission, or discrepancy in the Contract Documents. The Contractor shall obtain such written instructions by submitting a written request for information to the Department.
- 5.04 Drawings, diagrams and other information about existing conditions are provided only to show the existence of such conditions and thereby provide the Contractor with some information to be considered for scope identification and scheduling purposes only. Quantities, dimensions, elevations, measurements and locations shown may have been approximated or gathered from outdated, incomplete or otherwise inaccurate construction documents. This data shall not be used for bidding or construction purposes without verification by the Contractor. The Department makes no representation or warranties of any kind about existing conditions, regardless of any oral or written suggestion to the contrary.
- 5.05 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Consultant and the Department, and shall promptly report in writing to the Consultant and the Department any errors, inconsistencies, or omissions discovered.
- 5.06 The Contractor shall also take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing performance of the Work, promptly reporting in writing to the Consultant and the Department any errors, inconsistencies, or omissions discovered.
- 5.07 If the Contractor performs any Work with knowledge of an error, inconsistency, or

omission in the Contract Documents, or between the Contract Documents and field conditions affecting such Work, without prior notice to the Consultant and the Department, the Contractor shall pay all costs for correction of the Work affected by such error, omission, or inconsistency.

- 5.08 Notwithstanding anything contained in Articles 5.04 through-5.06 to the contrary, if conditions are encountered at the site which are (1) subsurface, or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities required in the Contract Documents, then notice of the condition shall be given by the Contractor to the Consultant and the Department promptly, before conditions are disturbed, and in no event later than ten (10) days after first observance of the conditions.
- .01 The Department or the Consultant will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Price or Contract Term, or both, which, upon approval by the Department, shall be incorporated into a Change Order.
- .02 If the Department or the Consultant determines that conditions at the site are not materially different from those indicated in the Contract Documents, and that no change in the terms of the Contract is justified, the Department shall so notify the Contractor in writing, stating the reasons.
- 5.09 The Contractor shall duly execute and return to the Department, within ten days of their receipt, two copies of the Agreement. Failure to so execute and deliver shall be grounds, at the sole option of the Department, for rejection and forfeiture of the Bid bond.
- 5.10 The Contractor shall keep one copy of the Drawings and Specifications on the Project Site, and shall, at all times, give the Consultant and the Department access thereto. Additionally, the Contractor shall furnish a separate complete copy of Drawings and Specifications reflecting any changes in the Work, or Record Drawings, in hard copy and AutoCADTM electronic format to the Department upon completion of the Work.
- 5.11 Performance of the Work by the Contractor shall be to the extent expressed in and reasonably inferred from Contract documents as necessary to Final Completion.
- 5.12 Notwithstanding anything to the contrary expressed or implied above, the Contractor represents that:
- [i] It has had an adequate opportunity to examine, and has carefully examined, all of the Contract Documents, including these General Conditions, in connection with the Work;
- [ii] It is acquainted with the physical conditions at the Project Site reasonably ascertainable upon reasonable inspection (such as levels and elevations affecting the Work, the excavations and filling required to perform the Work properly, and all visible or otherwise ascertainable obstructions which are relevant to

- performing the Work properly), including, without limitation, the Project Site and its surroundings, soil, and any other limitations;
- [iii] It is fully aware of any variances between the actual conditions and the conditions as shown or represented in the Contract Documents;
 - [iv] It has a full understanding of the difficulties that may be encountered in performing the Work based on such information;
 - [v] It agrees that it has full and complete responsibility for the Work, and for all risks in connection therewith; and, considering all of the foregoing,
 - [vi] It shall complete the Work for the Contract Price in accordance with the Contract.
- 5.13 Any alterations, variations, changes, modifications or waivers of provisions of the Contract shall be valid only when they have been reduced to writing, duly signed by each of the parties, and distributed to each of the Parties.
- 5.14 The Contract is an exclusive contract for services and may not be assigned in whole or in part without written approval of the Department.
- 5.15 In the event of conflict between provisions of Contract Documents listed in Article 5.02 which collectively comprise the Contract, the following rules of precedence shall obtain:
- .01 A specific provision prevails over contradictory statements in a general provision.
 - .02 A provision in the Agreement prevails over a contradictory statement in the Attachments to the Agreement, General Conditions, or Special Conditions.
 - .03 A provision in the Special Conditions prevails over a contradictory statement in the General Conditions.
 - .04 A provision in the Agreement or Attachments thereto prevails over a contradictory statement in the Specifications.
 - .05 A provision in the Specifications prevails over the Drawings.
 - .06 A provision in the Specifications prevails over a contradictory statement in the General Conditions or Special Conditions.
 - .07 A provision in a Contract Modification prevails over a contradictory term or provision in the document amended or modified.
 - .08 A provision in any of the foregoing documents controls over the Bidding Documents.
- 5.16 Use of the word “contradictory” in this Contract shall also mean “inconsistent.”

- 5.17 The Contract Documents are complementary; that which is required by any one shall be as binding as if required by all.
- .01 Words used in the Contract Documents that have well-known technical or trade meanings are used in accordance with such recognized meanings, unless otherwise provided in the Contract Documents.
- .02 References may be made in the Contract Documents to standard and technical specifications prepared by governmental agencies, technical and industrial organizations. These referenced specifications are incorporated in, and made part of, all Contract Documents by such reference.
- 5.18 Three originals of the Agreement shall be signed by the Department, the Contractor, and other parties to the Agreement, if any; and one each shall be distributed to the Parties. The Consultant, the Clerk of the Works, if any, and the Resident Personal Representative, if any, shall be furnished a complete copy of the Agreement.

Article 6. Term of the Contract.

- 6.01 The Contract will be effective upon its execution by both parties. It will remain in effect, unless previously terminated, until **twelve months** after the Work reaches Substantial Completion. If the Contract is terminated, the guaranty for the Work completed shall extend through twelve months after termination.
- 6.02 The Work shall commence within **ten days** of Notice-to-Proceed being received by the Contractor. Upon such receipt, the Contractor shall acknowledge receipt of the notice, mobilize on the job site, and proceed immediately with construction activities.
- 6.03 The Work shall reach Substantial Completion within **One-Hundred and Eighty (180) days** of the Contractor's receipt of the Notice to Proceed.
- .01 Within ten days of receipt of the Notice to Proceed, the Contractor shall complete and file with the Department's Project Manager a Progress Schedule in any industry-accepted form based on the critical path method of scheduling, showing completion of the Work within the Contract Term as provided in this section. The Progress Schedule shall be updated at each progress meeting.
- .02 Progress meetings shall be convened at the Project Site, or other specified location, by the Department's Project Manager. The Project Manager shall determine the required attendees.
- .03 In the event that the Contractor falls behind the milestone he should have reached according to the Progress Schedule, the first item of business on the progress meeting agenda will be the Contractor's explanation of the delay, and presentation of its diligence plan to eliminate the cause of further delay, and bring the Work back on schedule.
- .04 Within five days after the progress meeting, the diligence plan shall be reduced to writing and filed with the Department's Project Manager and with the Clerk of the Works, if any.

- .05 Upon bringing the Work back on schedule, the Contractor shall so notify the Department's Project Manager, who will then inspect the Work, date, approve (or reject and renegotiate) the diligence plan, and file it with the Clerk of the Works, if any.
- 6.04 The Work shall reach Final Completion within **thirty (30) days** of Substantial Completion.

Article 7. The Contract Price.

- 7.01 The Department shall pay to the Contractor as total compensation for complete performance of the Work described in the Plans and Specifications, the lump sum Contract Price specified in Section 7 of the Agreement.
- 7.02 The Contract Price shall be paid to the Contractor periodically, not less than monthly, upon receipt of a proper and correct Pay Request.
 - .01 Pay Requests shall include a properly completed "Certificate for Payment" form, a properly completed Schedule of Values, a complete invoice on the Contractor's letterhead, and a completed Minority Participation Report. The Contractor agrees that the Department may, from time to time, substitute, change, add, or delete forms or documents necessary for a Pay Request, depending on the Department's needs.
 - .02 Information provided on the Pay Request requires the Contractor to match the Schedule of Values, a separate line-item break-down of the price for each category of the Work, the total of which, when added to overhead and profit agreed upon in Article 7.02.04, make up the Contract Price.
 - .03 In each Pay Request, the Contractor shall compare the percentage of completion of each item on the Schedule of Values with that shown on the previous month's Pay Request, and apply the difference as a percentage of total value for that category of the Work for which the Pay Request is being submitted.
 - .04 Work done by the Contractor pursuant to Change Order shall be agreed upon as provided in Articles 27.04 and 27.06 herein.
 - .05 The Department shall retain ten percent of the final amount approved by the Department of each Pay Request until fifty percent of the Work is completed to the Department's satisfaction, and five percent of each such Pay Request thereafter until Final Completion, when, upon the Department's approval of the final Pay Request, all retained sums still unused for completion of the Work shall be paid to the Contractor.

Part Two

Conditions Precedent - Sureties and Insurance

Article 8. Performance and Payment Bonds.

- 8.01 Within two working days of being notified of its successful bid, the Contractor shall submit evidence of its ability to provide the necessary performance and payment bonds (*separate documents*), by providing a letter of intent to provide a performance bond and a 100% labor and material payment bond from a surety company authorized to do business in Florida meeting the financial rating and other requirements of the Bid Documents, to the Department. Within ten (10) days after receipt from the Department of notice of its successful bid, the Contractor shall furnish the Department, a performance bond and a labor and material payment bond (the "Bonds"), each in the amount of 100% of the Contract Price, as security for the faithful performance of all Work under the Contract, and payment of all charges in connection therewith. Such Bonds are subject to approval and acceptance by the Department.
- .01 The surety on each Bond must be duly authorized to write bonds under Florida Law, and shall be satisfactory to the Department.
- .02 Bonds shall be in the form and substance required by applicable law, including, but not limited to, Ch. 255, F.S. and Ch. 60D-5, F.A.C.
- .03 Bond premiums shall be paid by the Contractor and included in the Contract price.
- .04 The Contractor shall require the Attorney-in-Fact who executes the Bonds on behalf of the surety to affix thereto a certified and current copy of his/her Power of Attorney.
- 8.02 In accordance with 255.05 F.S. the Department will not issue a Notice to Proceed and the Contractor shall not commence any of the Work until the Contractor has delivered the Bonds in proper form to the Department and provided proof of recording the bonds with the county having jurisdiction over the project.

Article 9. Insurance.

- 9.01 The Contractor shall not commence Work under the Contract until:
- .01 It has obtained all insurance required by the Contract Documents;
- .02 Certificates showing evidence of the policies and endorsements of such insurance have been submitted to the Department; and
- .03 Such insurance has been accepted by the Department as meeting all of the requirements of the Contract Documents. Proof of the proper insurance must be submitted before the Department can execute the Agreement, in accordance with section 60D-5.004(2)(b)1.d., F.A.C.

- .04 Certificates and Endorsements shall be submitted to the Project Manager. The Certificates shall provide that the Department of Environmental Protection and the Board of Trustees of the Internal Improvement Trust Fund, 3800 Commonwealth Blvd., MS #520, Tallahassee, Florida, 32399-3000, are additional insureds for the purposes of general liability and automobile liability for the Contract Term, and shall reference a contract or bid number. All insurance documents shall be submitted to the Department's Project Manager.
- 9.02 All insurance certificates shall meet the following requirements:
- .01 Evidence of insurance shall include the telephone number, name, and address of the insurance agent, the policy of insurance and all required endorsements.
 - .02 No endorsement shall impose limitations on, or provide for exclusions from, the coverage provided to the Department, and the Trustees that make that coverage differ from the coverage provided to the primary named insured under the respective policy of insurance.
 - .03 All insurance required under the Contract shall be primary and in favor of the Department without any joint coverage requirements or co-primary requirements.
 - .04 In the event applicable law requires that any such insurance be co-primary, the Contractor agrees to obtain and pay for a specific endorsement naming all of its insurance as primary and applicable insurance of the Department and the Trustees' as secondary.
- 9.03 The Contractor and Subcontractor shall purchase and maintain such Insurance from a company or companies licensed to do business in the State of Florida that will protect the Department and the Contractor in the amounts and for the coverages stated in this Article from claims which may arise out of, or result from, the Contractor's operations under the Contract, whether such operations be by it or by any Subcontractor, material supplier, fabricator, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
- 9.04 The Contractor shall obtain and maintain Workers' Compensation, General Liability, Automobile Liability, Builder's Risk (all-risks form), and, if work proceeds over or adjacent to water, Jones Act and Longshoremen's and Harbormaster's insurance with the limits of coverage stated herein or in the Contract Documents with the appropriate endorsements in favor of the Department, the Trustees, and the Contractor, as follows:
- .01 Workers' Compensation Insurance: The Contractor shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance for all of the Contractor's Employees connected with the Work and, in case any of the Work is subcontracted, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all employees unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply fully with the Florida Workers' Compensation Law. In case any class of employees engaged in hazardous work under this Contract the Project Site is not protected under the Workers' Compensation laws, the Contractor shall provide, and cause each subcontractor to provide, adequate

insurance, satisfactory to the Department, for the protection of those employees not otherwise protected.

