

# GENERAL TERMS AND CONDITIONS

For Level 4 & 5 Construction Contracts with the State of Florida  
(Projects over \$200,000)

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# GENERAL TERMS AND CONDITIONS

## SECTION A – DEFINITIONS

Whenever the following terms (or pronouns which replace these terms) are used in the Contract Documents, their intent and meaning shall be interpreted as follows:

### AGREEMENT:

The document entitled "Agreement Between Owner and Contractor" in the form attached as Exhibit 1. The Agreement represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements. The Agreement may be amended only by a Modification.

### AIA DOCUMENT

The American Institute of Architects Document A201, General Conditions of Contract for Construction – 1997 edition. Where referenced, the terms of the AIA Document shall apply to this Agreement as if written in full herein.

### ARCHITECT/ENGINEER:

The Design Professionals (Architect/Engineer, Architect, Engineer or Other) commissioned by Owner for the Project. The terms Architect or Architect/Engineer mean the Architect/Engineer and its authorized representative.

### BIDDER:

Any individual, firm, partnership or corporation submitting a Proposal for the Project.

### BIDDING DOCUMENTS:

All documents provided by Owner or Architect/Engineer to Bidders in connection with the solicitation of bids for the Project, including (i) these General Terms and Conditions; (ii) any Supplementary Terms and Conditions; (iii) the plans, drawings and specifications for the Project; and (iv) any Addenda issued pursuant to Section B-7.

### CHANGE ORDER:

A written document prepared by Architect/Engineer and signed by Owner stating their agreement on (i) a change in the work required on the Project; (ii) the amount of adjustment in the Contract Sum, if any; and (iii) the extent of an adjustment in the Contract Time, if any.

### CONTRACT DOCUMENTS:

All documents to be incorporated into the Agreement, including (i) these

General Terms and Conditions; (ii) any Supplementary Terms and Conditions; (iii) the plans, drawings and specifications for the Project; (iv) any Addenda issued pursuant to Section B-7; (v) the Proposal; and (vi) any Modifications.

### CONTRACT SUM:

The amount stated in the Agreement, which is the total amount payable by Owner to Contractor for completing the Project.

### CONTRACT TIME:

The period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Project.

### CONTRACTOR:

The successful Bidder who enters into the Agreement.

### MODIFICATION:

A document issued after execution of the Agreement with the intent of amending the terms thereof, including (i) a written amendment to the Agreement signed by both parties, (ii) a Change Order, (iii) a written order for a minor change in work issued by the Architect/Engineer.

### OWNER:

The state agency identified in the Bidding Documents and the Agreement.

### PROJECT:

The Project identified in the Bidding Documents and the Agreement.

### PROPOSAL:

A bid to work on the Project, which the Bidder shall submit on approved forms.

### SUBSTANTIAL COMPLETION:

"Substantial Completion" shall mean that the Project is sufficiently completed in accordance with the Contract Documents, so that Owner can occupy or utilize the work or designated portions thereof for the use for which it is intended, as expressed in the Contract Documents. The term "Substantial Completion" shall not mean the inclusion of such minor alterations and patching as the Final Inspection shall disclose.

## SECTION B -- BIDDING CONDITIONS

### B-1 PREQUALIFICATION TO SUBMIT A BID

Bidder qualification requirements and procedures are established by Department rule (Rule 60D-5, Florida Administrative Code), and by the Bidding Documents. Failure of the bidder to strictly meet and follow all such requirements and procedures may result in bid rejection.

**Prequalification Requirements:** If stated in the Invitation to Bid (ITB), Bidders who are regulated under Chapter 399, 455, 489, or 633, Florida Statutes will be prequalified to bid in that specific field of construction if they provide the Owner with evidence of:

- (i). Current State Contractor license certification or registration as required under Florida Statutes
- (ii). Current Corporate Charter registration if the potential bidder is a domestic (Florida) corporation, or if the potential bidder is a foreign (non-Florida) corporation, or a limited partnership or limited liability company, with a current registration with the Florida Department of State.

#### **PLEASE NOTE:**

~~When required, evidence of above requirements for prequalification should be provided to the Department of Military Affairs no later than five (5) calendar days prior to bid date or as otherwise stated in the ITB. Failure to pre-qualify may result in disqualification of a bid. (Please call 904-823-0285 for instructions on prequalification with the Department of Military Affairs).~~

**Other Prequalification Requirements:** Additional prequalification may be requested for projects that require a contractor with specific expertise and experience. These requirements may be set forth in the Special Terms and Conditions or may be required through pre-bid conferences by the Agency or the Architect-Engineer.

### B-2 FAMILIARITY WITH LAWS

Bidders are required to be familiar with all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the Bidder will in no way relieve it from responsibility.

### B-3 FLORIDA PRODUCTS AND LABOR

Bidder's attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts Florida products and labor shall be used wherever price and quality are equal.

### B-4 PERMITS

Bidders will be obligated to identify and obtain all necessary permits for the Project. Unless specifically excluded elsewhere, Bidder shall include the cost of all such permits, including impact fees and review fees, in its Bid/Proposal. Such permits include but are not limited to the building permit, any plumbing, electrical, other internal system permits, and any connection permits.

### B-5 TAXES

Although Owner is not subject to the Florida Sales and Use Tax, any contractor who purchases materials and services, which will be used in the construction of State-owned buildings, will not be exempted from the Tax on these materials and services as evidenced by the following excerpt

from the Florida Statutes:

"The State, any county, municipality or political subdivision of this State is exempt from the sales tax, except this exemption shall not include sales of tangible personal property made to contractors employed either directly or as agents of any such government or political subdivision thereof when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision thereof."

Owner is not subject to:

1. Federal Excise Taxes on materials or appliances that are incorporated into and become a part of the completed improvement.
2. Federal Tax on Transportation of Property.

In every case of a purchase of materials to be incorporated in the work, which are subject to Federal Excise Tax, Owner will furnish to contractor the necessary Federal Excise Tax Exemption Certificate upon receipt of a copy of the supplier's invoice showing the item or items, the net price, and Federal Excise Tax separately.

Bidders shall take these 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-6 ALTERNATES

If Owner wishes to learn the relative or additional construction cost of an alternative method of construction, an alternative use or type of material or an increase or decrease in scope of the Project, these items will be defined as alternates and will be specifically described by the Bidding Documents. Alternates will be listed in the Proposal form in a manner that the Bidder shall be able to clearly indicate what sums they will add to (or deduct from) their Base Bid.

### B-7 ADDENDA

In case the Architect/Engineer finds it expedient to supplement, modify or interpret any portion of the Bidding Documents during the bidding period, such procedure will be accomplished by the issuance of written Addenda to the Bidding Documents, which will be delivered or mailed to all prospective Bidders.

### B-8 INTERPRETATION OF BIDDING DOCUMENTS

No interpretation of the meaning of the Drawings, Specifications or other Bidding Documents and no correction of any apparent ambiguity, inconsistency or error therein will be made to any Bidder orally. Every request for such interpretation or correction shall be in writing, and addressed to the Architect/Engineer. All such interpretations and supplemental instruction will be in the form of written Addenda to the Bidding Documents.

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

### B-9 EXAMINATION OF BIDDING DOCUMENTS AND WORKSITE

Bidders may be required by the Invitation to Bid, before submitting their

proposals, to visit the site of the proposed work and completely familiarize themselves with the nature and extent of the work and any local conditions that may in any manner affect the work to be performed and the equipment, materials and labor required. They are also required to examine carefully any Drawings, Specifications and other Bidding Documents to inform themselves thoroughly regarding any and all conditions and requirements that may in any manner affect the work.

The Owner is presumed to be the owner of all drawings and specifications, and Contractor may not use those documents except as authorized herein or in Article 1.6 of the AIA Document ("Ownership and Use of Drawings, Specifications and Other Instruments of Service").

#### B-10 BASIS FOR BIDDING - TRADE NAMES

For clarity of description and as a standard of comparison, certain equipment, materials, etc., have been specified by at least two trade names or manufacturers. To ensure a uniform basis for bidding, the Bidder shall base its Proposal on the particular system, equipment or material specified. After the contract is let, other equipment materials, etc., as manufactured by other manufacturers may be accepted only if, in the opinion of the Architect/Engineer, same is equivalent in quality and workmanship and will perform its intended purpose satisfactorily.

#### B-11 BID GUARANTEE

**On projects where the base bid and sum of all additive alternates exceeds \$100,000, the bid proposal shall be accompanied by a bid guarantee of not less than five (5) percent of the amount of the bid.** The bid bond may be a certified check, a cashier's check, treasurer's check, bank draft or Bid Bond made payable to Owner. If a bid bond is submitted, it must be signed by a Florida Licensed Resident Agent who holds a current Power of Attorney from the Surety Company issuing the Bond and the Power of Attorney must be attached to the Bid Bond. Such check or Bid Bond shall be submitted with the understanding that it shall guarantee that the Bidder (a) will not withdraw its bid for sixty (60) days after the scheduled date of opening of the bids; (b) will enter into a written contract with Owner in accordance with the form of Agreement attached as Exhibit 1 within ten (10) calendar days after receiving the executable copies, and (c) will diligently pursue the required Performance Bond and Labor and Material Payment Bond and provide such bonds within twenty (20) calendar days after receiving the Agreement. In the event Bidder fails to perform as described in the preceding sentence, the Bidder shall be liable to Owner for the full amount of the bid guarantee as representing the damage to Owner on account of the default.

The Bid Bonds or checks shall be returned to all except the apparent lowest two qualified Bidders after the formal opening of bids. The remaining Bid Bonds or checks will be returned to the two lowest Bidders after Owner and the accepted Bidder have executed the Agreement and the Performance Bond and Labor and Material Payment Bond have been approved by Owner. If the required Agreement and Bonds have not been executed within sixty (60) calendar days after the date of the opening of the bids, then the Bid Bond or check of any 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.

#### B-12 SURETY COMPANIES ACCEPTABLE TO STATE

To be acceptable to the State as Surety for Bid Bonds, Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Office of Insurance Regulation, authorizing it to write surety bonds in the state.

2. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
5. If the Contract Award Amount exceeds \$500,000, the Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

| Contract Amount (\$) |                | Policy Holder's Rating | Required Financial Rating |
|----------------------|----------------|------------------------|---------------------------|
| 0                    | To 1,000,000   | A-                     | CLASS I                   |
| 1,000,000            | To 2,000,000   | A-                     | CLASS II                  |
| 2,000,000            | To 5,000,000   | A-                     | CLASS III                 |
| 5,000,000            | To 10,000,000  | A-                     | CLASS IV                  |
| 10,000,000           | To 25,000,000  | A-                     | CLASS V                   |
| 25,000,000           | To 50,000,000  | A-                     | CLASS VI                  |
| 50,000,000           | To 100,000,000 | A-                     | CLASS VII                 |

Further, the Surety Company shall not expose itself to loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

- (a) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk. The 10% maximum exposure requirement shall not apply to the reinsuring carrier provided authorization by the Florida Office of Insurance Regulation to do business in this state has been obtained.
- (b) The amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall also be deducted in determining the limitation of the risk.

#### B-13 PREPARATION AND SUBMISSION OF BIDS

Each Bidder shall submit its Proposal on Bidder's letterhead using the proposal form supplied by Architect/Engineer and indicating its bid prices for the Base Bid and any alternates on which he bids. Any erasure or other correction in the proposal may be explained or noted over the signature of the Bidder.

Proposals containing any conditions, omissions, unexplained erasures, alterations, items not called for or irregularities of any kind may be rejected by Owner.

**Each bid must show the full business address of the Bidder and state whether it is an individual, corporation or partnership. The bid should be submitted in triplicate in a sealed envelope. The envelope must be clearly marked on its face as described in the Invitation to Bid follows:**

**"SEALED BID – DO NOT OPEN. Project 22564 CBJTC Primary Power Distribution Upgrade"**

Each Bidder must fill in the State Project Number and submit the bid prior to the time and the place specified in the Bidding Documents. Sealed bid envelopes submitted by mail or by delivery service must be delivered within a separate mail or delivery envelope, also marked "SEALED BID".

Bids not delivered in sealed envelopes may be returned to the bidder.

#### B-14 LISTING OF SUBCONTRACTORS

In order that Owner may be assured that only qualified and competent subcontractors will be employed on the Project, each Bidder shall submit in accordance with the Invitation to Bid (ITB) with its Proposal a list of the subcontractors who will perform the work for each Division of the Specifications utilizing the form supplied with the ITB. The Bidder shall have determined to its own complete satisfaction that a listed subcontractor has been successfully engaged in this particular type of business for a reasonable length of time, has successfully completed installations comparable to that which is required by this Agreement and is qualified both technically and financially to perform that pertinent phase of this work for which the subcontractor is listed. Only one subcontractor shall be listed for each phase of the work.

Any Bidder who lists a subcontractor not certified and/or registered by the State to perform the work of its trade if, such certification or registration is required for the trade by Florida Laws, will be rejected as non-responsive.

No change shall be made in the list of subcontractors, before or after the award of a contract, unless agreed to in writing by Owner.

#### B-15 SUBCONTRACTOR DATA

Within two (2) working days after bid opening, the apparent low bidder shall submit to Owner's Project Manager the following for each subcontractor.

1. Complete name, address and phone number.
2. Corporate Charter Number. (If applicable)
3. License Number.
4. Name of record license holder.

#### B-16 WITHDRAWAL OF BIDS

Bids may be withdrawn by written request received from Bidders prior to the time fixed for opening. Negligence on the part of the Bidder in preparing the bid confers no right for withdrawal of the bid after it has been opened.

#### B-17 DISQUALIFICATION OF BIDDERS

More than one bid from an individual, firm, partnership, corporation or association under the same or different names will not be considered. Reasonable grounds for believing that a Bidder is interested in more than one proposal for the same work will cause the rejection of all proposals in which such Bidders are believed to be interested.

#### B-18 RECEIPT AND OPENING OF BIDS

Bids will be opened publicly at the time and place stated in the Bidding Documents. The officer whose duty it is to open them will decide when the specified time has arrived and no bids received thereafter will be considered. No responsibility will be attached to any officer for the premature opening of a bid not properly addressed and identified. At the time fixed for the opening of bids, the bids will be read out loud.

#### B-19 DISQUALIFICATION OF BIDS

Any or all Proposals will be rejected if there is reason to believe that collusion exists among the Bidders and no participants in such collusion will be considered in future proposals for the same work. Falsification of any entry made on the Proposal will be deemed a material bid deviation

and will be grounds for rejection.

#### B-20 REJECTION OF BIDS

Owner reserves the right to reject any and all bids under any of the circumstances prescribed in Rule 60D-5.0071, Florida Administrative Code, or if the low qualified bid exceeds the Project construction budget. If all bids are rejected, Owner may rebid the Project or proceed in any other manner to commence work on the Project as authorized by law.

#### B-21 DETERMINATION OF SUCCESSFUL BIDDER

Award of contract will be made to the responsive bidder, determined to be qualified in accordance with the provisions herein and meeting the requirements of the Bidding Documents that submits the lowest valid bid for the work. The lowest bid will be determined as follows:

1. The lowest bid will be the bid from the responsive Bidder that has submitted the lowest price for the base bid or the base bid plus the additive alternates or less the deductive alternates chosen by Owner to be included in or excluded from the proposed contract, taken in numerical order listed in the bid documents. The order of the alternates may be selected by Owner in any sequence so long as such acceptance out of order does not alter the designation of the low bidder.

2. On Projects where Bidding Documents provide for evaluation of the bids based on first cost and life cycle cost and performance criteria, the lowest bid will be the bid by the firm whose bid products are determined to yield the lowest total cost in accordance with the criteria set forth in the Bidding Documents.

#### B-22 QUALIFICATIONS FOR AWARD OF CONTRACT

Prior to being awarded a contract, a low Bidder will be required to satisfy the qualification requirements established in Rule 60D-5, Florida Administrative Code. Failure to strictly meet and follow all such requirements may result in disqualification for contract award.

Generally, a low responsive Bidder must provide to Owner the following:

1. Within two (2) working days after the notice of the bid decision, evidence of Bidder's ability to provide the necessary performance and payment bonds for the project by providing a letter of intent from a surety company meeting the requirements of Section B-11 above.

2. Within seven (7) working days after the notice of the bid decision, the bidder must provide, if requested: (a) a list of projects of similar size and complexity and their status for a period of thirty-six months prior to solicitation, (b) and a copy of the Bidder's current financial statement. Owner shall have wide discretion to determine whether the Bidder's experience and financial condition are adequate for the Project.

3. Prior to entering the Agreement, evidence of insurance in effect, equal to or exceeding the limits required in Section C-3 or other Contract Documents.

Owner will have fourteen (14) days from receipt of each document to determine whether the Bidder is qualified for the contract award. Should the Bidder be disqualified, its bid will be rejected and the Bidder submitting the next low responsive bid will be given seven (7) working days to submit its qualification data.

Other prequalification requirements may be set forth in the Special Terms and Conditions.

## B-23 NOTICE AND PROTEST PROCEDURES

### 1. Notification.

(a) Bid Solicitation: Owner shall provide notice of its decision or intended decision concerning a bid solicitation by advertising for bids and distribution of Bidding Documents.

(b) Contract Award: On contracts in excess of \$35,000, notice of a decision or intended decision on contract award or bid rejection shall be given by posting at the location where the bids were opened, by electronic posting or by direct communication to Bidders.

### 2. Protest.

(a) Any person who is affected adversely by Owner's decision or intended decision shall file with Owner a notice of protest in writing within 72 hours, excluding Saturday, Sunday and State legal holidays, after (i) receipt of the Bidding Documents if the protest is directed toward the Bidding Documents, or (ii) notice of Owner's decision or intended decision on contract award or bid rejection if the protest is directed toward contract award or bid rejection.

(b) Thereafter, a formal written protest by petition in compliance with Section 120.57, Florida Statutes, and Rule 28-110, Florida Administrative Code, must be filed with Owner within ten (10) days after the date the notice of protest was filed.

(c) Failure to file a timely notice of protest or a timely formal written protest petition shall constitute a waiver of protest proceedings. Any protest filed prior to posting of the bid tabulation or receipt of the notice of the agency decision or intended decision will be considered abandoned unless renewed within the time limit provided for protests.

### 3. Owner Action.

(a) Upon receipt of a notice of protest that has been timely filed, Owner shall delay the contract award process until the subject of the

protest is resolved by mutual agreement between the parties or by final Owner action, unless Owner sets forth in writing particular facts and circumstances which require the continuation of the bid solicitation process or the contract award process without delay to avoid an immediate and serious danger to public health, safety, or welfare; provided, however, that if the petition is not filed within the time stated above, the contract award process may continue as if the notice of protest had not been filed.

(b) Upon receipt of the formal written protest petition which has been timely filed, Owner shall attempt to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturday, Sunday and legal State holidays.

(c) If the protest is not resolved by mutual agreement within said seven (7) days, and if no disputed issue of material fact is involved, Owner may designate a Hearing Officer who shall conduct an informal proceeding pursuant to Section 120.57, Florida Statutes. The qualifications of such designated Hearing Officer shall be: (i) a member in good standing of The Florida Bar; or (ii) a person knowledgeable by virtue of practical experience of the procedures relating to soliciting and evaluating bids for state contracts. Notice of informal proceedings shall be given no less than three days prior to the proceeding. The proceeding may be held before Owner.

(d) If there is a disputed issue of material fact, the protest shall be referred to the Division of Administrative Hearings, State of Florida, for proceedings under Section 120.57, Florida Statutes.

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## SECTION C – CONTRACT CONDITIONS

### C-1 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

On projects where the Contract Sum exceeds \$100,000, Contractor shall furnish Owner with a 100% Performance Bond and 100% Labor and Material Payment Bond written by a Surety Company acceptable to Owner and authorized to do business in the State of Florida and signed by a Florida Licensed Resident Agent. Contractor is required to furnish replacement bonds in the event of cancellation of the original Performance Bond and Labor and Material Payment Bond. The Bonds shall be substantially in the form shown in Exhibits 2 and 3.

The cost of all Performance Bonds and Labor and Material Payment Bonds shall be borne by Contractor. The Bonds shall be accompanied by a duly authenticated or certified document, in duplicate, evidencing that the person executing the Bonds on behalf of the Surety had the authority to do so on that date of the Bond. In the usual case, conferring of that authority has occurred prior to the date of the Bond, and the document showing the date of appointment and enumeration of powers of the person executing the Bond is accompanied by a certification that the appointment and powers have not been revoked and remain in effect. The date of that certification shall be dated the same date as the Bonds and the Bonds shall be dated the same date as the Agreement.

### C-2 EXECUTION OF AGREEMENT AND BONDS

Contractor shall execute all required forms of the Agreement and return within fourteen (14) calendar days of their receipt. Failure to return all forms correctly executed within fourteen (14) calendar days of receipt, without extension by Owner otherwise, may constitute an irregularity and deemed grounds, at Owner's option, for rejection and forfeiture of the Bid Deposit or at Owner's option, for the deduction on a day-for-day basis from the time allotted for final completion of the work under the Agreement.

If the Contractor is a firm or Company owned by an individual, the agreement shall be executed in the name of the firm or company by the manual signature of the individual or sole proprietor.

If Contractor is a partnership, the Agreement shall be executed in the name of the partnership by a general or managing partner.

If Contractor is a corporation, the Agreement shall be executed in the name of the entity by a duly authorized officer.

If the Contractor is an LLC, the Agreement shall be executed by a managing member or manager of the company.

If the Contractor is a corporation, the agreement shall be executed in the name of the Corporation and shall bear the corporate seal. It may be signed for the corporation by the President and attested by the Secretary; if signed for the Corporation by any other officer than the President, the signature of such officer signing shall be attested by the Secretary, and the executed agreement shall be accompanied by a duly authenticated document bearing the seal of the corporation, quoting the section of the by-laws of the corporation authorizing the Board of Managers to designate such officer and copy of the resolution designating and authorizing him/her to execute on behalf of the corporation. That document must contain a statement that the authority is in effect on the date of the execution of the contract, and may not be dated earlier than the date of the execution of the Agreement. The same officer may not execute the Agreement and authenticate the document of authority.