- .02 Public Liability and Property Damage Insurance: The Contractor shall take out and maintain during the life of this Contract Commercial General Liability for damages because of bodily injury or property damage that may arise from operation under this Contract whether such operations are by Contractor or by anyone directly or indirectly employed by him, and the amount of such insurance shall be the minimum limits as follows:

Contractor's Commercial General Liability Coverage including Bodily Injury/Property Damage, Personal Injury, Advertising Injury, Products & Completed Operations - \$1,000,000, Each Occurrence/\$2,000,000, General Aggregate

- .03 Automobile Liability Coverage: The Contractor shall take out and maintain during the life of this Agreement Commercial Automobile Liability for damages because of bodily injury or property damage that may arise from operation under this Agreement whether such operations are by Contractor or by anyone directly or indirectly employed by him, and the amount of such insurance shall be the minimum limits as follows:

Bodily Injury & Property Damage, including hired and non-owned \$1,000,000, Combined Single Limit. Coverage shall apply on an occurrence basis.

- .04 ~~Builder's Risk Coverage: The Contractor shall secure and maintain during the life of this Agreement a "Builder's Risk Policy," All Risks Form, issued on a completed valued basis. Installation Floaters and other Inland Marine Forms may be utilized where applicable and are in the best interest of the State of Florida. All Builder's Risk insurance shall include windstorm coverage, and flood coverage where applicable.~~

- .05 ~~Longshoremen's and Harbormaster's Insurance and Jones Act insurance in an amount sufficient to cover Contractor's forces shall be secured, if applicable.~~

- 9.05 Policies of insurance providing the coverages required under the Contract Documents and these General Conditions shall contain a provision prohibiting the cancellation or modification of such insurance without thirty (30) days' prior written notice to the Department, at the address stated in Article 9.01.04, and the Contractor's surety.
- 9.06 The Contractor shall not make any change to, or cancel, any insurance coverage without the Department's prior approval. Should any cancellation occur, and new coverage is not immediately obtained, the Department shall have the right to suspend the Work until such coverage is obtained; the Department shall not be deemed to cause any delay or incur any or cost for such suspension.
- 9.07 Exclusion of the Department from Liability: Notwithstanding any other provision of the Contract Documents, should the Contractor sustain loss or be damaged by act or omission of a Separate Contractor or Subcontractor, the Department and the Trustees shall not be liable for any such loss or damage and the Contractor shall not be entitled to obtain any

monetary relief from the Department to compensate for such loss or damage, but shall be limited to such recovery as is otherwise available at law from persons or entities other than the Department.

- 9.08 Indemnification Rider: The Contractor's Liability Policy shall provide an indemnification and a waiver of subrogation or hold harmless rider to cover the indemnification and hold harmless agreement required under the Contract. The Contractor and Department agree that one percent of each payment shall be understood to represent the consideration required for such indemnification and waiver of subrogation or hold harmless rider.
- 9.09 Loss Deductible Clause: The State of Florida shall be exempt from, and in no way liable for any sums of money which may represent a deductible in any Contractor's insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor or Subcontractor providing such insurance.

Article 10. Taxes.

- 10.01 The Contractor shall include in the Contract Price, and shall pay, all federal, state, county, and local taxes of whatever nature and description properly applicable to the Contractor's performance of the Work.
- 10.02 The Contractor shall pay all applicable payroll taxes, unemployment contributions, Social Security, pensions, annuities, and other benefits measured by the wages, salaries or other remuneration paid to its employees assigned to the Project.
- 10.03 The Contractor acknowledges the Department's right to audit Workers' Compensation and other employee benefit payments (labor burden) and taxes, and specifically agrees to submit satisfactory evidence of the payment of same within ten days of the Department's demand.

Article 11. EEO Compliance.

- 11.01 The Contractor agrees to comply with all applicable federal, state and local laws, including the Civil Rights Acts of 1964 as amended. The Equal Employment Opportunity clause in Section 202, paragraphs 1 through 7 of Executive Order 11246, as amended, relative to Equal Employment Opportunity and the implementing Rules and Regulations of the Office of Federal Contract Compliance, are incorporated herein by specific reference. The Affirmative Action Clause in Section 503 of the Rehabilitation Act of 1973, as amended, relative to Equal Opportunity for the handicapped, is incorporated herein by specific reference. The Affirmative Action clause in 38 USC Section 2012 of the Vietnam Veteran's Readjustment Assistance Act of 1974, relative to Equal Employment Opportunity for the special disabled veteran and veterans of the Vietnam Era, is incorporated herein by specific reference.
- 11.02 The Contractor shall comply with the Americans with Disabilities Act, the Florida Americans With Disabilities Accessibility Implementation Act, sections 553.501-553.513, F. S., and the 2004 Florida Building Code, Chapter 11, Florida Accessibility Code for Building Construction. In addition, the Department may direct the Contractor

to exceed the requirements of any of those laws if it so states in the Specifications or the Drawings.

Article 12. Royalties, Patents, Trademarks, and Copyrights.

- 12.01 The Contractor shall pay all royalties and fees for patented, trademarked, service marked, or copyrighted materials, equipment, services, designs, devices, or processes used on, or incorporated in, the Work. The Contractor shall defend all suits or claims for infringement of any patent rights or claims for trademark, service mark, or copyright violations, and shall indemnify, defend, and hold the Department harmless from loss on account thereof, except that the Department shall be responsible for all such loss when a particular design, process, or the product of a particular manufacturer or manufacturers is specified by the Department or the Consultant; but if the Contractor has reason to believe that the design, process, or product specified is an infringement of a patent, trademark, service mark, or copyright it shall be responsible for such loss, unless it promptly, and in all events prior to use, gives such information in writing to the Department.

Article 13. Surveys, Permits, Regulations, and Fees.

- 13.01 The Contractor shall furnish all surveys unless otherwise specified.
- 13.02 Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor.
- 13.03 Permits and licenses for permanent structures, or permanent changes in existing facilities, shall be secured and paid for by the Contractor unless otherwise specified.
- 13.04 When the Contract Documents require the Work or part of the Work to be done on public property other than that under lease to the Department, the Contractor shall secure any permit or license as necessary, and give such notice to the Department, and the agency having jurisdiction or other owner as may be required for such Work.
- .01 The Work shall be performed in accordance with all applicable laws, ordinances, rules and regulations, and to the satisfaction of the Department as well as that of such other owner or agency.
- .02 If the Contractor performs any Work contrary to federal, state or local law, ordinance, rules, regulations, or codes, including those of the Department or the applicable owner or agency with jurisdiction, the Contractor shall be liable for, and pay, all costs arising therefrom, including reasonable attorney's fees and costs, if assessed. This paragraph is not intended to and shall not create any rights to attorney's fees in other owners or agencies where such right does not already exist.
- .03 Where the Contract Documents require the Work or any part of it to be performed to a standard exceeding that required by law, such Work shall be completed according to requirements of the Contract Documents.

- 13.05 Verification of Department's Survey Data: Prior to commencing any excavation or grading, the Contractor shall satisfy itself as to the accuracy of all survey data as indicated in the Plans and Specifications or as provided by the Department. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, he shall immediately notify the Department in order that proper adjustments can be anticipated and ordered. Commencement by the Contractor of any excavation or grading shall be deemed its acceptance of the survey data after which time the Contractor has no claim against the Department resulting from alleged errors, omissions or inaccuracies of the survey data.

Article 14. Indemnification, Assignment, Subcontracting, and Apportioning of the Work.

- 14.01 The Department will not participate in any disagreements or disputes between the Contractor and any of its Subcontractors, material suppliers, equipment suppliers, or fabricators.
- 14.02 To the extent any Subcontractor, material supplier, equipment supplier, or fabricator involves the Department or any other agency (federal or state), or any subdivision of the State, in any such dispute unrelated to the acts or omissions of the Department or the other agency or subdivision, the Contractor agrees to defend, indemnify and hold harmless the Department and the Trustees, and, where appropriate, the other agencies and subdivisions, from all claims, judgments, or awards against the Department, the Trustees, or the other agencies or subdivisions arising from any such dispute.
- .01 This indemnification provision shall not be construed to indemnify the Department from acts of its own employees.
- .02 The parties agree that 1% of each periodic payment by the Department to the Contractor shall be designated premium for such indemnification.
- 14.03 The Contractor shall not assign or subcontract any part of its Work without first obtaining the written approval of the Department. The giving of such approval shall not constitute, nor shall the Contractor claim it to be, the basis of any responsibility or liability of the Department for a Subcontractor's performance of the assigned or subcontracted portion of the Work.
- 14.04 The Contractor shall submit to the Consultant and the Department proper identification of intended Subcontractors, equipment suppliers, material suppliers, and fabricators who are to provide material to be installed in the Work.
- .01 Such submission of a Subcontractor, suppliers, and fabricator by the Contractor shall be construed to mean that the Contractor has solicited bids from, and has selected, subject to Department approval, reputable and competent contractors, fully capable of performing the Work in accordance with the Contract Documents.
- .02 Such submission shall also be construed to mean that, based on the Contractor's investigation of such Subcontractors, suppliers, and fabricators, it represents

them to have the ability, knowledge, expertise, and sufficient resources to perform and supply the services, goods, and equipment required of them.

- .03 Such submission shall also be construed to mean that the Contractor has properly screened the Subcontractors, suppliers, and fabricators and has determined that they are not listed on either the convicted vendor list or the discriminatory vendor list maintained by the Department of Management Services.
- 14.05 In each subcontract the Contractor shall bind the Subcontractor to accept all conditions and requirements of the Contract Documents, and all modifications thereto, applicable to the Work under the Subcontract, and the performance thereof, including without limitation the insurance requirements applicable to Subcontractors in Article 9, above, together with indemnification provisions of the Contract and these General Conditions.
- 14.06 No consent or acceptance of subcontracting or assignment by the Department shall relieve the Contractor of any of its responsibilities or liabilities under the Contract Documents. As between the Department and the Contractor, the Contractor shall remain responsible and liable for complete performance under the Contract, and shall remain responsible and liable for all acts and omissions of its employees, assignees, Subcontractors and their employees, and of all persons either directly or indirectly employed by it, or employed by them, the same as if no subcontracting or assignment had been made.
- 14.07 No such assignment or subcontracting, including consent or acceptance of such by the Department, and no provision in any contract or agreement between the Contractor and a Subcontractor, assignee, or any other person shall create any contractual relationship between the Department and any Subcontractor, supplier, fabricator, or any other person with whom the Contractor contracts for services or materials.
- 14.08 Diversity. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Contract embrace diversity enthusiastically. The award of sub-contracts should reflect the full diversity of the citizens of the State of Florida. The Department will be glad to furnish a list of Minority Owned Firms that could be offered subcontracting opportunities or it may be obtained from the web site: www.osd.dms.state.fl.us/dirhome.htm
- 14.09 The Contractor must complete and return a Minority Participation Report Form with each Pay Request. The Form is attached to these General Conditions as **Exhibit H**. The form must be completed, regardless of participation.

Article 15. Guaranty.

- 15.01 The Contractor, in addition to specific guaranties or warranties as may be required in the Specifications, hereby unconditionally guarantees that the Work shall be done in accordance with all express and implied requirements of the Contract Documents.
- 15.02 The Contractor further guarantees and expressly guarantees and warrants the Work to be and remain free of defects in workmanship and materials for a period of twelve months from the date of Substantial Completion of the Work ("Warranty Period"), or for such longer warranty period as is provided in the Contract Documents or by law.

- 15.03 The Contractor further guarantees the completed Work to be fit and suitable for its intended purposes and uses by the Department.
- 15.04 The Contractor hereby agrees to repair or replace any and all Work that does not conform with requirements of the Contract Documents, or that is defective in materials or workmanship, without any expense whatsoever to the Department, so that such defective Work is in the condition required by the Contract Documents at any time during the Warranty Period after completion.
- 15.05 Whether any completion, repair, replacement work, or other work required by defects identified during the Warranty Period, is completed during the Warranty Period or not, the Contractor agrees to and shall be obligated to pay for and complete all such repair or replacement Work to the Department's satisfaction within a period not to exceed thirty (30) days after notification thereof.
- 15.06 The Contractor at its sole expense shall repair or replace adjacent Work that may be damaged or displaced as a result of the repair or replacement of its or its Subcontractor's defective Work.
- 15.07 Work that is damaged as a result of ordinary wear and tear, abuse, or neglect, shall not constitute defective Work under the terms of this guaranty.
- 15.08 The Contractor's guaranty and Subcontractors' guaranties are in addition to, and not limited in any way by, any applicable manufacturer's warranties.
- 15.09 The Contractor further agrees that, within ten (10) days after being notified in writing by the Department of any Work not conforming to requirements of the Contract Documents, or of any defects in the Work, the Contractor will commence and prosecute with due diligence all work necessary to fulfill the terms of this guaranty, and will complete the corrective work within a reasonable period time.
- 15.10 In the event the Contractor fails to comply fully with the requirements of this guaranty and warranty, the Parties expressly agree such failure to be a material breach of this contract, and that the Department may proceed to have such work done at the Contractor's expense, and the Contractor will honor and pay the costs and charges therefor within thirty days of written demand being made. The Department will be entitled to all costs and expense, including reasonable attorney's fees, incurred as a result of the Contractor's failure to timely pay the foregoing costs and charges.

Article 16. Laws Governing Construction.

- 16.01 The Contractor represents that it is fully informed with regard to all applicable local, state, and federal laws, ordinances, rules, regulations, and codes (the "Laws") governing the Work contemplated by the Contract Documents; and the Contractor further represents and agrees that it will comply in all respects with the Laws and shall give all reports, stipulations and representations and take all other actions required by the Laws.
- 16.02 The Contractor also represents that it shall require similar compliance by all others with whom it enters into any subcontract, purchase order, or commitment pertaining to the Work.

- 16.03 It shall be the duty of the Contractor, before starting any Work, to ascertain whether the Contract Documents are at variance with any such Laws, and if so, to promptly notify the Department, in writing, of such variance.
- .01 Any necessary changes in the Contract Documents required to correct such variance shall be made by the Contractor, as provided in the Contract Documents.
- .02 If the Contractor, its Subcontractors or suppliers perform any Work contrary to the Laws, the Contractor shall bear all costs to correct the Work so that it is in full compliance with the Laws and shall have no recourse to request reimbursement from the Department for any such variance.
- 16.04 The Contractor shall be liable for all damage or loss arising by reason of the breach of the provisions set forth in this Article and shall indemnify, defend and hold harmless the Department and the Trustees from any and all liability for damage or loss arising from, or in any way relating to, such breach.
- 16.05 As noted in Article 13.04.03 above, Work required by the Contract Documents in excess of the minimum standards set by the Laws shall be performed as indicated in, and in accordance with, the Contract Documents.

Article 17. Suspension of the Work.

- 17.01 The Department may suspend, delay, or interrupt the Work for any of the following reasons:
- .01 The Contractor fails to timely and properly correct deficiencies or faulty work.
- .02 The Contractor's insurer or surety notifies the Department that any of its insurance or bonds has lapsed or will lapse, and the Contractor fails to provide replacement insurance or bonds acceptable to the Department before the cancellation date.
- .03 Contractor or its Subcontractor materially violate safety laws.
- .04 The Department determines that there is a threat to the public health, safety, or welfare that necessitates such suspension.
- 17.02 The Department shall not be liable to the Contractor or its Subcontractors for any costs caused by suspension of the Work under this Article.
- 17.03 If the suspension is declared under Article 17.01.04, and is due to no fault of the Contractor or its Subcontractors, the Contractor's sole remedy shall be a Change Order extending the Contract Term.

Article 18. Accident Prevention.

- 18.01 The Contractor shall be responsible for initiating, maintaining, and supervising all safety

precautions and programs in connection with the Work, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- .01 Its employees and employees of its Subcontractors, suppliers, fabricators, and any of their Subcontractors working on the Project, and all other persons on the Project Site;
 - .02 All Work, including all equipment and materials to be installed therein; and
 - .03 Other property stored at the Project Site.
- 18.02 The Contractor shall comply with its "Safety Plan" prepared for the Work, and all applicable provisions of federal, state, and local safety laws, ordinances, rules, regulations, and codes, including building codes, ("safety laws") to prevent accidents or injury to persons on, about, or adjacent to where the Work is being or has been performed.
- 18.03 The Contractor shall erect, and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards for protection of workers and the public.
- 18.04 The Contractor shall require all Subcontractors, suppliers, and fabricators on site to comply with safety laws, the requirements set out herein and in its Safety Plan, and shall designate in writing a responsible member of its organization to enforce safety laws, prevent accidents, and properly instruct Subcontractors and others, including its own employees, in safety measures appropriate to the Work.
- 18.05 Any damages to the Work or to the adjacent property caused by acts or omissions of the Contractor, or any person performing Work or furnishing services, supplies or materials to the Project, except for employees of the Department or any Separate Contractors, shall be repaired or replaced as directed by the Department, at the expense of and without delay by the Contractor.

Article 19. Fire Protection and Precautions.

- 19.01 The Contractor shall provide overall coordination of fire safety and protection on the Project, as part of its Safety Plan, and shall designate in writing a responsible member of its organization whose duty shall be the enforcement of fire safety laws, and who shall properly instruct all Subcontractors, suppliers, and fabricators on site, and with its and their employees and workmen, with regard to fire protection and precautions.
- 19.02 The Contractor shall consult with the local fire authorities and the State Fire Marshall as to laws related to fire protection, fire reporting procedures then in force in the Project area, and any special fire safety provisions of any Contract Document, and properly instruct Subcontractors and others, including its own employees, in fire safety procedures and measures appropriate to the Work.
- 19.03 The Contractor shall at all times maintain free access to areas of the Project for firefighting equipment, and shall at no time block off main roadways or access routes

without providing adequate auxiliary routes for firefighting equipment, including, where applicable, heavy fire department trucks and other such equipment.

- 19.04 When the Work involves construction within an existing structure, the following considerations apply. Unless otherwise required by applicable laws and codes, the Contractor shall:
- .01 Provide and maintain during construction not less than one 10-A:60-B:C portable fire extinguisher for each 3,000 square feet of floor area;
 - .02 Ascertain that the fire extinguishers are [i] in good working order, [ii] conveniently located, [iii] conspicuously identified, [iv] inspected on a current basis, [v] clearly visible, and [vi] readily accessible; and
 - .03 Provide additional, appropriate extinguishers where concentrated areas of combustible materials require them.
- 19.05 Fire extinguishers shall be of an approved type, shall be UL listed, and shall be inspected at regular intervals, no less frequently than required by applicable laws and codes, and shall be recharged as necessary.
- 19.06 Accumulations of oily rags, paper, and other similarly combustible materials shall be removed from structures daily, and properly stored or properly discarded. No such materials shall be stored or discarded in the Management Unit without written consent of the Department's Project Manager.
- 19.07 During any temporary operation involving open flames or producing heat or sparks ("Hot Work"), the Contractor shall designate a Fire Safety Supervisor and Fire Watch for each Hot Work operation.
- .01 The Fire Safety Supervisor shall not permit a Hot Work operation to proceed unless proper precautions have been implemented, including, without limitation, designation of at least one Fire Safety Supervisor to be on site and in attendance at all times during the Hot Work.
 - .02 The Fire Watch shall monitor the Hot Work area during and after Hot Work operations, and implement measures to prevent fires and to respond to any fires that ignite during pendency of and after the Hot Work.
- 19.08 During all construction operations in occupied building space, the Contractor shall construct and maintain a one-hour fire-resistance separation between the part of the building under construction, or where repair or replacement work is underway, and the occupied part of the building, in accordance with the Life Safety Code NFPA 101, §1-3.11, 1997 Edition.

Article 20. Emergencies.

- 20.01 In an emergency affecting the safety of persons, or of the Work, or of adjoining or adjacent property, the Contractor, without special instruction or authorization from the Department, is hereby authorized to act at its sole discretion to prevent such threatened

loss, damage, or injury. However, to the extent possible, the Contractor will seek agreement from the Department on the measures to be taken and the cost of such measures.

- 20.02 The Department may declare an emergency and direct the Contractor to undertake certain appropriate measures against loss, damage, or injury.
- 20.03 Any compensation claimed by the Contractor on account of such emergency work shall be determined in accordance with Articles 7.02.04 and 27.04 of these General Conditions.

Article 21. Job Site Personnel.

- 21.01 The Contractor shall provide at the job site throughout the progress of the Work, [i] a competent, experienced Superintendent, and [ii] any assistants reasonably necessary for the proper coordination and performance of the Work in accordance with the Contract Documents.
- 21.02 Any directions the Department gives to the designated Superintendent shall be as binding as if given to the chief executive officer of the Contractor.
- 21.03 The Department shall provide at the Project Site throughout the progress of the Work, a competent, experienced Project Manager, and may provide:
 - .01 A Clerk of the Works for the proper coordination and maintenance of Contract Documents, meeting minutes, scheduling, monitoring, inspecting the Work, reporting on progress of the Work, and other responsibilities as the Department may require from time to time; and
 - .02 A Resident Personal Representative, who shall be responsible for ensuring compliance with the Drawings and Specifications.
- 21.04 The Project Manager and the Consultant shall visit the job site as scheduled to inspect the Work, attend construction meetings, and exercise other responsibilities under the Contract Documents.

Article 22. Construction Meetings.

- 22.01 The Project Representatives and the Consultant shall hold a pre-construction meeting, at which, among other things, the Department and the Contractor will discuss the Contract conditions, frequency of coordination and progress meetings, procedures for submittals, procedures for Change Orders and Pay Requests, and other matters stated on the checklist. The Department's Project Manager will complete a checklist of all matters discussed and will keep minutes of the meeting, which he or she will distribute to the parties.
- 22.02 On the timetable agreed to during the preconstruction meeting, the Department's Project Manager shall arrange and conduct coordination meetings and progress meetings with the Consultant or its employee designee, the Contractor's Superintendent or his/her employee

designee, and with Separate Contractors, if any, and Subcontractors who are at that time working on their phase of the Work, or other persons involved in the Work in attendance whose agendaed problems may be resolved through collegial interaction and discussion. Minutes of the meetings showing attendees, matters agendaed, matters raised, conclusions reached and actions taken, together with other matters of significance to the progress of the Work, will be prepared by the Project Manager, with copies furnished to the Contractor, the Consultant, Subcontractors who may have been present, the Clerk of the Works, if any, and other attendees whose concerns were discussed or whose work was affected by decisions made at the meeting.

- 22.03 Unless the Contractor submits all its additions or corrections to the minutes within ten days after its receipt of a copy of them, the minutes will stand as written by the Department.

Article 23. Progress Schedule.

- 23.01 All Work shall be arranged, sequenced, and performed in such a manner as to achieve Substantial Completion within the Contract Term.
- 23.02 The Contractor shall consult with the Consultant and the Department in scheduling such construction of the Work, and shall prepare a Progress Schedule, according to requirements of the Contract Documents.
- .01 All Subcontractors, material suppliers, equipment suppliers, and fabricators shall perform their Work in accordance with the Progress Schedule as coordinated by, and under management of, the Contractor, who shall have responsibility for all steps, procedures, and policies necessary thereto for facilitating execution of all the Work.
- 23.03 Should the Work fail to progress according to the Progress Schedule, and if, in the opinion of the Department, the Work cannot be completed within the Contract Term, the Contractor shall accelerate the Work through use of overtime and additional time over established hours of work, including Saturdays, Sundays, and holidays, and assigning additional forces to the Work as required to regain timeliness of activities sequenced on the Progress Schedule to meet Substantial Completion as agreed in the Contract, all without additional cost to the Department.

Article 24. Shop Drawings, Product Data, and Samples (Submittals).

- 24.01 The Department will review and approve or take other appropriate action on the Contractor's submittals, such as shop drawings, product data, and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Such action will be taken with reasonable promptness, but no later than ten (10) days after submission of the shop drawings, product data, or samples to it for review.
- .01 Review and approval of such submittals is not for the purpose of determining, or agreeing to, accuracy and completeness of details such as dimensions and quantities, or for substantiating instructions for installation, or for testing

performance of equipment or systems, all of which remain the responsibility of the Contractor, as required by the Contract Documents.