The Performance Bond and Labor and Material Payment Bond shall be executed on behalf of Contractor in the same manner and by the same person who executed the Agreement.

### C-3 CONTRACTOR'S INSURANCE

Contractor shall not commence any work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by Owner, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida through an authorized licensed Florida Resident Agent.

Worker's Compensation Insurance. Contractor shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all of its employees connected with the work of this Project and, in case any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor. Such insurance shall comply fully with the Florida Worker's Compensation law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to Owner, for the protection of its employees not otherwise protected.

Bodily Injury and Property Damage Insurance. Contractor shall take out and maintain during the life of this Agreement the following insurance policies as shall protect it from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by itself or by anyone directly or indirectly employed by him/her, and the amount of such insurance shall be the minimum limits as follows:

- (1) Contractor's Comprehensive General Liability Insurance:  
\$1,000,000 Each Occurrence, Combined Single Limit.
- (2) Auto Liability Insurance:  
\$300,000 Each Occurrence, Combined Single Limit.
- (3) Owner's and Contractor's Protective Liability Insurance:  
\$500,000 Each Occurrence, Combined Single Limit.
- (4) Builder's Risk Insurance, All Risks Form:  
To be issued on a completed value basis. Installation Floaters and other Inland Marine Forms may be utilized where applicable and are in the best interest of Owner.

Asbestos Abatement Contractors Liability Insurance Pollution Endorsement. An asbestos abatement Contractor shall procure a pollution endorsement to his public liability insurance, against claim or claims expenses arising from the abatement project, as required by Section 255.56 of the Florida Statutes. The coverage by the endorsement may be of the Claims-Made type.

Subcontractor's Insurance. Unless the above policies extend to the operations of all subcontractors, Contractor shall require each subcontractors to procure and maintain during the life of the subcontract, insurance of the type specified above.

"XCU" (Explosion, Collapse, Underground Damage). Contractor's

insurance policies shall provide "XCU" coverage for those classifications in which they are applicable.

Broad Form Property Damage Coverage, Products and Completed Operations Coverages. Contractor's liability policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.

Contractual Liability-Work Contracts. Contractor's Liability Policy shall include Contractual Liability Coverage designed to protect Contractor for contractual liabilities assumed by Contractor in the performance of this Contract.

Indemnification. To the fullest extent permitted by law, Contractor and its liability insurer shall indemnify and hold harmless Owner from and against liabilities, damages, losses and costs, including but not limited to reasonable attorneys fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor or Contractor's employees, agents and subcontractors in the performance of work on the Project. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to Owner.

Contractor hereby acknowledges receipt of good and valuable consideration as part of its fee in exchange for giving Owner the indemnification provided above. The limit of such indemnification shall be \$1,000,000.00 per occurrence.

Loss Deductible Clause. Owner shall be exempt from, and in no way be liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor and/or Subcontractor providing such insurance.

Certificate of Insurance. Owner shall be furnished proof of coverage of the above required insurance. Said certificate of insurance forms shall be completed, signed by the authorized licensed Florida Resident Agent and returned to the office of Owner. These certificates shall be dated and show:

- (1) The name of the insured contractor, the specific job by name and number, the name of the insurer, the number of the policy, its effective date, and its termination date.
- (2) Statement that the Insurer will mail notice to Owner at least thirty (30) calendar days prior to any material changes in provisions or cancellation of the policy.
- (3) Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverage's required in this Section.
- (4) Certificate of Insurance shall state that Owner and Agent are listed as additional insured on all appropriate policies.
- (5) Copy of the endorsement or additional insured rider to the General Liability Policy.
- (6) Registration Number of authorized Resident Agent.

#### Miscellaneous

- (1) If Contractor requests in writing that insurance for special hazards be included in the property insurance policy, Owner shall permit Contractor to purchase such insurance, but the cost thereof shall be paid for by Contractor.
- (2) Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by

insurance, except such rights as they may have to the proceeds of such insurance held by Contractor as trustee. The Contractor shall require similar waivers by subcontractors and sub-subcontractors.

- (3) If required in writing by any party in interest, Contractor, as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of its duties. It shall deposit in a separate account any money so received, and it shall distribute it in accordance with such agreement as the parties in interest may reach. If after such loss no special agreement is made, replacement of damaged work shall be covered by an appropriate Change Order.
- (4) Owner, as trustee, shall have power to adjust and settle any loss with the insurers.
- (5) If Owner finds it necessary to occupy or use a portion or portions of the work prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by Owner and Contractor and to which the insurance company or companies providing the property insurance once have consented by endorsement to the policy or policies. This insurance shall not be cancelled or lapsed on account of such partial occupancy. Consent of Contractor and the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

#### C-4 NOTICE TO SECURE PERMITS AND UTILITY CONNECTIONS; NOTICE TO PROCEED

Once the Agreement is fully executed, Contractor will be given a notice to secure and pay for all required permits from all agencies with jurisdiction over the area in which the Project is located and to pay all required connection fees from all agencies supplying utilities to the Project.

Contractor is allowed thirty (30) calendar days from the time of this notice to secure and pay for those required permits and utility connections, if such connection fees are required before construction can start. Special permits such as tree removal, Water Management District, Dept. of Environmental Regulation, septic tank, etc., may be necessary before construction can start. If additional time is required, Contractor will request approval of a time extension for good cause for the purpose of obtaining any permit required prior to commencing construction on the site.

Upon paying for all required connections and securing the Building Permit, Contractor shall notify the Architect/Engineer and Owner. The Notice to Proceed to Mobilize on Site and to Proceed with Construction ("Notice to Proceed") will then be issued by Owner.

#### C-5 PUBLIC NOTICE

Immediately following receipt of Notice to Proceed as prescribed in Section C-4 hereinabove, Contractor shall post a notice in the following form in a conspicuous place on the Project site:

"Notice is hereby made to all those concerned and affected that (Contractor's Name) is performing (Project Name, Project Number at Project Location).

All parties furnishing labor, materials and/or equipment to said project are to provide notice of such in writing by certified mail to Owner at the (Owner's Address) within twenty (20) calendar days of first providing such labor, materials and/or equipment."

#### C-6 TIME OF COMPLETION AND LIQUIDATED DAMAGES

The work to be performed under the Agreement shall (i) be commenced within ten (10) calendar days after date of Notice to Proceed; (ii) attain Substantial Completion by the time set forth in the "Supplementary Terms and Conditions" (the "Substantial Completion Date"), and (iii) be finally complete within 30 days of the Substantial Completion Date.

Because failure to complete the Project in a timely basis will result in substantial injury to Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that if Substantial Completion does not occur by the Substantial Completion Date, Contractor shall pay to Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in the "Supplementary Terms and Conditions" for each and every calendar day elapsing between the Substantial Completion Date and the date such substantial completion shall have been fully accomplished. Said liquidated damages shall be payable in addition to any excess expenses or costs payable by Contractor to Owner under Section C-40 ("Termination"), and shall not exclude the recovery of damages by Owner under other provisions of the Contract Documents, except for Contractor's delay. This provision of liquidated damages for delay shall in no manner affect Owner's right to terminate the contract as provided in Section C-40 or elsewhere in the Contract Documents. Owner's exercise of the right to terminate shall not release Contractor from its obligation to pay said liquidated damages in the amounts set out above.

In the event of termination of the Agreement by Owner prior to the Substantial Completion Date, Contractor shall be liable to Owner for the expenses for additional managerial and administrative services provided in Section C-40 and also for the per diem liquidated damages at the rate specified in the Agreement:

1. for each day it is in arrears in its work at the time of said termination as determined by the Architect/Engineer, and
2. for an additional thirty (30) calendar days, hereby stipulated and agreed to be the time it will require Owner to effect another contract for completion of the Project and for resumption of work thereon.

Provided, however, that the sum of 1 and 2 above shall not exceed the number of days beyond the Substantial Completion Date, or any reasonable extension thereof.

Owner may deduct from any balance retained by Owner, the liquidated damages for delay or termination, as the case may be, or such portions thereof as the retained balance will cover.

#### C-7 CONSTRUCTION SCHEDULES

Within twenty (20) calendar days after the date of Owner's issuance of a Notice to Proceed, Contractor shall prepare and electronically submit to the Architect/Engineer and Project Manager a construction schedule graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the Project, showing the sequence in which Contractor proposes for each such activity to occur and the duration (dates of commencement and completion, respectively) of each such activity.

At least once each month, the Architect/Engineer will determine whether the schedule developed and submitted by Contractor meets the requirements stated above and whether the progress of the work complies with Contractor's schedule. Contractor shall provide an updated schedule with each request for partial payment. Failure of Contractor to develop, submit and conform to a construction schedule as contemplated herein shall be sufficient grounds for the Architect/Engineer to find Contractor in substantial default and certify to Owner that sufficient cause exists to terminate the Agreement or to withhold any payment.

Following development and submittal of the construction schedule as

aforesaid, Contractor shall, at the end of each calendar month, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events affecting the progress of work already performed or yet to be performed in contrast with the construction schedule last submitted. Each such update and/or revision to the construction schedule shall be submitted to the Architect/Engineer and Project Manager electronically. Failure of Contractor to update, revise and submit the Construction Schedule as aforesaid shall be sufficient grounds for the Architect/Engineer to find Contractor in substantial default and certify to Owner that sufficient cause exists to terminate the Contract or to withhold payment to Contractor until a schedule or schedule update acceptable to the Architect/Engineer is submitted.

Contractor shall have the option of scheduling a Substantial Completion Date earlier than the date established by the Contract Documents; provided, however, in such event, such earlier Substantial Completion Date will be recognized by Owner only as a matter of convenience to Contractor and shall not change the date for Substantial Completion established by the Contract Documents or be otherwise binding on Owner or anyone under Owner's control; and provided further, however, in such event, should events occur during performance of the work necessary to complete the Project which would justify the granting to Contractor of an extension of the Contract Time pursuant to the provisions of the AIA Document, Contractor shall be entitled to receive only such an extension of Contract Time as is determined by the Architect/Engineer to be due Contractor as follows:

1. If the currently approved Contractor's schedule indicates completion ahead of the contractually established date for Substantial Completion, the time extension to the Agreement shall only be determined, when the total time directly affecting the critical path of the schedule is added to the end date of the schedule thereby making a new end date beyond the contractual completion date. The time extension will only be for the time between the currently approved contractual completion date and the new schedule end date.

2. If the currently approved Contractor's schedule indicates completion at or after the contractually established date for Substantial Completion, the time extension shall only be added to the contractually established date for the substantial completion and shall be determined by the Architect/Engineer as the portion of delay time directly affecting the critical path of the current approved contract schedule.