- .02 Review and approval by the Consultant or Department of the Contractor's submittals shall not relieve the Contractor of obligations under the Contract Documents, except as provided in Article 24.04.06 below.
 - .03 Review and approval by the Consultant or Department shall not constitute approval of safety precautions, or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences, or procedures.
 - .04 Review and approval by the Consultant or Department of a specific item shall not constitute or indicate approval of an assembly of which the item is a component.
- 24.02 The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, and samples, or similar submittals, until the submittal has been approved and accepted for installation or use by the Department.
- .01 Work shall be in accordance with accepted and approved submittals.
 - .02 The Contractor shall submit for review and approval of the Consultant and the Department, a submittal schedule controlling submittal of all shop drawings, product data, samples, or other submittals required for construction of the Project.
 - .03 The Contractor shall submit a preliminary submittal schedule, and have it approved, before submission of its first Pay Request. No payment shall be made until this schedule is approved by the Department.
- 24.03 Shop drawings, product data, samples, and similar submittals are not Contract Documents; their purpose is to demonstrate for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Procedure for submittals shall be discussed and agreed upon during the Preconstruction Meeting.
- 24.04 The Contractor and its Subcontractors shall prepare and submit to the Department copies of shop drawings as required by the Contract Documents, or such additional shop drawings as the Department may reasonably request.
- .01 All shop drawings shall be submitted by or through the Contractor to the Department for review and approval prior to fabrication, erection, installation, or construction of the Work, unless otherwise directed in writing by the Department.
 - .02 The Contractor shall provide a copy of all shop drawings, product data, samples, and similar submittals to the Department for its information concurrently with submission to the Consultant.
 - .03 All shop drawings, product data, samples, and similar submittals shall be

prepared and submitted in accordance with the requirements established by the Department, and other requirements expressed in the Contract.

- .04 The Contractor shall review, approve, and submit to the Consultant shop drawings, product data, samples, and similar submittals required by the Contract Documents with reasonable promptness, but no later than ten days after receipt of same, and in such sequence as to cause no delay in the Work in which the Department is a scheduled participant.
 - .05 By approving and submitting shop drawings, product data, samples, and other submittals, the Contractor represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so promptly, and has checked and coordinated the information contained within such submittals with requirements of the Work and with the Contract Documents.
 - .06 The Contractor shall not be relieved of responsibility for deviations from any requirement of the Contract Documents by the acceptance or approval of the shop drawings, product data, samples or similar submittals unless it has specifically informed the Department in writing of such deviation at the time of submittal, and the Department has given written approval to the Contractor for such deviation.
 - .07 The Contractor shall conspicuously direct specific attention, in writing or on re-submitted shop drawings, product data, samples, or similar submittals, to revisions other than those requested by the Department on previous submittals.
 - .08 Informational submittals, upon which the Department is not expected to take responsive action, may be so identified in the Contract Documents.
 - .09 When professional certification of performance criteria in materials, systems, or equipment is required by the Contract Documents to be provided by the Contractor, the Department shall be entitled to rely upon the accuracy and completeness of such calculations and certification as are provided by the Contractor.
 - .10 Except as otherwise specified herein, the Contractor shall submit approved shop drawings and approved manufacturer's literature and brochures to the Department for its information.
 - .11 Shop drawings or other submittals not approved shall be corrected and re-submitted for review by the Contractor. No shop drawings shall be used by the Contractor for performance of the Work until they have been reviewed and approved by the Department.
- 24.05 When the Contractor submits shop drawings for review by the Department, the Contractor thereby warrants that it has carefully examined such shop drawings along with the Drawings, Specifications, and the existing status of the Work, and is aware of problems, if any, incident to incorporation of the submitted equipment or material into the structure of the Project and its service systems.

- .01 The Contractor shall not be entitled to payment of, and shall not submit a request for, any additional costs incident to incorporation of such submitted equipment or materials into the Work.
 - .02 The Contractor shall obtain approval of shop drawings and submittals from governmental authorities having authority to approve such shop drawings or submittals, such as for fire protection and automatic sprinklers, prior to submitting them to the Department.
- 24.06 The Contractor shall furnish prints of all reviewed and approved shop drawings to others as required for construction operations in the field.
- 24.07 Where required by the Specifications, or when otherwise required by the Department, the Contractor shall submit to the Department no less than three representative samples, accessories, finishes, or other items included in the Work.
- .01 Such samples must be accepted by the Department in writing before being incorporated into the Work.
 - .02 Samples shall be submitted to the Department in sufficient time for review and approval before the items are to be purchased and installed in the Work.
 - .03 Samples shall be accompanied by a label and shall be properly identified, indicating the type and brand of material, its place of origin, name of the producer/fabricator, the Contractor's name, name of the Project for which the material is intended, and the specific Drawing or Specification page number where the material is described and its use is shown.
- 24.08 Approved shop drawings, product data, samples, and other submittals will be distributed to the persons indicated in the Preconstruction meeting.
- 24.09 Samples not accepted by the Department will be returned to the Contractor for re-submission. One rejected sample shall be retained by the Department for comparison to re-submittals.

Article 25. Materials and Workmanship.

- 25.01 All materials, and the workmanship necessary to install them in the Work, shall be new unless otherwise specified.
- 25.02 Should a dispute arise at any time as to quality and fitness of workmanship, equipment, materials, or items submitted pursuant to Article 24, the Department shall decide the dispute based on requirements of the Contract.
- .01 If requested by the Consultant or the Department, the Contractor shall furnish evidence, at its sole and exclusive expense, as to the kind and quality of materials or equipment at issue.

25.03 Substitutions. Substitutions shall be handled as follows:

- .01 Materials, products, and equipment described and specified in the Contract Documents establish the standard of required function, dimension, appearance, and quality to be met by any proposed substitution.
- .02 No substitution will be considered unless a written request for approval has been submitted to the Consultant and the Department.
 - [i] Each request shall include the name of the material or equipment for which it is to be substituted, and a complete description of the proposed substitute, including drawings, cuts, performance and test data, and any other information requested by the Consultant or the Department as necessary to a complete evaluation of the proposed substitute.
 - [ii] A statement will be included stating all changes in other materials, equipment, or Work required if the substitute is installed.
 - [iii] The burden of proof of the merit of the proposed substitute is on the Contractor.
 - [iv] The Department's decision whether or not to accept a proposed substitution shall be final and binding on the Contractor.
- .03 The Department, after consulting with the Consultant, may grant the Contractor's requested substitution, if in the Department's sole discretion, basic criteria are met, including, but not limited to, compliance with terms of Contract, acceptability of materials, construction, workmanship, performance, and finish, as well as the availability of maintenance and service for the substitution after completion of the Project. No compromise in quality level, no matter how small, is acceptable.
- .04 Approval of substituted items by the Department is deemed to be granted for convenience of the Contractor, and all costs arising from, or in any way relating to, the substitution, shall be the responsibility of the Contractor, who shall pay all additional costs incurred by the Department or any other contractor resulting from the substitution proposed by the Contractor. Approval of substituted items shall require a warranty from the Contractor for one full year after Substantial Completion, and in conformance with other warranty provisions of the Contract.

Article 26. Liquidated Damages.

- 26.01 Timely completion of the Work being the essence of this Contract, and precise measurement of the Department's damages for delay in substantial completion being incapable of reasonable calculation, the parties specifically agree as follows:
- .01 If the Contractor fails to complete the Work within the number of days agreed to accomplish Substantial Completion, in addition to such other damages as may be shown to arise for causes other than delay, if any, the Contractor shall pay liquidated damages to the Department in the amount of **\$150.00 for each**

calendar day beyond those specified in Article 6.03, not to exceed twenty percent of the Contract Price, until the Work has reached Substantial Completion and accepted by the Department.

- .02 If the Contractor fails to reach Final Completion within the time specified in Article 6.03, in addition to such other damages as may be shown to arise for causes other than delay, if any, the Contractor shall pay one-half of the amount of liquidated damages specified in Article 26.01.01, not to exceed twenty percent of the Contract Price.
- .03 If upon delay the Department terminates the Contractor's right to proceed, liquidated damages assessed against the Contractor will continue to accrue until the Work by a Separate Contractor reaches Substantial Completion.

Article 27. Extra Work and Changes in the Work.

- 27.01 The Department may, without invalidating the Contract, order extra work or make changes by altering, adding to, or deducting from, the Work.
 - .01 Such extra work or changes in the Work shall be communicated to the Contractor in writing, and shall be executed under conditions of, and in full compliance with, this Article.
 - .02 Changes in the Contract Price, changes in the Contract Term, changes in the Scope of Work, or the addition of extra work, shall be made only by Change Order, Construction Change Directive, or formal written amendment. No Contract Modification shall be binding unless it is in writing and executed by the Department.
 - .03 No Unit Manager or his/her staff has authority to modify the Contract. No oral direction shall be binding upon the Department.
 - .04 The Contractor shall not claim, nor shall the Department have any liability for, any compensation for work claimed to be in addition to that expressly required by the Contract Documents, when such work is performed by the Contractor without a properly executed Change Order or Construction Change Directive.
 - .05 All work claimed by the Contractor to be additional work, and performed without a written, executed Change Order or Construction Change Directive, shall conclusively and irrebuttably be deemed to be part of the Work required by Contract Documents for which the Contractor's bid was submitted, or by reasonable inference therefrom.
 - .06 The Contractor acknowledges and agrees that the ability of the Department to control costs of construction of the Project is an essential element of the Contract Documents, and that this Article is strictly enforceable.
- 27.02 The Department has authority to make minor changes in the Work that do not require any change in the Contract Price or the Contract Term, and are not inconsistent with purposes of the Work. Other than such minor changes, no extra work or changes in the Work,

changes in the Contract Price, or changes in the Contract Term, shall be valid unless done by a Change Order or Construction Change Directive properly issued in accordance with this Article.

27.03 When the Contractor receives a request for Change Order for a change in the Work, or a request to perform extra work, the Contractor shall promptly submit to the Department an itemized estimate and proposal for such extra work or changes, including separate unit prices on changed and extra work for both additions to and deductions from the Contract in the form of an amended Schedule of Values. The Contractor's itemized estimate and proposal shall include all amounts to be paid to the Contractor for such change in the Work or extra work.

27.04 Adjustments in the Contract Price set out in a properly executed Change Order for extra work or changes in the Work shall be determined by the following method:

Actual Cost. By reasonable actual cost paid by the Contractor for all labor and materials, plus a fixed fee expressed as a percentage of the actual cost in accordance with Article 27.06. The fixed fee shall be agreed to in writing by the Parties and shall cover all other charges such as overhead, profit, insurance, taxes, and bonds. For any change that involves a net credit to the Department, no allowance for overhead, profit and other additional costs shall be included.

27.05 **Fixed Fee for Overhead and Profit.**

.01 The Contractor's fixed fee, which includes overhead and profit, for extra work, or a change in the Work, performed by the Contractor's own forces shall be 15% of the additional costs actually paid by the Contractor for labor and material used to perform the extra or changed Work.

.02 The Contractor's fixed fee for extra work or changes in the Work performed by Subcontractors shall be 7.5% of the additional costs for labor and material used to perform the extra or changed Work.

.03 The Contractor's actual costs for labor and materials shall be supported by paid receipts.

27.06 Changed Conditions. If conditions are encountered at the site which are [i] subsurface or otherwise concealed physical conditions which differ materially from those indicated by the Contract Documents, or [ii] unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice of the condition shall be given to the Department by the Contractor. Such notice shall be given promptly, before the conditions are disturbed, but in no event later than ten days after Contractor's or its Subcontractor's first observance of such conditions.

.01 The Department shall promptly investigate such conditions, and, if it determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Department will make an equitable adjustment in the Contract Price or the Contract Term, or both, which shall be incorporated in a Change Order.

- .02 If the Department determines that conditions at the site are not materially different from those indicated in the Contract Documents, and that no change in the Contract is justified, the Department shall provide written notification to the Contractor stating the reasons for its conclusion.

Article 28. Claims for Extra Compensation.

- 28.01 A written notice of any claim for increase in the Contract Price shall be given to the Department by the Contractor **within ten days** after the occurrence of the event giving rise to such claim. The notice shall describe in reasonable detail the circumstances or event giving rise to such claim, and the manner in which the Work has been affected by such circumstances or event.
- .01 The written notice of claim shall be given before the Contractor proceeds to execute Work affected by such circumstances or event, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Article 20.01.
- .02 No claim for extra compensation shall be valid unless made in the manner set forth in this section, and then only to the extent permitted in the Contract Documents.
- .03 Any change in the Contract Price resulting from such claim shall be authorized only by Change Order signed by both parties to the Contract.
- 28.02 Upon request from the Department, the Contractor shall provide its books, costs, other accounting and Project records and other records and documentation containing information pertaining to the claim for review by the Department or its representatives.
- 28.03 No claim for extra cost shall be valid unless made in accordance with this Article and the Agreement, and then only to the extent permissible under the Contract Documents.

Article 29. Delay and Claims for Extension of the Contract Term.

- 29.01 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Department, its employees, or agents, or by any Separate Contractor performing under a Department contract, or by changes in the Work ordered by the Department, or by strikes; lock-out; fire; unusual delay in transportation; unavoidable casualties; acts of war or terrorism; rain or unusually severe weather; other causes beyond the Contractor's control; delay authorized by the Department; or any cause found by the Department to justify the delay, the Contract Term shall be extended for such reasonable time as the Department may decide, provided that under no circumstances shall the Contractor be entitled to an extension of the Contract Term for any delays caused in any way by the Contractor, its Subcontractors, suppliers, or fabricators.
- 29.02 If the Contractor falls behind the Progress Schedule, it shall make every effort through adjustments as set out in Article 23.03 to make up for lost time.
- 29.03 Any request by the Contractor for extension of the Contract Term for any reason noted in

Article 29.01 must be presented to the Department within **fourteen (14) days** after the delay-causing event commences or sooner if the Substantial Completion or Final Completion date is less than fourteen (14) days from the commencement of the delay-causing event. If the Substantial Completion or Final Completion date is less than fourteen (14) days from the commencement of the delay-causing event, Contractor must request the time extension prior to the Substantial Completion or Final Completion date, as applicable. As noted above, time is of the essence in performance of the Work under this Contract. If the Contractor's claim is not submitted within the time limitation set out in this article, it shall not be entitled to an extension of the Contract Term, and any extension of time for completion of the Work will be granted at the sole discretion of the Department.

- 29.04 No claim for damages, or any adjustment other than an extension of the Contract Term, shall be asserted against the Department because of delay. As set out in Article 27, an extension of the Contract Term shall be in the form of a Change Order, and shall constitute the Contractor's sole and exclusive remedy on account of delay.
- 29.05 Delays Due to Rain or Unusually Severe Weather: For any delays in Project Work due to rain or unusually severe weather, the Contractor shall notify the Department within 24 hours, for each occurrence throughout the Contract Term. The Project Manager shall track rain days relative to the Progress Schedule. The Project Manager shall confirm the number of rain days with the Unit Manager or the Clerk of the Works, if any, for consideration in extending the Contract Period.
- .01 Inclement weather does not justify time extensions unless it can be established that such weather could not have been reasonably anticipated during the season and in the location of its occurrence. No contract time extension will be granted for normal rainfall. Time extensions will be granted for abnormal or unanticipated inclement weather with the execution of a Change Order.
- .02 Normal rainfall will be determined from data obtained through the nearest rain gauge station monitored by the Florida Water Management District with jurisdiction in the Project area. Normal rainfall will be averaged over five years.

Article 30. Inspection and Testing.

- 30.01 The Department, its designated representatives and governmental officials with jurisdiction shall at all times have access to the Work regardless of its progress in preparation or performance. The Contractor shall provide proper facilities for such access and inspection. The Contractor shall coordinate and pay for all routine inspection and testing. The Contractor shall submit copies of the results of all tests to the Department and the Resident Personal Representative, if any. The Department has the right to reject materials and workmanship that are defective or otherwise fail to comply with all requirements of the Contract Documents.
- .01 Rejected materials shall be promptly removed by the Contractor from the Management Unit without charge to the Department.
- .02 If the Contractor does not correct such defective work, or remove defective materials within a reasonable time, the Department may remove and replace

them, and deduct all applicable and related costs from any amounts otherwise payable, or to become payable, to the Contractor.

[i] If such costs exceed payable amounts, the Contractor shall pay the balance to the Department within five business days.

[ii] The Department shall have no obligation to look to any other person or party than the Contractor for any such payment.

30.02 Should it be considered advisable by the Department in its sole discretion at any time before Substantial Completion of the entire Project to make an inspection of the Work already completed by removing or tearing out some part or all of the Work, the Contractor shall, upon request, promptly furnish all labor and materials necessary to accomplish such inspection.

.01 If such Work is found to be defective in any material respect due to the fault of the Contractor or its Subcontractors, material suppliers, equipment suppliers, or fabricators, the Contractor shall pay all costs of such examination and for the satisfactory correction and reconstruction of such Work.

.02 If, however, such Work is found to meet all requirements of the Contract, the actual cost of labor and material necessary to inspect and replace affected Work shall be allowed the Contractor by Change Order in accordance with applicable provisions of Article 27, above.

30.03 When any Work is being executed away from the Project Site, the Department shall be notified by the Contractor in reasonable time no less than **ten days** prior to commencement of such Work as to the location where it is to be performed and the date it will be ready for inspection, so that the Department may inspect such Work before it is delivered to the Project Site. The Department and its respective representatives shall have free and unlimited access to the place where the Work is in progress or in storage.

30.04 Failure by the Department during the progress of the Work to discover or reject materials or Work which does not conform with the Contract Documents shall not be deemed an acceptance thereof nor a waiver of the Department's right to require correction of all defects in such Work or materials, and no payment or partial or entire occupancy of the Project by the Department shall be construed to be an acceptance of Work or materials that are not strictly in conformance with Contract Documents.

30.05 The Department, at its sole discretion, but with no obligation to do so, may provide services of a testing facility to inspect and test the quality of soil conditions, concrete, bituminous paving, structural steel, roofing, and similar items. The testing facility will provide all technical equipment required for conducting such tests.

.01 The Contractor shall furnish the actual materials or construction to be tested, and shall fully and without reservation cooperate with the testing facility, including, without limitation, providing equipment and services as necessary for conducting such tests.

.02 Failure of such testing or inspection service to discover defects or deficiencies in

the Contractor's Work, or the fact that such testing or inspection services provide information subsequently shown to be inaccurate or incorrect, shall not relieve the Contractor in any way from the proper performance of all of its obligations under the Contract.

- 30.06 In the event of any nonconformity of tested Work with requirements of the Contract Documents, the Contractor shall pay for the tests, and shall remove all nonconforming Work and materials, and replace them with Work and materials that are in full compliance with the Contract Documents.

Article 31. Faulty Work.

- 31.01 In the event that the Department disapproves any materials, equipment, system, or workmanship as being unsound, improper, or otherwise unacceptable under the Contract Documents, and requires them to be removed, replaced, or reconstructed, the Contractor shall bear all expenses of such removal, replacement, or reconstruction, including the cost of delays and correction of such faulty, defective, or nonconforming Work, and the Contractor shall be solely responsible, at its own expense, for correction or replacement of other Work affected by the corrections.

Article 32. Cutting and Patching of Work; Damage and Patching.

- 32.01 The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.
- 32.02 The Contractor shall not damage or endanger any portion of the Work or any work of the Department by cutting, patching, or otherwise altering any Work, or by any excavation.
- .01 The Contractor shall not cut or otherwise alter the Work of the Department, except with the prior written consent of the Department.
- .02 The Contractor shall not unreasonably withhold from the Department its consent to cutting or otherwise altering the Work.
- 32.03 The Contractor shall refinish entire surfaces as necessary to provide an even finish to match adjacent finishes as follows.
- .01 For continuous surfaces, refinish to nearest intersection.
- .02 For an assembly, refinish the entire unit.
- 32.04 Patching and replacing of all such damaged Work shall be done by the contractor or Separate Contractor who initially did the work and the cost shall be paid by the contractor causing the damage. If the responsible contractor refuses or fails to execute the work, the Department may repair or replace such damaged Work and back charge the cost to the responsible contractor. The Contractor shall not repair damage caused by other contractors, except upon express written approval of the Department.
- 32.05 Quality and workmanship of patching shall completely restore the damaged Work to full conformance with all requirements of the Contract Documents.

Article 33. Substantial Completion and Punch List.

- 33.01 In order to limit the size of a Punch List at the time of Substantial Completion of the entire Project, the Contractor shall adhere to the following procedures:
- .01 From the date of the Notice to Proceed to the date of Substantial Completion, the Contractor shall prepare and maintain a written record of all defects and deficiencies in the Work. The Department shall have the authority and the right, but not the obligation, to add to and approve such written record as defects or deficiencies in the Work are discovered.
 - .02 All defects and deficiencies in the Work shall be corrected immediately upon notice of discovery, and shall not be permitted to remain and become an item on the Punch List.
 - .03 Corrections of defects and deficiencies shall be made before the Subcontractor that performed the Work leaves the Project.
 - .04 During the finishing stages of the Work, the Contractor shall make periodic inspections at least weekly with its Subcontractors to check for and correct all defects and deficiencies in the Work.
- 33.02 When the Contractor determines that the Work, or a designated stand-alone portion thereof, has reached Substantial Completion, as defined in Article 1.46, the Contractor shall prepare for submission to the Department a list of items (the Punch List) still to be completed or corrected.
- 33.03 The Department shall have the right, but not the obligation, to add to such Punch List upon discovery by the Department of any defects or deficiencies.
- .01 Failure to include any items on the Punch List does not alter responsibility of the Contractor to complete all Work in accordance with the Contract.
 - .02 When the Department determines that the Work or designated portion thereof has reached Substantial Completion, the Contractor shall prepare a Certificate of Substantial Completion of the Work which shall be submitted to the Department for review and determination of compliance with the Contract Documents. .
 - .03 In the Certificate of Substantial Completion of the Work, attached hereto and incorporated herein as Exhibit E, the Department shall fix the time, not less than thirty days, within which the Contractor shall complete any uncompleted or incorrect items listed on such Certificate.
- 33.04 Upon representation by the Contractor that, in its opinion, the Work has reached Substantial Completion in accordance with the Contract Documents, the department shall promptly make a thorough inspection of the Work and prepare any required corrections to the Punch List so that it sets out all items found to be in nonconformance with Contract Documents or otherwise unacceptable to the Department.

- 33.05 After the Department revises the Punch List, it shall arrange a meeting with the Contractor and its Subcontractors for Punch List review. The Department shall have the right, but not the obligation, to add to and approve the Punch List upon discovery of any defects or deficiencies in the Work.
- 33.06 When the Contractor gives written notice to the Department that the Contractor or a Subcontractor has completed its Punch List items, the Department shall inspect the Work, and, if the items are found to be satisfactorily completed in accordance with the Contract Documents, advise the Contractor accordingly.
- 33.07 The Certificate of Substantial Completion shall transfer responsibilities for Project maintenance, heat, utilities, and insurance to the Department.
- 33.08 Warranties and guaranties required by Contract Documents shall commence on the date of Substantial Completion.
- 33.09 When the Department, on the basis of inspection, determines that the Work has reached Final Completion and so advises the Contractor, the Contractor shall prepare and execute an Affidavit of Final Completion of the Work.

Article 34. Cleaning.

- 34.01 The Work, and any public or private property occupied by the Contractor and its Subcontractors, shall be kept in a neat and orderly condition at all times. Waste materials, rubbish, and debris shall be removed from the Project Site daily and placed in appropriate containers for proper disposal.
- 34.02 Upon Final Completion, all of the Contractor's temporary buildings, equipment, tools, surplus, or waste materials and rubbish of every type and kind shall be removed from the Project Site and all occupied premises, and such premises shall be restored to their original condition, or as indicated on the elevations and other drawings, whichever is consistent with the Work.
 - .01 Such restoration shall be subject to prior written approval of the Department.
- 34.03 Disposal of debris removed from the Project Site shall be in a licensed landfill or as otherwise required by law.
 - .01 The Contractor shall provide to the Department written, dated verification that all debris removed from the Project Site has been disposed of in a licensed landfill or otherwise in compliance with all applicable law.
 - .02 The Contractor will pay any cost incurred by the Department as a result of the failure of the Contractor and its Subcontractors to comply with requirements of this Article.
- 34.04 All exposed surfaces of the Work shall be left clean and free from mud, grease, stains, dust, marks or other extraneous materials.