#### C-8 VERIFICATION OF OWNER'S SURVEY DATA

Prior to commencing any excavation or grading, Contractor shall be satisfied as to the accuracy of all survey data as indicated in these plans and specifications and/or as provided by Owner. Should Contractor discover any inaccuracies, errors, or omissions in the survey data, he shall immediately notify the Architect/Engineer in order that proper adjustments can be anticipated and ordered. Commencement by Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time Contractor has no claim against Owner resulting from alleged errors, omissions or inaccuracies of the said survey data.

#### C-9 CONSTRUCTION SITE AND FACILITIES

Sanitary Provisions. Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with regulations of the County or the Department of Health. No nuisance will be permitted.

Temporary Wiring. Contractor shall meet all safety requirements of the National Electric Code, Florida Department of Financial Services, Division of Worker's Compensation or local requirements. In addition, all wire shall be so sized that it is not over-loaded according to the National

Electric Code, and any wire used shall be fused to adequately protect that wire according to the Code referred to. Contractor shall have an adequate number of outlets and each outlet shall be properly and clearly labeled with the maximum voltage and fuse protection. Where temporary lighting is used, outlet shall consist of weatherproof socket insulated and provided with a locking type wire guard. All devices shall be properly grounded.

Storage and Work Areas. At the start of the operations Contractor shall make arrangements with the Architect/Engineer's field representative and Owner's representative for the assignment of storage and work areas. During construction Contractor shall maintain the areas in a neat condition.

Contractor's Field Offices. Trailers may be used for field offices, but their use as living quarters for personnel shall be limited to one staff member such as a night watchman or a superintendent.

Underground Utilities. Contractor shall meet all requirements of the United States Department of Labor Occupational Safety and Health Administration (OSHA) in the performance of work related to excavations for underground utilities, foundations and other subsurface work. Contractor shall conduct thorough training in OSHA standards and requirements on a continuing and regular basis throughout the execution of such work.

Cleaning. Contractor shall keep the site and surrounding areas reasonably clean and free of trash at all times. At Substantial Completion, the entire area shall be thoroughly cleaned, including all window glass, hardware, plumbing fixtures, electrical fixtures, tile work, etc., and shall be kept clean until final completion. Contractor shall replace all broken or defective glass and replace all air conditioning filters (any fixed grills or permanent filters shall be cleaned). If Contractor fails to clean up as required in this section, Owner may do so itself and charge the cost to Contractor.

Reporting. Contractor shall provide copies of all records of recycling and waste disposal, including the construction and demolition debris (C&D) report (to be furnished by DMA) to the CFMO Sustainability Office by email to [ng.fl.flamg.mbx.env-sus@army.mil](mailto:ng.fl.flamg.mbx.env-sus@army.mil).

#### C-10 DRAWINGS, SPECIFICATIONS, ETC. – COPIES, CHANGES, OWNERSHIP

Promptly after the Project is awarded to Contractor, the Architect/Engineer will provide Contractor with CAD plot and print files of all Project drawings and specifications. Contractor shall immediately indicate plainly and conspicuously on the field set of drawings and at appropriate paragraphs in the specifications, all changes or corrections made by Addenda and Change Orders as they are issued.

The Architect/Engineer is presumed to be the author and owner of all drawings and specifications prepared by it, and Contractor may not use those documents except as authorized herein. The provisions of Article 1.6 of the AIA Document ("Ownership and Use of Drawings, Specifications and Other Instruments of Service") shall apply.

#### C-11 SHOP DRAWINGS

Shop drawings shall be submitted for manufactured or fabricated materials as called for in the separate specification sections. Drawings shall be fully identified by project name, location, supplier's name, date, drawing number, specifications section reference, etc. Contractor shall submit, with such promptness as to cause no delay in its work, or in that or any other Contractor, four (4) copies (in addition to those copies necessary for its own requirements) of all shop drawings, and schedules, required for the work of the various trades, to the Architect/Engineer for approval. Contractor shall make no deviation from the approved drawings or the changes made thereto by the Architect/Engineer, if any.

It shall be the responsibility of Contractor to properly schedule the submission of shop drawings for approval to allow adequate time for checking of drawings, manufacture and shipment of items to job site in sufficient time to prevent delay in Progress Schedule.

It shall also be the responsibility of Contractor to coordinate the preparation of shop drawings of items, which will be furnished by more than one manufacturer but are designed to interface when installed.

Shop drawings submitted to the Architect/Engineer for its approval shall first be checked and approved by Contractor, the prima facie evidence of which shall be a "checked" stamp marked "Approved", or "Approved as Noted" on each copy of each shop drawing, placed thereon by Contractor. Shop drawings received without Contractor's "checked" stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect/Engineer and marked by him/her in one of the following ways:

- 1) Approved as drawn.
- 2) Approved as noted.
- 3) Returned for correction.
- 4) Not approved.

#### Submission and Approval Of Shop Drawing and Sample Schedule

If and when required by the Architect/Engineer, Contractor shall prepare and submit in triplicate to the Architect/Engineer a completely itemized Schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

- 1) Identification as to pertinent Specification Division.
- 2) Item(s) involved.
- 3) Name of pertinent subcontractor or supplier and the name of pertinent manufacturer.
- 4) Schedule date of delivery of pertinent items to the Project.

The subcontractors for all phases of the Project shall submit through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross referenced to the plans and specifications for easy identification.

All shop drawings, setting drawings, material brochures, samples and/or color selection materials, which are required and are not included in the foregoing shall be submitted via the Contractor. Insofar as is possible or practical, all shop drawings or descriptive literature of equipment for the mechanical or electrical trades shall be submitted in a complete brochure for each trade as soon as possible after Notice to Proceed is executed.

Owner will not grant time extension based on delays due to improper scheduling of work; and Owner, at its discretion, may withhold progress payments until such time as these requirements are fully satisfied.

#### C-12 REFERENCE TO A.S.T.M. OR FEDERAL SPECIFICATIONS

Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) or to the United States Government Federal Specifications, or to other standard specifications of other associations or trade organizations, in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by Owner, unless otherwise expressly provided in the Contract Documents.

#### C-13 MANUFACTURER'S SPECIFICATIONS

Where the name of a concern or manufacturer is mentioned on drawings or in specifications in reference to a required service or product, and no

qualifications or specification of such is included, then the material gauges, details of manufacture, finish, etc., shall be in accordance with its standard practice, direction or specifications. Contractor shall be responsible for any infringement of patents, royalties, or copyrights, which may be incurred thereby.

#### C-14 TESTS AND INSPECTIONS

The provisions of AIA Document Article 13.5 ("Tests and Inspections"), shall apply, subject to the other terms in this the Agreement and the following modifications: (i) delete last sentence of Article 13.5.1; and (ii) add the following:

Inspections: The Project will require detailed code compliance inspections by the local authorities with jurisdiction over the area in which the Project is located. The disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing, electrical, fire safety and general building. Contractor shall make all permits, drawings, specifications, previous inspection reports, and change documents available to Code Inspectors. Contractor shall provide a copy of each inspection report to the Architect/Engineer in a timely fashion.

Contractor has responsibilities relative to all types of inspections and is responsible for contacting all of the inspecting entities to determine its responsibilities. Each inspecting entity imposes unique and separate responsibilities. One inspection from an entity will not substitute for an inspection from another entity. The Architect/Engineer may also have responsibilities, relative to inspections.

Mark (XX) if included for use of Alternative plans review and inspection in accordance with 553.791, F.S.

\_\_\_\_ Contractor may use a private provider for alternative plans review and inspection in accordance with 553.791, F.S., at their own expense.

\_\_XX\_\_ Unless otherwise unavailable, contractor shall use a private provider for alternative plans review and inspection in accordance with 553.791, F.S. Fees shall be paid by the contractor and factor the cost of fees into bid.

Owner and/or the occupying state agency representatives may perform their own inspections upon reasonable notice.

Testing: The Architect/Engineer shall designate the tests which shall be made, and the Contractor shall not obligate the Owner for tests without the Architect/Engineer's approval.

Certain tests are required as part of the Agreement and shall be paid for by Contractor. These are specifically named in the technical specifications and the types of tests are as follows:

(1) Where tests are required by the technical specifications for materials, methods or equipment, Contractor shall pay the cost of initial tests to prove qualities and determine conformance with specification requirements, e.g., mill tests on cement and steel; load testing of piling; sieve analysis and calorimetric tests on sand; strength tests for determining proportions of materials or concrete, moisture content and sound transmission tests of concrete blocks, etc;

(2) If Contractor proposes substitute materials or equipment, Contractor shall pay for all tests requested by Architect/Engineer to ensure the specification requirements are satisfied;

(3) If materials or workmanship are used which fail to meet specification requirements Contractor shall pay the costs of all coring or other tests deemed necessary by Architect/Engineer to determine the safety or suitability of the material or element;

(4) The Contractor shall pay for all testing costs, including but not limited to; power, fuel, equipment and systems for proper operation such as electrical, plumbing, heating ventilation, air conditioning, elevator, dumbwaiters and conveyors, etc.

All other tests performed at the direction of the Architect/Engineer or the Owner shall be paid for by the Owner, except to the extent that the costs of performing such tests are otherwise chargeable to the Contractor under provisions of the Contract Documents.

#### C-15 APPROVAL OF MATERIALS

A list of all materials, equipment, etc., together with manufacturer's drawings and catalog information shall be submitted to the Architect/Engineer for approval prior to ordering material or equipment but not later than forty-five (45) calendar days after receipt of Notice to Proceed. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect/Engineer to determine whether same meets specifications. The Architect/Engineer's approval will not relieve Contractor of the responsibility for performance of any terms of the Agreement.

If the submittals reflect any changes from the plans or specifications, these changes should be clearly indicated by Contractor.

#### C-16 PROHIBITED MATERIALS - ASBESTOS

Per Section 255.40, Florida Statutes, the use of asbestos or asbestos-based fiber materials is prohibited in any buildings, construction of which is commenced after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any governmental entity.

#### C-17 ITEMS PRODUCED BY PRISON INDUSTRIES - PRIDE

The following language is mandated by Section 946.515, Fla. Statutes:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract 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); and for purposes of this contract the contractor shall be deemed to be substituted for the owner insofar as dealings with such corporation are concerned.

Owner will use good faith efforts to notify Contractor of any items required to be purchased from PRIDE under this section. Contractor may obtain additional information about products and services from PRIDE at <http://www.pride-enterprises.org>.

#### C-18 SUBSTITUTIONS

Substitutions for a specified system, product or material may be requested of the Architect/Engineer and the Architect/Engineer's written approval must be obtained before substitutions will be allowed. All requests for substitutions should be submitted within forty-five (45) days after award of Contract. Substitutions requested after this date may receive no consideration.

In making requests for substitutions Contractor shall list the particular system, product, or material he wishes to substitute, the justification for such a request, and the amount he will add or deduct from the Contract Sum if the substitution is authorized by Owner and approved by the Architect/Engineer.

#### C-19 CONSTRUCTION CLIMATE CONTROL

It shall be the responsibility of 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 final acceptance of the Project by Owner.

#### C-20 AS-BUILT DRAWINGS

During the progress of the work, Contractor shall require the plumbing, mechanical, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract drawings. Contractor shall also record all drawing revisions that have been authorized by Change Order that effect wall or partition locations, door and window locations and other template changes. The exact routing of conduit runs shall be shown on these drawings.

Upon substantial completion of the work, this data shall be recorded to scale using AutoCAD, version 2010 or later. Two (2) sets of disk files will be furnished to Contractor by the Architect/Engineer, but cost shall be borne by Contractor. Each drawing shall be bound, without external references, noted "As Built" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be disturbed except as noted above.

Contractor shall review the completed As-Built drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When ductwork, manholes, boxes, underground conduits, plumbing, hot or chilled water lines, invert, etc. are involved as part of the work, Contractor shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this Project. The disks shall be submitted to the Architect/Engineer when completed, together with two sets of black-line prints for certification and forwarding to Owner, at the time of final completion.

#### C-21 GUARANTEES AND OPERATING INSTRUCTIONS

Contractor shall provide full cooperation to Owner in the production of video instructions for the operation and maintenance of all HVAC, fire alarm, sprinkler, irrigation, computer and other systems essential to efficient utilization of the building grounds. Owner personnel or its agents shall perform the actual taping, editing and production of such instructional media. Cooperation of the on-site representative of Contractor shall be the responsibility of Contractor, whose representatives are to coordinate instructional activities with Owner and its personnel or agents.

All work performed by Contractor in completing the Project shall be guaranteed by Contractor against all defects resulting from the use of materials, equipment and workmanship for a period of one year from the date of Substantial Completion of the Project.

If, within any guarantee period, repairs or changes are required in connection with the guarantee work, which in the opinion of the Architect/Engineer is rendered necessary as a result of the use of materials, equipment or workmanship which are defective or inferior or not in accordance with the terms of the Contract, Contractor shall, promptly upon receipt of notice from Owner and without expense to Owner, proceed to:

Place in satisfactory condition in every particular all of such guaranteed work, correct all defects therein; and

Make good all damages to the structure or site or equipment or contents thereof, which, in the opinion of the Architect/Engineer, is the result of the use of materials, equipment, or workmanship which

are inferior, defective, or not in accordance with the terms of the Contract Documents; and

Make good any work or materials or the equipment and contents of structures or site disturbed in fulfilling any such guarantee.

If Contractor, after receipt of any such written notice, fails within seventy-two (72) hours to commence at the job site with performance of the work necessary to remedy all defects in the work described in such notice so as to provide Owner with the Project completed in accordance with all requirements of the Contract Documents, or fails to complete the performance of such remedial work within a reasonable time after commencing same, Owner shall be entitled to have such defective work remedied on the account of Contractor and its Surety, in which event, Contractor and its Surety shall be fully liable for all costs and expenses reasonably incurred by Owner in having such defective work remedied. Contractor shall be responsible for collecting, identifying, indexing, and collating the following materials from the sub-contractors, and will deliver four copies of the finished document to the Architect/Engineer for checking of correctness.

Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties addressed to the State Agency for which the construction is being performed, as applicable, for each and every piece of Fixed Equipment furnished under this Agreement to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's name, address, office and cell phone number, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be updated to reflect existing conditions.

Subsequent to Substantial Completion and receipt of As-Built, Operations and Maintenance Books but prior to the date of Final Acceptance, Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the work for a reasonable period of time to instruct the State Agency personnel in operation and maintenance of equipment and control systems.

This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instructions so that operating personnel will be thoroughly familiar with both the system and the data supplied.

#### C-22 CHANGES AND DELAYS IN THE WORK

During the course of Contractor's performance under the Agreement, certain events may occur which have the effect of changing the conditions, nature or extent of the work to be performed as specified in the Bidding Documents. The occurrence of these events may result in the issuance of a Change Order and/or delays in the performance of work.

A. Change Orders. Change Orders may cause Contractor to incur greater or less cost and expense to perform the work than planned to be incurred in Contractor's successful bid, in which event Contractor or Owner shall respectively be entitled to either an increase or decrease in the Contract Sum to the extent such greater or less cost and expense results. The party entitled to the benefit of any such adjustment to the Contract Sum shall, within twenty-one (21) calendar days from the first occurrence of such event(s), present written demand therefore on the other party through Architect-Engineer. Should Contractor and Owner be unable to settle and dispose of such demand within thirty (30) calendar days from the date any such claim is presented, then such demand shall be referred to Architect-Engineer for determination, which determination shall be final and binding unless appealed in accordance with applicable

provisions of this Agreement. The amount of any increase or decrease in the Contract Sum shall be governed and controlled by strict adherence to the following guidelines and limitations, and neither party shall receive any monetary consideration beyond that which is authorized below.

All adjustments to the Contract Sum resulting from a change in the work shall be determined by the measure of actual or estimated as the case may be, out-of-pocket costs and expenses incurred or spared by Contractor for labor, materials, equipment, and equipment rental, plus overhead and profit thereon, for performing the changed work.

(1) Labor costs shall be inclusive of all direct job site cost for estimation, laying out, mechanics' wages and laborers' wages, together with all payroll taxes, payroll assessments, and insurance premiums paid for such labor.

(2) All material costs, equipment costs and equipment rental costs shall be trade discount rates, plus State Sales Tax, where applicable.

(3) Overhead and profit shall be inclusive of all project management, project administration, superintendence, project coordination, project scheduling and other administrative support functions and services, whether performed on the job site or off the job site and general support equipment. Overhead and profit shall be determined as follows:

a. Overhead and profit for the Contractor shall be calculated at the rate of 15% of the labor, material, equipment and equipment rental costs, incurred or spared, as measured under the preceding paragraphs for changes in the work performed by the officers, employees or subsidiaries of Contractor.

b. Overhead and profit for the Contractor shall be calculated at the rate of 7.5% of the Contractor's sub-contractors' actual labor, material, equipment and equipment rental costs, incurred or spared, as measured under the preceding paragraphs, plus an additional 15% of all such costs, for overhead and profit to the Contractor's sub-contractors, for all changes in the work performed by the officers, employees or subsidiaries of the Contractor's sub-contractors.

(4) In addition, all adjustments to the Contract Sum resulting from a change in the work shall include all out-of-pocket expenses, incurred or spared, in performing the changes in the work for:

a. Paying the premiums required to obtain Performance Bonds and Labor and Material Payment Bonds called for by the Contract Documents;

b. Paying the fee(s) required for licenses or permits called for by changes in the work;

c. Paying for delivery of materials or equipment to the job site;

d. Paying for storage of materials or equipment before use thereof in performing changes in the work, and

e. Paying for testing required by the changes in the work.

(5) In the event Contractor demands an adjustment in the Contract Sum, such demand shall be accompanied by paid receipts or other such written evidence satisfactory to Owner itemizing the costs and expenses incurred as a result of the event(s) constituting the changes in the work.

B. Delays. Contractor may request an equitable adjustment in the Contract Sum to compensate Contractor for direct and actual overhead costs (excluding profits) incurred as a result of a delay in Contractor's performance under this Agreement if the delay (i) occurs after the Notice

to Proceed is issued, (ii) is not due to a Change Order, (iii) is attributable primarily to acts or omissions of Owner, and (iv) in combination with other such compensable delays, extends for more than 10 calendar days. Contractor's exclusive remedy for all other delays in performance of the Agreement caused by events beyond its control shall be a claim for equitable adjustment in the Contract Time.

C. Limitation of Remedies. Contractor's remedies for delays in the progress of work under this Agreement, or for any changes in such work, shall be limited to those provided in this Section. All requests and claims for compensation and damages must be submitted as provided in Section C-41 ("Claims and Disputes"). No provision of this Agreement shall be construed as a waiver of sovereign immunity by Owner.

## C-23 PROGRESS PAYMENTS

A. The provisions of AIA Document Articles 9.1 through 9.7 ("Payments and Completion") shall apply, subject to the requirements of this section and the following modifications: (i) Delete Article 9.3.1.1; (ii) Delete from the sixth line of Article 9.7.1 the following: "...or awarded by arbitration"; and (iii) Delete the last sentence of Article 9.7.1 in its entirety.

B. Funding for this Project may have been appropriated by the State Legislature or furnished by Federal Grant to a particular State Agency, and therefore payments to Contractor may be made by the government agency based on approval of each payment by Owner.

Based upon Certificate of Partial Payment submitted to the Architect/Engineer by Contractor and Certificates of Payment issued by the Architect/Engineer and accepted by Owner, Owner shall make progress payments to Contractor against the account of the Contract Sum in accordance with the following:

1. Within thirty (30) calendar days from Owner's receipt and acceptance of a Certificate of Payment, Owner shall pay, or cause to be paid to Contractor, 95% of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated into the work, and 95% of that portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other locations agreed upon in writing by the parties, less the aggregate of previous payments. Owner shall promptly make payment to Contractor, unless Owner has grounds, pursuant to Section 255.078(3), Florida Statutes for withholding the payment of retainage. If Owner makes payment of retainage to Contractor for labor, services, or materials supplied by one or more subcontractors or suppliers, Contractor shall timely remit payment of such retainage to those subcontractors and suppliers.

2. Contractor shall promptly pay each Subcontractor in accordance with Sections 287.0585 and 255.078, Florida Statutes, upon receipt of payment from Owner out of the amount paid to Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to Contractor on account of such Subcontractor's work.

3. The Architect/Engineer may, on request at its discretion, furnish to a Subcontractor, if practical, information regarding the percentages of completion of the amount applied for by Contractor and the action taken thereon by the Architect/Engineer on account of work done by such Subcontractor.

4. Neither Owner nor the Architect/Engineer shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

5. No Certificate of Payment, nor any progress payment, nor any partial or entire use of occupancy of the Project by Owner, shall

constitute an acceptance of any work not in accordance with the Contract Documents.

C. Contractor shall request such compensation by submitting:

1. a properly completed Certificate of Partial Payment on the form enclosed as Exhibit 4.
2. ~~a properly completed Contractor's Status Report of Minority & Disabled Veteran's Business Enterprise on the form enclosed as Exhibit 6. This form must be submitted even if no minorities are reported.~~
3. a Schedule of Contract Values as described below., and

D. Contractor shall, within ten (10) calendar days from date of Agreement, submit to the Architect/Engineer for approval three copies of a Schedule of Contract Values which will reflect the estimated cost of each subdivision of work of each specification section, further detailed by Subcontractor item, and utilizing the Construction Specification's Institute "Masterformat Section Numbers". The value of each item shall include a true proportionate amount of Contractor's overhead and profit. The sum of all such scheduled values shall equal the Contract Sum as evidenced by the Agreement.

The approved Schedule of Contract Values will accompany and support Contractor's periodic Certificate of Partial Payment and shall indicate the value of suitably stored material as well as labor performed and materials incorporated into the work for each subdivision of the schedule during the period for which the requisition is prepared.

The Schedule of Contract Values form approved by the Owner will be used to present this and other pertinent information which will facilitate the processing by Owner's representatives of Contractor's Certificate of Partial Payment.