- 34.05 Streets, and service roads occupied or used by the Contractor, shall be kept clean of waste materials and refuse resulting from performance of the Work.
- .01 Should the Contractor fail to maintain proper cleanliness, the Department may, at its sole discretion, cause the required cleaning to be done, and the cost thereof shall be deducted from any amounts payable, or to become payable, to the Contractor.
- 34.06 Immediately prior to a request for a Certificate of Substantial Completion, the Contractor shall clean all of the Work and existing surfaces, building elements, and contents that were soiled by operations under the Contract, and make repairs of damages and blemishes caused by the Contractor's performance of the Work. Such cleaning and repair shall include, but not be limited to, the following:
- .01 Employment of experienced workers or professional cleaners for final cleaning.
- .02 Clean each surface or unit to the condition expected in a cleaning and maintenance program for a new institutional building.
- .03 Comply with all manufacturers' instructions.
- .04 Remove labels that are not permanent.
- .05 Clean and polish reflective and transparent materials, including mirrors and glass in doors and windows.
- .06 Remove glazing compounds and other substances from exposed surfaces.
- .07 Replace scratched, chipped or broken glass and other damaged reflective or transparent materials.
- .08 Clean exposed exterior and interior hard surface finishes to a dust-free condition, free of stains, films, extraneous markings and foreign matter.
- .09 Restore reflective surfaces to their original or final condition as implied or expressed by the Contract Documents.
- .10 Leave all concrete floors broom-clean.
- .11 Vacuum carpeted surfaces.
- .12 Wipe surfaces of mechanical and electrical equipment.
- .13 Remove excess lubrication and other substances.
- .14 Clean plumbing fixtures to a sanitary condition.
- .15 Clean light fixtures and lamps and ensure that all light fixtures and lamps have new and operable bulbs or elements installed.

- .16 Clean the Project Site, including landscape development areas, of rubbish, litter, and other foreign matter.
- .17 Sweep paved areas broom-clean; remove stains, spills, extraneous markings and other foreign deposits.
- .18 Rake grounds that are neither paved nor planted to a smooth, even-textured surface.

Article 35. Operation and Maintenance Manuals.

35.01 The Contractor shall provide complete operation and maintenance instructions, manuals, and other information for all architectural, electrical, security systems, computers, mechanical, elevator equipment, and systems installed and provided as part of the Work under the Contract ("Manuals").

.01 Such Manuals shall include, but not be limited to, the following:

[i] Furnish three complete sets of Manuals bound in suitable, quick release three-ring binders. Separate sections shall be provided for each of the following:

- (a) Architectural;
- (b) Electrical;
- (c) Mechanical;
- (d) Elevators;
- (e) Security electronics systems;
- (f) Computers; and
- (g) Other Systems.

[ii] The intent of the Manuals is that the Department be provided with complete operating and maintenance documents for all systems, in a convenient, easy-to-use form.

.02 Section 1 - Index

The Manuals shall include a general and expanded index. Each item and section is to have printed tabs, dividing the manual into its various areas by subject matter corresponding to the sections of the specifications.

.03 Section 2 - General Information

This section shall contain the following:

[i] Systems design concept consisting of a written description of the design intent of the system and for each individual system.

[ii] Lists of prime contractor, subcontractors, fabricators, and suppliers, including address, phone numbers, and names of persons to contact for each of the systems. This is to be a complete list of all parties who may be in anyway related to the Work covered by the respective manuals.

.04 Section 3 - Layout

This section shall contain the following:

- [i] Layout drawings to be on 8-1/2 x 11 or 8-1/2 x 14 inch (folded) size sheets showing the locations of major pieces of mechanical and electrical equipment; electrical distribution system riser diagrams; electrical control diagrams; record drawings, or portions (all valves to be numbered on the drawings in accordance with the valve tagging); and a copy of the valve tagging schedule, which gives each valve a number and description of service (valve tagging schedule will also be posted at a location designated by the Department).
- [ii] The Contractor shall provide architectural layout drawings of floor plans with proper room numbers and locations showing door numbers and window locations that are referenced by a type number to door, window, and hardware schedules.

.05 Section 4 - Operating and Maintenance Information

This section shall contain the following:

- [i] Operating and Maintenance information shall include manufacturer's operating manuals, manufacturer's maintenance manuals, parts list, shop drawings, and other information from the manufacturer such as engineering data for all electrical and mechanical equipment. If a manufacturer's general brochure is used, the item that applies in the general brochure should be designated as well as the locations and quantities in which it is found.
- [ii] Provide lubrication charts listing all types of lubricant to be used for each piece of equipment and recommended frequency of lubrication.
- [iii] Provide pump curves for each pump, fan curves for each fan, internal wiring diagrams for the control centers and starters, and wiring diagrams for complete mechanical installation, including interlocking circuits.

.06 Section 5 - General Requirements for the Manuals

The following requirements shall be met:

- [i] All literature and completeness of assembly shall be reviewed by the Department and approved in writing prior to the acceptance of the Manuals.
- [ii] The elevator and security electronics maintenance information must include all information reasonably necessary for the Department to perform its own maintenance work, and shall also include a list of qualified maintenance contractors to provide an alternative to the Department for maintenance of those systems.
- [iii] Warranty and guaranty information must be provided for each section of the Manuals.

- [iv] Copies of all approved shop drawings are to be included and indexed as a part of this section of the Manuals.
- [v] Each volume of the Manuals shall contain a copy of the complete index and related record drawings in reduced scale format.

Article 36. Record Photos.

- 36.01 The Contractor shall provide digital, date incorporated photographs on a Compact Disk or secure data disk showing the Project site and details of the construction at the time the Notice to Proceed is issued, at Substantial Completion, and at Final Completion, showing the Project conditions from the start to finish.
- 36.02 In addition to the requirement of s. 36.01, the Contractor shall provide photographs meeting the requirements of s. 36.01 for all systems and Work that will be covered up. These records shall be organized within the record Manuals in a booklet (binder) format, indicating and describing each activity as stated in the General Conditions.

Article 37. Record Drawings.

- 37.01 During the progress of the Work through Substantial Completion, the Contractor shall prepare and maintain in a safe place at the Project site: one (1) Full Size (24"x36" or similar size) Record copy and one (1) Full Size Permit set of the Contract Documents as required by the various permitting agencies (including the Fire Marshal if applicable). This shall include all drawings, specifications, addenda, amendments, RFI's, Change Orders, Construction Change Directives, written interpretations and clarifications issued by the Bureau of Design and Construction (BDC) and the Permit Agencies, to include all evaluated samples and copies of all BDC evaluated shop drawings. In addition to the CAD files to be generated as per 37.04 below, these Record Drawings of the changes shall be turned over to the Bureau of Design and Construction/Owner at Final Completion of the project.
- 37.02 The Record Contract Documents mentioned in 37.01 shall be continuously updated in a clean, neat, legible manner **in red** and kept in good order by the Construction Contractor to accurately reflect ALL architectural, civil, electrical, plumbing, mechanical, fire protection, and security system changes that are made to adapt the Work to field conditions. Updating shall include recording all concealed and buried installations [accurately located as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces)] both inside and outside the project site, as well as piping, duct lines, conduit and utility service locations. Specifically for all civil (site) construction work, the Construction Contractor shall accurately record and the locations, dimensions, and elevations of those items which will subsequently be concealed or become inaccessible, i.e.: final site work grades, finish floor elevations, final invert pipe elevations, all permanent site improvements (e.g. pavement, sidewalks, fences, stormwater facilities, building footprints, etc.), and all site utility locations.
- 37.03 The Contractor shall update the Drawings on a monthly basis and provide them to the Department for review prior to the Department's approval of each Pay Request.

- 37.04 Upon completion of the Work, the Contractor shall prepare Record Drawings of the finished work. Record Drawings shall show actual locations, dimensions, and elevations of the finished work and clearly identify those items that vary from the approved plans, authorized amendments, Change Orders, or Change Directives. The Record Drawings shall be neatly and accurately drawn to scale. Each sheet shall be marked as "Record" and bear the date, name, signature of the contractor. The Record Drawings shall be submitted to the owner in the form of two (2) full size hard copy sets (24"x36") and one in electronic format (PDF files formatted for 24"x36" printing).
- 37.05 **Specifically where CAD generated surveys and civil engineering plans are required by a permitting agency, the Construction Contractor shall employ a Professional Surveyor and Mapper**, registered and licensed in Florida, to accurately record and certify the locations, dimensions, and elevations of those items which will subsequently be concealed or become inaccessible, i.e.: final site work grades, finish floor elevations, final invert pipe elevations, all permanent site improvements (e.g. pavement, sidewalks, fences, storm water facilities, building footprints, etc.), and all site utility locations. The grades and elevations of all storm water facilities shall be recorded using contour lines at one-foot increments or less to accurately describe the volume contained therein. Upon completion of the Work, the Contractor's **Professional Surveyor and Mapper** shall prepare Record Drawings of the finished work. Record Drawings shall show actual locations, dimensions, and elevations of the finished work and clearly identify those items that vary from the approved plans, authorized amendments, Change Orders, or Change Directives. The Record Drawings shall be neatly and accurately drawn to scale and transmitted to BDC in .DWG format via email, FTP site or CD. Record Drawings shall be produced with the AutoCAD™ computer-drafting program in a version compatible with the AutoCAD™ Release used to create the original Bid Drawings furnished to the Contractor. A competent CAD draftsman shall record all Project changes in a neat and professional manner. The same drafting standards as applies to symbols, layers, colors, plotter pen sizes, text, fonts, titles and title blocks, used in drafting the original Bid Drawings supplied to the Bidders shall be followed. The Department will furnish these drafting standards to the Contractor. In addition to the CDs, the Contractor's **Professional Surveyor and Mapper** shall provide three (3) signed and sealed blue-lined or black-lined printed sets of the Record Drawings to the Department for review and approval. Each sheet shall be marked as "Record" and bear the date, name, signature and seal of the **Professional Surveyor and Mapper**/ Contractor submitting the Drawing. The **Professional Surveyor and Mapper**/ Contractor shall certify on the Record Drawings that all improvements have been constructed to the grades, elevations and locations shown and that they are located within the easements, rights of way, and property boundaries shown on the Department's survey, if available, or the Bid Drawings and subsequent modifications. A CD with the Bid Drawings will be furnished to the Contractor's **Professional Surveyor and Mapper** for use in drafting the Record Drawings revisions.
- 37.06 The Contractor shall review the completed Record Drawings and verify that all data furnished on the Drawings are accurate and truly represent the Work as actually installed. The Record Drawings preparation shall be considered incidental to performance of the Contract and no separate compensation will be paid by the Department.

Article 38. Final Payment and Forms Required.

- 38.01 The Contractor's final Pay Request shall be accompanied by all required items for a Pay Request and the following additional items:
- .01 A completed and notarized Affidavit of Final Completion, including the releases and any other documents specified in **Exhibit G** to these General Conditions;
 - .02 Record Photos;
 - .03 Record Drawings; and
 - .04 A written guarantee of labor and materials on the Contractor's letterhead.

Article 39. Mediation of Contract Claims and Disputes.

- 39.01 In the event of any claim or dispute arising by or between the Department and the Contractor, each party shall continue to perform as required under the Contract, notwithstanding the existence of such claim or dispute, it being acknowledged that time is of the essence.
- 39.02 This provision includes, but is not limited to, the obligation to continue to perform under the Contract notwithstanding disputes as to amounts due for payment hereunder.
- 39.03 Except for any claim, dispute, or matter in question that has been waived by the acceptance of final payment, or that is otherwise barred by the applicable statute of limitations or other provision of law, any claim, dispute, or other matter in question arising out of, or relating to, the Work or the Contract or the breach thereof, shall be first submitted to non-binding mediation by a single mediator in Tallahassee, Florida.
- 39.04 The party making a claim or dispute shall notify the other in writing of its claim or dispute within ten working days of the event giving rise to the claim or dispute.
- .01 Such notice shall give the other party ten working days from receipt of the notice to respond in writing.
 - .02 If the party initiating such notice is not satisfied with the response, then it shall invoke this clause initiating non-binding mediation by sending a demand for mediation to the other party within seven days.
 - .03 Such notice demanding mediation shall also be in writing.
 - .04 The parties have two weeks after notice to agree upon a mediator. Any such agreement shall be in writing.
 - .05 The parties can bind each other to the length of the mediation if they can so agree. Such agreement shall be in writing and executed by both sides.