#### C-24 FINAL PAYMENT

The provisions of AIA Document Articles 9.8 through 9.10 ("Payments and Completion") shall apply, subject to the requirements of this section and the following modification: (i) Delete from Article 9.9.1 the words "provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the work."

Within thirty (30) calendar days from the date of Contract Completion, Owner shall pay or cause to be paid to Contractor, the entire unpaid balance of the then Contract Sum, less the amount of any sums which continue to be retained to satisfy the cost of performing any change in the work which is the subject of any claim or dispute and which has not yet been satisfactorily performed by Contractor, provided that the parties have not otherwise stipulated in the Certificate of Substantial Completion, and provided further that the work has been satisfactorily completed, Contractor's obligations under the Contract have been fully performed, and a final Certificate for Payment has been issued by the Architect/Engineer (See Section C-23, Progress Payments).

Contractor's application for final payment shall be accompanied by the following:

1. Certificate of Partial Payment (4 copies with original signatures and original seals) noted as Final (Exhibit 5).
2. Final Schedule of Contract Values.
3. Consent of Surety to make Final Payment (Signed & Sealed)

4. Power of Attorney from Surety for Release of Final Payment (Signed, Sealed, and dated same as Consent of Surety)
5. Affidavit of Contract Completion (Exhibit 6)
  - (a) Page 1 completed by the General Contractor (Original + 3 copies)
  - (b) Page 2 completed by Architect/Engineer (Original + 3 copies)
6. Certificate of Occupancy from the authority having jurisdiction.
7. Notice of Release of Lien from each Sub-Contractor who has filed Notices to Owner
8. Contractor's Guarantee of Construction for One (1) year from the date of Substantial Completion.
9. Copy of the Approval by the Architect/Engineer and the Transmittal to the State Agency of Manuals, Shop Drawings, As-Builts (2 paper sets and 2 CDs in AutoCAD .dwg format, version 20010 or later), Brochures, Warranties, and List of Subcontractors, with telephone numbers and addresses.
10. Verification (if applicable) that State Agency personnel have been trained in the operation of their new equipment for each System; HVAC, Controls, Fire Alarm, etc. submit Attendance Lists.
11. Fully executed Roof Warranty (if applicable) in the name of the State Agency for whom the Project is being constructed.
12. Other special warranties as required by specifications, in the name of the State Agency for whom the Project is being constructed.
13. Certificate of Specification - No Prohibited Hazardous Material

#### C-25 LATE PAYMENT RIGHTS

Upon receipt of an Certificate of Partial Payment, Owner has thirty (30) days to inspect and approve the work. If payment is not issued within 40 days after the Certificate of Partial Payment is received and the work is inspected and approved, interest at the rate specified in Section 215.422, Florida Statutes will be due and payable in addition to the Certificate of Partial Payment amount. Interest penalties of less than one (1) dollar will not be enforced unless Contractor requests payment. Certificate of Partial Payment which have to be returned because of preparation errors will result in a delay in the payment. The payment requirements do not start until a properly completed Certificate of Partial Payment is provided to Owner or Architect/Engineer.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at the Department of Financial Services website.

#### C-26 DUTIES OF CONTRACTOR

The provisions of AIA Document Article 3 ("Contractor"), shall apply subject to the other terms of the Agreement and the following modifications:

1. Add the following to Article 3.3.2: "Should the Architect/Engineer find any person(s) employed on the Project incompetent, unfit or otherwise objectionable for his duties and so certify the facts to the Contractor, the Contractor shall immediately cause the employee to be dismissed and said employee shall not be re-employed on this Project without written consent of the Architect/Engineer."

2. Add the following to Article 3.8.1: "If directed by the Architect/Engineer the Contractor shall solicit not less than three bids for the item(s), the cost of which is provided for by a specified allowance sum. The Contractor shall purchase the item(s) from one of the three Bidders as directed by the Architect/Engineer."

3. Delete Article 3.10 ("Contractor's Construction Schedules") and refer instead to Section C-7 above.

4. Add the following to Article 3.14: "All cutting and patching work shall blend in and be plumb and square. The quality of materials used shall be the same or surpass those used in the adjacent existing construction."

#### C-27 DUTIES OF ARCHITECT/ENGINEER'S REPRESENTATIVE

##### **(If one is authorized by Owner)**

A. The provisions of AIA Document Article 4.2 ("Architect's Administration of the Contract"), shall apply subject to the other terms of the Agreement and the following modifications:

(i) Add the following to Article 4.2.5: "The authorized representatives and agents of the Architect/Engineer, Owner, and the United States Federal Agencies providing monies in the form of grant-funds or loans and such other persons as the Owner may designate shall have access to and be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, other relevant data and records wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access, inspections and, when required, exact duplicate copies of the aforementioned data shall be furnished."

(ii) Delete last sentence of Article 4.2.10 and add the following: "The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in the Contract Documents."

B. The Duties of the Architect/Engineer's Representative(s) shall include but not be limited to the following:

1. Assist Contractor in obtaining interpretation of the Contract Documents from the Architect/Engineer.
2. Conduct on-site observations for determining conformance to the Contract Documents in regard to work, materials, equipment, etc.
3. Request additional details and/or information from the Architect/Engineer when needed by Contractor.
4. Evaluate suggestions and/or modifications submitted by Contractor and transmit these to the Architect/Engineer with recommendations.
5. Anticipate problems, which may create delays and problems in construction and report these to Contractor and Architect/Engineer for solution.
6. Maintain official relationship only with the General Contractor Job Superintendent(s) and communicate problems to him/her regardless of which sub-contractor(s) work is involved.
7. Attend all required construction conferences and participate actively in discussions of the Project.
8. When authorized by the Architect/Engineer conduct tests and inspections as required by the Contract Documents and record results of such tests and inspections.

9. Maintain a daily log of Project activity including but not limited to: hours on the job site, weather conditions, daily construction activity, number of persons in each trade on the site, general observations, written and verbal directives to Contractor and visits of governmental officials.
10. If, upon inspections or observations, work is found not to be in accordance with Contract Documents, advise the Architect/Engineer verbally and in writing. Consult with the Architect/Engineer for further directions if Contractor does not correct work as directed by the Architect/Engineer.
11. Check that tests and inspections to be performed by others, in addition to those performed by Architect/Engineer's Representatives and/or the Architect/Engineer, are actually performed; in accordance with the Contract Documents.
12. When requested, accompany all State, Federal officials on inspections of construction and record the inspection in the log.
13. Cooperate with Owner's Project Manager or Inspectors and provide them with all requested information about the Project.
14. Maintain in an orderly manner, files of correspondence, reports of job conferences, shop drawings and samples, copies of contract documents, change orders, addenda, supplementary drawings, and job log.
15. Review requisitions for payment submitted by Contractor and transmit to the Architect/Engineer with recommendations.
16. Participate in the inspections of construction with the Architect/Engineer and Owner's Project Manager at regular intervals and at Substantial Completion and provide Architect/Engineer with information as to work which is not complete, defective, or not in accordance with Contract Documents.
17. Refer all communications from State Agencies to Owner's Project Manager and to the Architect/Engineer.
18. Copy Owner's Project Manager on all correspondence related to the Project.
19. Review plans, specifications and shop drawings on a regular basis. Be alert to errors and omissions on the Contract Documents and construction problems before they occur and advise the Architect/Engineer when discovered.
20. Advise Contractor and Architect/Engineer of work being performed with unapproved shop drawings or without shop drawings when such shop drawings are required by specifications.
21. Check materials and equipment delivered to the job site against specifications, approved samples, shop drawings and related correspondence. If in conflict, advise Contractor and/or Architect/Engineer.
22. Check that Contractor is maintaining a record of notated drawings of As-Built conditions, when As-Built drawings are specified to be provided.
23. When necessary, act as liaison between Contractor and the State Agency who will occupy the Project in the coordination of the State Agency's requirements to Contractor(s) schedule.

C. The Architect/Engineer's Representative is not authorized to do the following:

1. Authorize deviations from the Contract Documents (unless approved by Architect/Engineer).
2. Expedite the work for Contractor(s).
3. Advise Contractor on building techniques or scheduling.
4. Approve Shop Drawings.
5. Issue Certificate for Payment.
6. Approve substitutions.
7. Interpret the Contract Documents except when obviously clear.

D. The Architect/Engineer's Representative should not:

1. Get involved in disputes or problems between subcontractor and subcontractor.
2. Get involved in disputes or problems between Contractor and subcontractor.
3. Offer gratuitous advice to Contractor or subcontractors on how to perform the work whether solicited from Contractors or not.
4. Communicate with State Agency's representative in any official way except as noted in Item A-23 above.
5. Make vague and unclear log entries as to the acceptability of Contractor's work. If unacceptable and not corrected properly and in a timely way, the condition should be entered into the job log clearly as a statement made with follow-up written communication to the Architect/Engineer.
6. Order a work stoppage except in extreme emergencies and except under conditions authorized only by the Architect/Engineer.

#### C-28 DUTIES OF OWNER'S CONSTRUCTION REPRESENTATIVE

**(If one is authorized by Owner. This Representative is NOT a State Building Code Inspector)**

A. The duties of Owner's Construction Representative shall include but not be limited to the following:

1. Be present at the site at all times when construction is being performed and conduct daily on-site observations for determining conformance to the Contract Documents in regard to work, materials, equipment, etc.
2. Anticipate problems, which may create delays and problems in construction and report these to Owner's Project Manager for solution.
3. Attend all construction conferences.
4. When authorized by Owner's Project Manager, conduct inspections as required by the Contract Documents and record results of such inspections.
5. Maintain a daily log of Project activity including but not limited to: hours on the job site, weather conditions, daily construction activity, number of persons in each trade on the

site, general observations, written and verbal directives to Contractor and visits of governmental officials and the Architect/Engineer.

6. If, upon inspection or observations, work is believed not to be in accordance with Contract Documents, advise Owner's Project Manager verbally and in writing.
7. Check that tests and inspections to be performed by others, in addition to those performed by Architect/Engineer's Representative and/or the Architect/Engineer are actually performed in accordance with the Contract Documents.
8. When requested, accompany all State and/or Federal officials on inspections of construction and record the inspection in the log.
9. Cooperate with Owner's Project Manager and provide them with all requested information about the project. The Owner's Project Manager can provide or direct them to the Architect/Engineer for assistance where appropriate.
10. Maintain in an orderly manner, files of correspondence, reports of job conferences, shop drawings and samples, copies of contract documents, change orders, addenda, supplementary drawings and job log.
11. Review requisitions for payment submitted by Contractor via the Architect/Engineer and transmit to Owner's Project Manager with recommendations.
12. Participate in the inspections of construction with Owner's Project Manager at regular intervals and at substantial completion and provide Owner's Project Manager with information as to work which he feels is not complete, defective, or not in accordance with Contract Documents.
13. Refer all Communications from State Agency that will occupy the Project to Owner's Project Manager.
14. Copy Owner's Project Manager on all correspondence related to the Project.
15. Review plans, specifications and shop drawings on a regular basis. Be alert to errors and omissions on the Contract Documents and construction problems before they occur and advise Owner's Project Manager when he feels problems exist.
16. Advise Owner's Project Manager when he observes work being performed with unapproved shop drawings or without shop drawings when such shop drawings are required by specifications.
17. Check materials and equipment delivered to the job site against specifications, approved samples, shop drawings and related correspondence. If believed to be in conflict, advise Owner's Project Manager.
18. Check that Contractor is maintaining record notated drawings of as-built conditions, when as-built drawings are specified to be provided.

B. Owner's Construction Representative is not authorized to do the following:

1. Authorize deviations from the Contract Documents.
2. Expedite the work for Contractor.

3. Advise Contractor on building techniques or scheduling.
4. Approve Shop Drawings.
5. Issued Certificate for Payment.
6. Approve Substitutions.
7. Interpret the Contract Documents for Contractor.

C. Owner's Construction Representative should not:

1. Get involved in disputes or problems between Subcontractor and Subcontractor.
2. Get involved in disputes or problems between Contractor and Subcontractor.
3. Offer gratuitous advice to Contractor and Subcontractors on how to perform the work whether solicited from Contractors or not.
4. Communicate with State Agency's representative in any official way.
5. Make vague and unclear log entries as to the acceptability of Contractor's work. If unacceptable and not corrected properly and in a timely way, the conditions should be entered into the job log clearly as a statement made with follow-up written communications to Owner's Project Manager.
6. Order a work stoppage except in extreme emergencies affecting Life Safety.

C-29 HARMONY

Contractor is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Contractor and its Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the Project.

Contractor further agrees that this provision will be included in all subcontracts of the Subcontractor as well as in Contractor's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

C-30 CONTRACTOR'S EXPERIENCE/FINANCIAL STATEMENT

Contractor represents and warrants that any information provided by Contractor regarding their firm's experience and financial statement to qualify for award of this Project, was accurate and correct when submitted, and that no major changes have occurred since it was submitted. Contractor understands and agrees that materially inaccurate information may result in termination of this Agreement at Owner's option. Contractor shall not change the principals or supervisory personnel without the written consent of Owner.

C-31 ESTABLISHMENT OF A LOCAL OFFICE

Unless waived by Owner for good cause, Bidder must agree to establish or have an active office, or an ongoing project, located within 300 road miles of the Project site.

C-32 CONTRACTOR'S SUPERVISION OF PROJECT

If the Contract Sum exceeds \$500,000 the contractor must agree to provide field (on-site) supervision (through a named superintendent) for all trade subcontractors on the project. In addition, the contractor shall assign and name a supervisory employee to provide scheduling direction to 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. The contractor shall include a resume of experience for each of those proposed supervisory employees.

C-33 CONTRACTOR'S WORK FORCE

The provisions of AIA Document Article 5 ("Subcontractors") shall apply, subject to the following modification: (i) Add the following to Article 5.2.1: "The Contractor shall not remove or replace subcontractors listed in his bid subsequent to the lists being made public at the bid opening, except upon good cause shown and only when approved in writing by the Owner."

Also, if the Contract Sum exceeds \$500,000, Contractor will perform no less than 15% of the management and construction work utilizing its own employees. The percentage shall be calculated dividing the estimated cost of labor deployed by Contractor on the Project (including overhead and profit), by the total estimated labor costs for the Project.

C-34 UNAUTHORIZED ALIENS – CHECKS THROUGH E-VERIFY

The Department shall consider the employment by any contractor of unauthorized aliens a violation of section 274 of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Agreement.

Pursuant to the State of Florida, Office of the Governor, Executive Order Number 11-116, Contractor will utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the term of the Contract by Contractor to perform employment duties within Florida within 3 business days after the date of hire; and (b) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Contract with the Department within 90 calendar days after the date the Contract is executed or within 30 days after such persons are assigned to perform work pursuant to the Contract, whichever is later.

C-35 APPRENTICES

If the Contractor employs apprentices on the Project, the behavior of Contractor and Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established through the Department of Education, State of Florida. The Contractor will include a provision similar to the foregoing sentence in each subcontract.

Contractor shall have the option of listing all available job vacancies with the local Job Service Florida office in order to take advantage of local pools of unemployed qualified construction personnel.

C-36 PUBLIC ENTITY CRIME INFORMATION STATEMENT

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 for a period of 36 months from the date of being placed on the convicted vendor list.

#### C-37 DISCRIMINATION, DENIAL OR REVOCATION FOR THE RIGHT TO TRANSACT BUSINESS WITH PUBLIC ENTITIES

An entity or affiliate who has been placed on the discriminatory vendor list 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.

#### C-38 CRIMINAL BACKGROUND CHECKS

*Mark (XX) if included:*

\_\_\_\_ Criminal History Background Checks (Level 1) shall be obtained for all employees and agents of the Contractor and his subcontractors, their agents and employees, and all other persons performing any of the work under a contract to the Contractor working within buildings or facilities either owned or managed by the Department of Military Affairs. The Contractor may also be required to perform Criminal History Background Checks for all employees and agents of the Contractor and his subcontractors, their agents and employees, and all other persons performing any of the work under a contract to the Contractor working within buildings or facilities owned or managed by other government entities.

The Contractor is obligated to obtain and pay for each Criminal History Background Report ("Report"), which may be obtained by accessing the Criminal History link on the Florida Department of Law Enforcement online at <http://www.fdle.state.fl.us>

The Contractor must supply FDLE with the employee's complete social security number to allow FDLE to run the Report. However, there is no need for the Department of Military Affairs to have this number in its entirety. Therefore, prior to sending reports to the Department, and to maintain confidentiality, the Contractor must blacken out all but the last four digits of the individual's social security number.

The Contractor shall forward the Reports to the following e-mail address for confirmation: \_\_\_\_\_

The Department of Military Affairs will make the determination whether or not to allow entry/occupation of the buildings/facilities. If access is denied to an individual, additional information will be required in order to re-consider the individual for access.

**XX Projects at Camp Blanding: The Contractor is REQUIRED to submit to the Project Manager a list of all Contractor's and Sub-Contractors' employees that could possibly work on the project (Last Name, First Name, Driver's License Number. (For employees that do not have a driver's license, a US Passport, State ID card, Government issued Photo ID or Work Visa are acceptable. Note: Non US citizens cannot use a foreign passport for work purposes. They must have a work visa or Permanent Resident Card.**

**All Contractor's and Sub-Contractors' employees will have a background check run to pre-authorize their entrance on to Camp Blanding. If they have not been pre-approved, they will not be allowed on base. After contract execution, a form will be provided to the Contractor and the approval process takes approximately 5 business days. The Department will not be responsible for any costs incurred by the Contractor or Subcontractors due to employee approval delays as a result of late, incorrect and/or incomplete forms**

**submitted by the Contractor.**

#### C-39 ELECTRONIC MAIL CAPABILITIES

Contractor must have full e-mail capabilities. It is the intention of the Department of Military Affairs to use electronic communication for all projects whenever possible. Contractor shall provide their e-mail address and the name of a contact person responsible for their electronic communications.

#### C-40 TERMINATION OR SUSPENSION OF THE AGREEMENT

The provisions of AIA Document Article 14.1 through 14.4 ("Termination or Suspension of the Contract") shall apply.

Also, this Agreement may be unilaterally terminated by Owner for refusal by Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Contractor in conjunction with this Agreement. In the event of termination due to the fault of others, Contractor shall be paid for services performed to termination date, including reimbursements then due plus terminal expense.

#### C-41 CLAIMS AND DISPUTES

The provisions of Chapter 28-106, Florida Administrative Code to the extent not inconsistent with this Article are referred to and adopted by reference and shall govern procedures for claims.

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the claim.

Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

Contractor shall not have any right to compensation other than, or in addition to, that provided by this Agreement, to satisfy any Claim unless Contractor has provided notice as required hereunder. All such Claims shall be set forth in a petition stating:

1. name and business address of the claimant,
2. a concise statement of the ultimate facts, including the statement of all disputed issues of material fact, upon which the Claim is based.
3. a concise statement of the provisions of the Agreement together with any federal, state and local laws, ordinances or code requirements or customary practices and usages in the industry asserted to be applicable to the questions presented by the Claim and a demand for the specific relief believed to be due the claimant, and
4. the date of the occurrence of the event giving rise to the Claim and the date and manner of Contractor's compliance with the notice requirements this section.

Within thirty (30) calendar days from the date any such Claim is received, Owner shall deliver to Contractor its written determination on the Claim. Unless Owner's determination is agreed to by Contractor and a consent order adopting the determination is entered within thirty (30) days of

receipt of Owner's determination, Owner shall designate a hearing officer who shall conduct a proceeding in accordance with Chapter 28-106, F.A.C.

Pending final resolution of a Claim unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make payments in accordance with the Contract Documents.

The venue for all civil and administrative actions against the department shall be in Leon County, unless otherwise agreed by the parties.

Except as otherwise agreed, Contractor and Owner hereby waive all claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes damages for loss of use, lost profits and overhead expenses. This mutual waiver applies, without limitation, to all consequential damages due to a party's termination in accordance with section C-40 above.

#### C-42 EXCLUSION OF OWNER FROM LIABILITY

Notwithstanding any other provision of the Contract Documents, should Contractor sustain loss or be damaged by act or omission of a separate contractor, Owner shall not be liable for any such loss or damage and Contractor shall not be entitled to obtain any monetary relief from Owner to compensate for any such loss or damage, but shall be limited to such recovery as is otherwise available at law from persons and/or entities other than Owner. For purposes of this section, "Owner" shall mean any agency, department or branch of the State of Florida.

#### C-43 MISCELLANEOUS AIA PROVISIONS

The following provisions of the AIA Document shall apply, subject to the other terms of the Agreement:

1. Article 2.3 ("Owner's Right to Stop Work");
2. Article 2.4 ("Owner's Right to Carry Out the Work");
3. Article 6 ("Construction By Owner Or By Separate Contractors");
4. Article 8 ("Time"), modified as follows: (a) replace the words in Article 8.1.3 "...in accordance with Paragraph 9.8." with "...as expressed in the Contract Documents"; (b) delete the words in Article 8.3.1 "or by delay authorized by the Owner pending arbitration."; and (c) delete 8.3.3 in its entirety;
5. Article 10 ("Protection of Persons and Property"), modified by deleting 10.3.3 in its entirety.
6. Article 12 ("Uncovering and Correction of Work");
7. Article 13.1 ("Governing Law"); Article 13.2 (Successors and Assigns"); Article 13.3 ("Notices"); and Article 13.4 ("Rights and Remedies").