- .06 If the parties cannot agree upon a mediator, then the parties shall request the Chief Judge of the Second Judicial Circuit in Leon County, Florida, to appoint a mediator.
- [i] The mediator's fees shall be born equally by the parties involved in the mediation.
 - [ii] Unless otherwise agreed by the parties in writing, such mediation shall take place within forty-five (45) days of the appointment of or agreement to the mediator, if the mediator's schedule so allows.
 - [iii] This agreement to mediate disputes shall be specifically enforceable under the laws of Florida.
- .07 Any resolution achieved at mediation shall be set forth in a written settlement agreement which may be enforced in any court having jurisdiction.
- .08 The Contractor shall require all the dispute resolution provisions and requirements set out in this Article in each contract it makes with any Subcontractor, material supplier, equipment supplier, or fabricator.
- .09 In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations, or otherwise.
- 39.05 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its performance of this Contract during any claim, dispute, or mediation.
- 39.06 If any matter sought to be mediated by the Department or the Contractor involves a claim or other matter by or against the Consultant, any Subcontractor, any Separate Contractor, or any other third party, or any such entity is reasonably necessary to be joined in the mediation to permit a full and complete disposition of the dispute submitted hereunder, then the Consultant, Subcontractor, Separate Contractor or third party shall be joined by personal service of the notice demanding mediation.
- .01 If the Consultant, Subcontractor, Separate Contractor or third-party is determined by the mediator to be necessary to the proceeding, but cannot be made a party to such mediation because they have not agreed to mediate such claims, the mediation shall be terminated forthwith.
 - .02 Such termination of the mediation shall not preclude any party from commencing any judicial proceeding in a court of competent jurisdiction in Leon County, Florida, providing the claims sought to be decided are not otherwise barred.
- 39.07 Any demand for mediation and any answer to such demand must contain a statement of each claim alleged and the dollar amount in controversy sought in each claim.
- 39.08 Should mediation fail to resolve the claim submitted, the parties may then proceed to seek applicable remedies at law.

- 39.09 The agreement to mediate set forth in this Article shall apply to, and become part of, any Subcontract, any contract into which these General Conditions are incorporated by reference or otherwise, and the parties to such contract shall mediate all disputes arising out of, or in any way relating to, that contract or the Project in accordance with the provisions of this Section.

Article 40. Prohibited Materials.

- 40.01 Pursuant to Section 255.40, Florida Statutes, the use of asbestos or asbestos-based fiber materials is prohibited.
- 40.02 If the Work involves renovation or demolition of a building, an asbestos survey will be provided by the Department to the Contractor. When the survey shows the presence of asbestos-containing materials, the Department will include specifications for removal or provisions for encapsulation, containment, and other related matters as required by law.
- 40.03 Notification by the Contractor to the appropriate Division of the Department of Environmental Protection is required when a building is renovated or demolished regardless if the structure contains asbestos or not. The notifications form can be obtained from the Project Manager.
- 40.04 Chromated Copper Arsenate or CCA is a pesticide commonly applied to the pressure treated wood (green tinged) used in construction. No CCA treated wood shall be used for construction projects in the Management Unit unless otherwise stated in the Technical Specifications.
- 40.05 Paint containing lead is prohibited.

Article 41. Historic Preservation, Archaeological Monitoring.

- 41.01 If the Project is located within a state designated landmark or landmark zone, or if the Department is aware of any materials or facilities with historic, cultural or archaeological significance on or near the Project Site, the Department shall inform the Contractor of those facts.
- 41.02 If there are any such zones or materials, the Contractor shall be responsible for obtaining any permit needed from the Department of State, Division of Historical Resources (DHR), and for complying with all DHR rules and permit requirements, including, but not limited to, filing any required notices of scheduled activities, such as digging in a designated state archaeological landmark or landmark zone. (The issuance of such permits is governed by the provisions of Chapter 267, Florida Statutes.)
- 41.03 If at any time the Contractor or its Subcontractors become aware of any archaeological materials (human remains, bones, pottery, arrowheads, building foundations, or other artifacts), the Contractor shall stop work and immediately notify the Department's Project Manager and the DHR.
- 41.04 ~~If required by DHR, the Contractor shall employ and pay a professional archaeologist to monitor earth disturbing activities caused by the project work.~~

Article 42. Reference to A.S.T.M. or Federal Specifications.

- 42.01 When the Contract references the Society for Testing and Materials ("A.S.T.M."), "United States Government Federal Specifications," or to other standard specifications of Associated Manufacturer's Organizations, or trades, in connection with the required quality of materials, methods, and the like, the applicable specifications shall be of the latest revised edition(s) effective as of the date bids are opened by the Department, unless otherwise expressly provided in the Contract Documents.

EXHIBIT A: Certificate for Payment (Construction)

Payment Block (Office use only)											
<i>Transmittal Date:</i> _____					<i>Total for this Payment: \$</i> _____						
FCO Project No.	Organization Code				EO	Obj Code	Fund	Category - Year	Module/OCA	Grant #	Amount
Line 1:											
Line 2:											
Line 3:											
Line 4:											
Capitalization? Yes ☐ No ☐											
<i>Invoice Received By:</i> _____				<i>Services / Merchandise Received By:</i> _____				<i>Serv. / Msde. Inspected and Approved By:</i> _____			
Date: _____				Date: _____				Date: _____			
/ /				/ /				/ /			

Contract / Invoice Information Block	
Invoice/Pay Request No. _____ Partial ☐ Final ☐ Contractor: (Name & Remittance Address) _____ _____ _____ Tel. No.: _____ Fax No.: _____	Bureau Project Manager: _____ Facility: _____ Project Desc: _____ Contract No.: _____ Dates Services Provided: (Not to exceed Contract Final Completion Date) From: _____ To: _____ Contract Final Completion Date: _____

Change Order Block				<i>Note: 5% Retainage not required on Guaranteed Maximum Price contracts</i>	
Previously approved C.O.s Total: _____				Original Contract \$ _____	
Change Orders Approved this Pay Period Only				<i>Plus All Change Orders</i> \$ _____	
New C.O. #	Date Approved	Additions	Deductions	= Contract Sum to \$ _____	
				Work Completed to \$ _____	
				<i>Less Retainage 5%</i> \$ _____	

				= Total Payable \$ _____	
				<i>Less Previous Certificates</i> \$ _____	

				= This Certificate \$ _____	

Certification Block			
CERTIFICATION BY THE CONTRACTOR: I HEREBY CERTIFY that, according to the best of my knowledge and belief, all items and amounts shown on the face of this Application are correct and that all work has been performed and materials supplied in full accordance with the terms and conditions of the Contract, and that all the amounts due out of any previous payments made to the Contractor by the Owner . Further, I agree to promptly pay each materialman, laborer, and/or subcontractor, as defined in Chapter 713.01, Florida Statutes, upon receipt of payment from the Owner , out of the amount paid to me on account of such materialman's, laborer's, and/or subcontractor's work, the amount to which said materialman, laborer, and/or subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to myself on account of such materialman's, laborer's, and/or subcontractor's work, pursuant to sections 255.0705 through 255.078, Florida Statutes (the Florida Prompt Payment Act).			
Contractor: _____		Date: _____	
CERTIFICATION BY THE CONSULTANT: I HEREBY CERTIFY that I have checked and verified this Progress Payment Application; that to the best of my knowledge and belief the above application is a true statement of the value of the work performed, that all work and materials included in this Certificate have been inspected by me or by my authorized assistants; that all work has been performed and materials supplied in full accordance with the terms of this Contract; and I approve for payment the amount noted above.			
Date: _____		Consultant: _____	
REVIEWED BY OWNER'S REPRESENTATIVE: I HAVE REVIEWED AND APPROVED the services performed and hereby RECOMMEND PAYMENT of the above request.			
Date: _____		Project Manager: _____	

DEPARTMENT OF ENVIRONMENTAL PROTECTION

EXHIBIT B: Payment Schedule of Values

CERTIFICATE FOR PAYMENT containing Contractor's signed Certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
PAGE _____ OF _____ PAGES

Pay Request Number:
Pay Request Date:
Period To:
Project No.:

A	B	C	D	E	F
Description of Work	Scheduled Value	Work Completed		%, (C/B)	Balance to Finish (B-C)
		To Date	This Period		

Revised 10/10/2007

Bureau of Design and Construction
3800 Commonwealth Blvd., MS #520
Tallahassee, Florida 32399-3000

Date: _____

Project: _____

Project #: _____

Location: _____

Contractor Name: _____

DEP Bid No. BDC51-23/24, Page 115

EXHIBIT D: Change Order

DEPARTMENT OF ENVIRONMENTAL PROTECTION				
<u>Change Order:</u>				
<u>Contract for Construction Services:</u>				
Contract No.:			Change Order No.:	
Project No.:			Vendor / Contact Person:	
Location / Park:			Phone No.:	
Fixed Price:				
Description of Change (Attach additional sheets if required):			Decrease:	Increase:
Project Period:	Days:	Date:	Cost Description:	Costs:
<i>Total Contract Days & Start Date:</i>			<i>Original Contract Sum:</i>	
<i>Original Substantial Completion:</i>			<i>Fixed Price Cost Change:</i>	
<i>Present Substantial Completion:</i>			Net Change:	
This change add:			<i>Present Contract Sum:</i>	
New Substantial Completion:			plus one year New Contract Sum:	
New Final Completion:				
This Change Order is an amendment to the Contract Agreement between CONTRACTOR and the DEPARTMENT, and all contract provisions shall apply unless specifically exempted. The amount and time change designated are the maximum agreed to by both the DEPARTMENT and the CONTRACTOR for this change. In consideration of the foregoing adjustments in contract time and contract sum the CONTRACTOR hereby releases DEPARTMENT from all claims, demands or causes of action arising out of the transactions, events and occurrences giving rise to this Change Order. This written Change Order is the entire agreement between DEPARTMENT and CONTRACTOR with respect to this Change Order. No other agreements or modifications shall apply to this contract amendment unless expressly provided herein. This Change Order represents final agency action pursuant to Section 120.57, Florida Statutes (1989).				
Signatures and Dates:				
			<i>Date:</i>	
<i>Contract Authority, FDEP</i>		<i>Signature:</i>		

				<i>Date:</i>				
<i>Contract Administrator, BDC, FDEP</i>				<i>Signature:</i>				
				<i>Date:</i>				
<i>Project Manager, BDC, FDEP</i>				<i>Signature:</i>				
				<i>Date:</i>				
<i>Contractor</i>				<i>Signature:</i>				
Encumbrance Information:								
Project No.:	Grant No.:	Organization Code:	Category & Year:	Fund:	Module:	Object Code:	EO:	Amount:
							check	\$
Total:								
cc.	Procurement (MS 93)							
	The Bureau of Finance & Accounting (MS 78)							

EXHIBIT E: Change Directive

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Change Directive

Contract for Construction Services

Contract No: _____

Project No: _____

Vendor: _____

Contact Person: _____

Location / Park: _____

Phone No.: _____

Description of Change (Attach additional sheets if required)

When signed by the Owner and received by the Contractor, this document becomes effective IMMEDIATELY as a Construction Change Directive, and the Contractor shall proceed with the change(s) described above.

Signature and Date:

Contract Authority, DEP

Signature

Date

EXHIBIT F: Certificate of Substantial Completion
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Certificate of Substantial Completion

Distribution to:

- ☐ Contracts Manager
- ☐ Project Manager
- ☐ Consultant
- ☐ CONTRACTOR

OWNER:
Department of Environmental Protection
Division of Recreation and Parks
CONSULTANT: _____

Project No: _____
Project: _____

CONTRACTOR: _____

Attn: _____
Date of Issuance: _____

Contract For: _____
Contract Date: _____

The work performed under this Contract has been reviewed and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby established as _____, which is also the date of commencement of applicable warranties required by contract documents, except as stated below.

DEFINITION OF DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Consultant when construction is sufficiently complete, in accordance with the contract Documents, so the OWNER can occupy or utilize the Work or designated portion thereof for the use for which it is intended, as expressed in the contract documents.

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the contract documents. The date of commencement of warranties for items on the attached list will be the date of final payment unless otherwise agreed to in writing.

CONSULTANT By _____ Date _____

The OWNER accepts the Work or designated portion thereof as substantially complete.

Department of Environmental Protection,
Division of Recreation and Parks
By _____ Date _____

The CONTRACTOR will complete or correct the work on the list of items attached hereto within the time prescribed in the contract from the above Date of Substantial Completion.

CONTRACTOR By _____ Date _____

EXHIBIT G: Contractor's Affidavit of Contract Completion

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Contractor's Affidavit of Contract Completion

AGENCY: _____

PROJECT: _____

CONTRACTOR: _____

CONTRACT DATE: _____ CONTRACT AMOUNT: _____

CONTRACTOR'S AFFIDAVIT

I solemnly swear and affirm: That the work under the above referenced contract and all amendments thereto have been completed in accordance with the requirements of said contract; that all costs incurred for equipment, materials, labor, and services against the project have been paid; that no liens have been attached against the project; that no suits are pending by reason by work on the project under the contract; that all Workmen's Compensation claims are covered by Workmen's Compensation insurance as required by law; that all public liability claims are adequately covered by insurance, and that the CONTRACTOR shall save, protect, defend, indemnify, and hold the OWNER harmless from and against any and all claims which arise as a direct or indirect result of any transaction, event or occurrence related to performance of the work contemplated under said contract.

CONTRACTOR:

Company Name

By: _____ (Corporate Seal)
Signature

Printed Name and Title

STATE OF _____
COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____, 20____, by

(name) as _____ (title) of

(company name), a _____ (state of incorporation,
corporation, on behalf of the corporation.) He or she is personally known to me or has produced
_____ as identification.

Notary Public, State of Florida

Printed/Typed Name of Notary

(SEAL)

Commission No.: _____

Commission Expires: _____

EXHIBIT H: Minority Participation Report

Department of Environmental Protection

Bureau of Design and Construction

Date: / /

Please submit all invoices and this form to:

**Bureau of Design and Construction
3800 Commonwealth Boulevard MS #520
Tallahassee, FL 32399
Ph. No. (850) 245-2300**

Complete the top portion for every invoice.

Firm submitting report: _____

FCO Project No.: _____ Contract No.: _____ Task Assignment No.: _____

For Invoice No.: _____ Invoice Amount: \$ _____

Will any portion of this invoice be used as payment to a Minority Owned Vendor, Supplier or Sub-Contractor?

☐ NO ☐ YES ☐ THIS IS A MINORITY BUSINESS

If **YES** please complete the following information: Use additional pages as necessary.

Minority Owned Business:

- | | | |
|----|---------------|---------------|
| 1. | _____ | \$ _____ |
| | <i>Vendor</i> | <i>Amount</i> |
| 2. | _____ | \$ _____ |
| | <i>Vendor</i> | <i>Amount</i> |
| 3. | _____ | \$ _____ |
| | <i>Vendor</i> | <i>Amount</i> |
| 4. | _____ | \$ _____ |
| | <i>Vendor</i> | <i>Amount</i> |
| 5. | _____ | \$ _____ |
| | <i>Vendor</i> | <i>Amount</i> |
| 6. | _____ | \$ _____ |
| | <i>Vendor</i> | <i>Amount</i> |

Total Amount: \$ _____

EXHIBIT I: Amendment Form

DEP CONTRACT NO. _____
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AMENDMENT NO. _____

THIS CONTRACT as entered into on the _____ day of _____, _____,
between the Department of Environmental Protection (hereinafter referred to as the "Department")
and _____ (hereinafter referred to as the "Contractor"), is
hereby amended as follows:

1.

2.

IN ALL OTHER RESPECTS, the Agreement of which this is an Amendment, and attachments
relative thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed this
day of _____, _____.

By: _____
(Signature)

(Name and Title)

(Address)

(City, State, and Zip)

By: _____
(Secretary's signature or designee's)

(Name and Title)
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Approved as to form and legality:

DEP Attorney



EXHIBIT J:

State of Florida
Department of
Environmental Protection
3800 Commonwealth Blvd., MS #520
Tallahassee, Florida 32399-3000

BOND NUMBER: _____

LABOR AND MATERIAL BONDS

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENT: that *(Company Name)*, a *(Type of entity, for example: Florida corporation)*, *(Company Address)*, *(Company Telephone)*

as Principal, hereinafter called Contractor, and *(SURETY NAME ADDRESS AND PHONE NUMBER)*

as Surety, hereinafter called Surety, are held and firmly bound unto the State of Florida Department of Environmental Protection as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of *(Written amount of award)*, *(Numerical amount)*

for the payment whereof Contractor and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS,

Contractor has by written agreement dated *(Contract date)*, entered into a contract with Owner for *(Project Name, Location)*, *(Contract Number)* in accordance with Drawings and Specifications prepared by *(Consultant Company, Address)*, phone: *(Consultant Phone #)*, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

THE CONDITIONS OF THIS BOND ARE AS FOLLOWS:

- 1 Contractor shall promptly make all payments owing when due to all persons who are defined in Section 713.01, Florida Statutes, whose claims derive directly or indirectly from the prosecution of the work provided for in the contract, then this bond is void; otherwise, it remains in full force and effect.
2. Each said claimant shall have a right of action against the Contractor and Surety for the amount due him. No such action shall subject the Obligee to any cost, expense, loss or damage, and Contractor shall promptly pay Obligee for the full measure of all cost, expense, loss, damage, and attorney's fees sustained by Obligee as a result of any default by Contractor under the contract.
3. Pursuant to Section 255.05, Florida Statutes, a claimant, except a laborer, who is not in privity with the Contractor and who has not received payment for his labor, materials, equipment or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, equipment or supplies for the prosecution of the work furnish the Contractor with a notice that he intends to look to the bond for protection. A claimant who is not in privity with the Contractor and who has not received payment for his labor, materials, equipment or supplies shall, within ninety (90) days after completing performance of the labor or after completing delivery of the materials, equipment or supplies, deliver to the Contractor and to the Surety written notice of the performance of the labor or delivery of the materials, equipment or supplies and of the nonpayment. No action for the labor, materials, equipment or supplies may be instituted against the Contractor or the Surety after one year from the date performance of the labor is completed or delivery of the materials, equipment or supplies is completed.
4. An action against the Surety or the Contractor or both, may be brought in the county in which the public building or public work is being constructed or repaired or in any other place authorized by the provisions of Chapter 47, Florida Statutes.
5. The amount of this bond shall be changed only to the extent that the Contract Sum is changed in accord with applicable provisions of the Contract for Construction.
6. Neither any change in or under the contract documents, nor any compliance or noncompliance with any formalities provided in the contract or the change shall relieve the Surety of its obligations under this bond.
7. This bond incorporates by reference all the requirements of Section 255.05, Florida Statutes, including, but not limited to, all notice and time limitation provisions therein. This bond shall be construed and deemed a statutory bond issued pursuant to Section 255.05, Florida Statutes, and not a common law bond.

SIGNED AND SEALED THIS _____ (Award Date)

(Signature of Witness)

(Signature of Contractor) (Seal)
(Official Representative, Title)

(Signature of Witness)

(Signature of Attorney-In-Fact) (Seal)

(Type Name)

(Signature of Witness)

(Signature of Florida Resident Agent)

(Type Name & Registration Number)

Power of Attorney attached hereto.

NOTES CONCERNING SURETY AND EXECUTION

A. SURETY COMPANY REQUIREMENTS

To be acceptable to the Department of Environmental Protection, a Surety Company shall comply with all of the requirements of Article 8 of the General Conditions of the Contract.

B. EXECUTION OF BOND

1. Enter the Surety Company's name and address on each copy of the Bond in the space provided.
2. Enter the date shown on page 12 of the Agreement in the space provided on each copy of the Bond.
3. Enter the date of execution on each copy of the Bond in the space provided. This date must be the same as the date shown on the Agreement.
4. Have each copy of the Bond signed by the same person that signed the Agreement on behalf of the Contractor. Type in that person's name and title in the place provided on each copy of the Bond, and have one other individual witness that person's signature on each copy of the Bond. Also, have the Contractor's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
5. Have each copy of the Bond signed by the person authorized to sign on behalf of the Surety Company. Type that person's name in the place provided on each copy of the Bond, and have one other individual witness that person's signature on each copy of the Bond. Also, have the Surety Company's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
6. Have each copy of the Bond signed by a Florida Resident Agent (Reference Chapters 624.425 and 624.426 of the Florida Statutes). Type in that person's name and registration number in the place provided on each copy of the Bond and have one other individual witness that person's signature on each copy of the Bond. This may be the same person indicated in B.5 above, if this person is a Florida Resident Agent and is also authorized to sign on behalf of the Surety Company as Attorney-In-Fact.
7. Each copy of the Bond must have a Power of Attorney attached indicating that the person in B.5 above is authorized to sign on behalf of the Surety Company.
8. Each copy of the Power of Attorney must have the Surety Company's Corporate Seal and a Notary Seal either manually affixed or they may utilize facsimile reproductions of the same.
9. If the date of execution of the Power of Attorney is not the same as the date shown on the Agreement, then the Power of Attorney must be certified to still be in effect on the date shown on page 12 of the Agreement.
10. If the Bond is being backed by the Small Business Administration, then a certified true and correct copy of the Surety Bond Guarantee Agreement, SBA Form 990, must be attached to each copy of the Bond.



State of Florida
Department of
Environmental Protection
3800 Commonwealth Blvd., MS #520
Tallahassee, Florida 32399-3000

BOND NUMBER: _____

PERFORMANCE BOND

THIS BOND IS ISSUED SIMULTANEOUSLY WITH LABOR AND MATERIAL BOND IN
FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL
PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENT: that (*Company Name*), a (*Type of entity, for example: Florida corporation*), (*Company Address*), (*Company Telephone*)

as Principal, hereinafter called Contractor, and (*SURETY NAME ADDRESS AND PHONE NUMBER*)

as Surety, hereinafter called Surety, are held and firmly bound unto the State of Florida Department of Environmental Protection as Oblige, hereinafter called Owner, for the use and benefit of claimants as herein below defined, in the amount of (*Written amount of award*), (*Numerical amount*)

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS,

Contractor has by written agreement dated (*Contract date*), entered into a contract with Owner for (*Project Name, Location*), (*Contract Number*) in accordance with Drawings and Specifications prepared by (*Consultant Company, Address*), phone: (*Consultant Phone #*), which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract and all obligations thereunder, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the surety may promptly remedy the default, in accordance with Section 255.05, Florida Statutes, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a Contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price", as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner. The time within which the Owner can institute an action against either the Contractor or the Surety shall be governed by the pertinent Florida Statutes.

SIGNED AND SEALED THIS _____ (Award Date)

(Signature of Witness)

(Signature of Contractor) (Seal)
(Official Representative, Title)

(Signature of Witness)

(Signature of Attorney-In-Fact) (Seal)

(Type Name)

(Signature of Witness)

(Signature of Florida Resident Agent)

(Type Name & Registration Number)

Power of Attorney attached hereto.

NOTES CONCERNING SURETY AND EXECUTION

A. SURETY COMPANY REQUIREMENTS

To be acceptable to the Department of Environmental Protection, a Surety Company shall comply with all of the requirements of Article 8 of the General Conditions of the Contract.

B. EXECUTION OF BOND

1. Enter the Surety Company's name and address on each copy of the Bond in the space provided.
2. Enter the date shown on page 12 of the Agreement in the space provided on each copy of the Bond.
3. Enter the date of execution on each copy of the Bond in the space provided. This date must be the same as the date shown on the Agreement.
4. Have each copy of the Bond signed by the same person that signed the Agreement on behalf of the Contractor. Type in that person's name and title in the place provided on each copy of the Bond, and have one other individual witness that person's signature on each copy of the Bond. Also, have the Contractor's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
5. Have each copy of the Bond signed by the person authorized to sign on behalf of the Surety Company. Type that person's name in the place provided on each copy of the Bond and have one other individual witness that person's signature on each copy of the Bond. Also, have the Surety Company's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
6. Have each copy of the Bond signed by a Florida Resident Agent (Reference Chapters 624.425 and 624.426 of the Florida Statutes). Type in that person's name and registration number in the place provided on each copy of the Bond and have one other individual witness that person's signature on each copy of the Bond. This may be the same person indicated in B.5 above, if this person is a Florida Resident Agent and is also authorized to sign on behalf of the Surety Company as Attorney-In-Fact.
7. Each copy of the Bond must have a Power of Attorney attached indicating that the person in B.5 above is authorized to sign on behalf of the Surety Company.
8. Each copy of the Power of Attorney must have the Surety Company's Corporate Seal and a Notary Seal either manually affixed or they may utilize facsimile reproductions of the same.
9. If the date of execution of the Power of Attorney is not the same as the date shown on the Agreement, then the Power of Attorney must be certified to still be in effect on the date shown on page 12 of the Agreement.
10. If the Bond is being backed by the Small Business Administration, then a certified true and correct copy of the Surety Bond.

REMOVE WHEN IN ADOBE