#### C-44 CONFLICTING TERMS; ORDER OF PRIORITY

In the event of conflict among the Contract Documents, the Contract Documents shall be construed according to the following priorities:

|                          |                                       |
|--------------------------|---------------------------------------|
| <b>Highest Priority:</b> | Modifications                         |
| <b>Second Priority:</b>  | Agreement                             |
| <b>Third Priority:</b>   | Addenda-later date to take precedence |
| <b>Fourth Priority:</b>  | Supplementary Terms and Conditions    |
| <b>Fifth Priority:</b>   | General Conditions                    |
| <b>Sixth Priority:</b>   | Drawings and Specifications           |

If there is a conflict within the Drawings, the figured dimensions shall govern over the scaled dimensions. Detailed Drawings shall govern over the general Drawings. Larger scale Drawings shall take precedence over smaller scale Drawings. Drawings shall govern over Shop Drawings. Whenever there is a conflict concerning quality or quantity between or among notes, specifications, dimensions, details, or schedules in the Specifications or in the Drawings, or between the Specifications and the Drawings, or in all other instances not specifically noted above, Contractor shall provide the better quality or greater quantity of work.

Compliance with these priority conditions shall not justify any changes in the work or any increase in the Contract Sum, unless any such compliance results in work that may not be reasonably inferred from the Contract Documents as being required to produce the intended result as determined by the Architect/Engineer.

#### C-45 ASSIGNMENT OF ANTITRUST CLAIMS

For and in recognition of good and valuable consideration, receipt of which is hereby acknowledged, Contractor hereby conveys, sells, assigns and transfers to the State of Florida all rights, title and interest in and to all causes to action it may now or hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the particular goods or services purchased or acquired by the State of Florida pursuant to this Agreement.

C-46 EMPLOYMENT OF STATE RESIDENTS AND POSTING OF JOB OPENINGS: Contractor agrees to comply with the requirements set forth in Section 255.099 regarding the employment of state residents and the posting of job openings on the State of Florida job bank system.

C-47 COOPERATION WITH THE INSPECTOR GENERAL: Pursuant to section 20.055(5), Florida Statutes, the bidder who is awarded the contract and its subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

#### C-48 LUMBER, TIMBER AND OTHER FOREST PRODUCTS PRODUCED AND MANUFACTURED IN FLORIDA:

Pursuant to section 255.2575(4), Florida Statutes, the bidder who is awarded the contract and its subcontractors understand and will comply with requirements, where applicable, for use of lumber, timber, and other forest products produced and manufactured in this state, if wood is a component of the public work, and if such products are available and their price, fitness, and quality are equal.

#### C-49 HOLIDAYS, AWS AND WORK SCHEDULE

For the purpose of scheduling, the contractor shall anticipate working during working hours to be determined at the pre-construction meeting, Monday through Friday. The following Federal legal holidays are observed at the facility. Unless otherwise noted in the Bid Documents, the contractor will not be allowed to work on the following holidays if observed Monday through Friday:

|                               |                             |
|-------------------------------|-----------------------------|
| New Year's Day                | 1 January                   |
| Martin Luther King's Birthday | Third Monday of January     |
| President's Day               | Third Monday of February    |
| Memorial Day                  | Last Monday of May          |
| Juneteenth                    | 19 June                     |
| Independence Day              | 4 July                      |
| Labor Day                     | First Monday in September   |
| Columbus Day                  | Second Monday in October    |
| Veteran's Day                 | 11 November                 |
| Thanksgiving Day              | Fourth Thursday in November |
| Christmas Day                 | 25 December                 |

NOTE: Any of the above holidays falling on a Saturday will be observed the preceding Friday; holidays falling on a Sunday will be observed on the following Monday. Any of the above holidays falling on an AWS Monday (see below) will be observed on the preceding Friday.

The Florida National Guard works on an alternate work schedule (AWS) where every other Monday is a scheduled day off.

The contractor will not be allowed to work on AWS Mondays unless otherwise coordinated and approved.

## SECTION D -- CONTRACT CONDITIONS FEDERAL FUNDS APPLICABILITY

Section D refers to federal funding. The terms in this section apply if federal funds are used to fund this Project. This Article may be disregarded if federal funding is not used for this Project. Portions of this section are not applicable and have been struck through.

*Mark (XX) if D-1 through D-3 are included.*

XXX

### D-1 FEDERAL FUNDS APPLICABILITY

If this Agreement contains \$10,000 or more of federal funds, the Construction Contractor shall comply with Executive Order 11246, Equal Employment Opportunity, as amended by Executive Order 11375 and others, and as supplemented in Department of Labor regulation 41 CFR Part 60, if applicable.

Clean Air Act and the Federal Water Pollution Control Act, as amended. If this Agreement contains over \$150,000 of federal funds, the Construction Contractor shall comply with all applicable standards, orders, or regulations issued under section 306 of the Clean Air Act, as amended (42 U.S.C. § 7401 et seq.), section 508 of the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.), Executive Order 11738, as amended, and, where applicable, and Environmental Protection Agency regulations (2 CFR Part 1500). The Construction Contractor shall report any violations of the above to the Owner.

Contract Work Hours and Safety Act. If this Agreement contains over \$100,000 of federal funds and involves the employment of mechanics or laborers, the Construction Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by 29 CFR Part 5.19.1.4 ~~If the Construction Manager is a federal subrecipient or pass through entity, then the Construction Manager and its subcontractors who are federal subrecipients or pass through entities are subject to the following: A contract award (see 2 CFR § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines in 2 CFR Part 180 that implement Executive Orders 12549 and 12689, "Debarment and Suspension." SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.~~

Debarment and Suspension - Contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. The Department of Military Affairs (DMA) shall comply with the DOD implementation of 2 CFR Part 180 (at 2 CFR Part 1125) by checking the Excluded Parties List System (EPLS) through the System for Award Management (SAM) at <https://www.sam.gov>. DMA shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the contract files, and shall be subject to audit by the grantor and Federal/State audit agencies. By entering into a contract, the contractor covenants and agrees that it will comply with Office of Management and Budget guidance on nonprocurement suspension and debarment in 2 CFR Part 180, Subpart C, as implemented by Department of Defense (DOD) at 2 CFR Part 1125 by checking the EPLS at <https://www.sam.gov> to verify eligibility of subcontractors.

~~If the Construction Manager is a federal subrecipient or pass through entity, the Construction Manager and its subcontractors who are federal subrecipients or pass through entities must determine whether or not its subcontracts are being awarded to a "contractor" or a "subrecipient," as~~

~~those terms are defined in 2 CFR §200.01. If a Construction Manager or its subcontractor(s) are a subrecipient, the Construction Manager must ensure the Construction Manager and its subcontractor(s) adhere to all the applicable requirements in 2 CFR Part 200.~~

If this Agreement contains over \$2,000 of federal funds and is required by the applicable federal funding program legislation, the Construction Contractor shall comply with ~~the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148), as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). All applicable federal labor standards clauses are incorporated into the Construction Documents. The Construction Manager agrees to familiarize him/herself with "Making Davis-Bacon Work - A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects" and to comply with all applicable regulations.~~

~~If the Construction Manager is a federal subrecipient or pass through entity, then the Construction Manager and its subcontractors who are federal subrecipients or pass through entities must comply with the limitations set forth in 2 C.F.R. § 200.216. The Construction Contractor, when entering into contracts, shall comply with 2 CFR 200.471 Telecommunication costs and video surveillance costs.~~

### D-2 FEDERAL LAWS, RULES, REGULATIONS, AND POLICIES

The Construction Contractor shall comply with the provisions of Federal law and regulations including, but not limited to, 2 CFR Part 200, and other applicable regulations.

Performance under this Agreement is subject to the applicable provisions of 2 CFR Part 200, entitled "Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards" including the cost principles and restrictions on general provisions for selected items of cost.

The following 2 CFR requirements also apply to this Agreement:

- (a) 2 CFR Part 24, Universal Identifier and System for Award Management;
- (b) 2 CFR Part 170, Reporting Subaward and Executive Compensation Information;
- (c) 2 CFR Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement).

The Construction Contractor must disclose to the Department any lobbying with non-Federal funds in connection with obtaining any Federal award.

The Construction Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

The Construction Contractor should, as appropriate, and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States as defined in 2 C.F.R. § 200.322.

In addition to the foregoing, if required by the applicable federal funding program, the Construction Contractor will be governed by and shall comply with all applicable State and Federal laws, rules, regulations, and executive orders including, but not limited to, the applicable laws and regulations set forth in the Owner's federal funding award. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that other statutes, rules, or regulations do

not apply.

Where applicable, when any Federal rule or regulation regarding Covid-19 response conflicts with State rules and regulations, the State of Florida rule or regulation will prevail with no consequence to the Owner.

### D-3 FEDERAL FUNDING TERMS

The Construction Contractor agrees to refund to the Owner any balance of unobligated funds advanced or paid to the Construction Contractor.

The Construction Contractor shall refund any monies used for ineligible purposes under the laws, rules, and regulations governing the use of the federal funds.

The Construction Contractor shall cooperate and comply with any monitoring procedures, inspections, reviews, investigations, or audits related to the performance of this Agreement.

The Construction Contractor shall identify an individual responsible for monitoring Construction Contractor's and its subcontractor's performance under the terms of this Agreement including, but not limited to, the adherence to and compliance with all applicable federal funding requirements. This individual shall facilitate providing all reports, information, and documentation from the Construction Contractor and its subcontractors needed to facilitate the Owner's federal funding reporting requirements. Written notice of the Construction Contractor's current designated individual, and any subsequent changes to the selected individual, shall be provided to the Owner.

~~If the Construction Contractor is a federal subrecipient or pass-through entity, the Construction Contractor and Owner will, pursuant to Rule 691.5-006(3), F.A.C., execute an additional document, which shall be an incorporated exhibit to this Agreement, containing the applicable audit requirements from Form DFS A2 CL, Audit Requirements for Awards of State and Federal Financial Assistance (Rev. 11/18).~~

No federal funds received in connection with this Agreement may be used by the Construction Contractor, agent acting for the Construction Contractor, or subcontractor to influence legislation or appropriations pending before Congress or any State legislature.

*Mark (XX) if included:*

XXX D-4 BUY AMERICA PREFERENCE (Pub. L. No. 117-58, §§ 70901-52, Title IV—Build America, Buy America Act)

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

### *Waivers*

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

(a) When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

- (1) applying the domestic content procurement preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at TBD.

### *Definitions*

"Construction materials" includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives (see IIA, § 70917(c)(1))—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

"Domestic content procurement preference" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**COMPLIANCE:** The contractor is responsible for compliance

with BABA requirements and shall be able to provide certification. For "BABA" (Build America, Buy America) certification, the primary documentation is a manufacturer's certification letter which states that the product complies with BABA requirements, including details like the project name, product description, and a signed attestation by a company representative confirming domestic manufacturing compliance; this letter is considered the most effective way to demonstrate BABA compliance on a project.

Key points about BABA certification documentation:

- Content:

The certification letter should include project details, specific product information, a statement confirming compliance with BABA requirements, and the location of the manufacturing facility.

- Signature:

A company representative must sign the certification letter to validate its authenticity.

- When required:

Project recipients or subrecipients can request this certification from manufacturers to ensure products used in their projects meet BABA standards.

- Reference to legislation:

The certification letter should reference the relevant legislation, like the Infrastructure Investment and Jobs Act (IIJA) or the Bipartisan Infrastructure Law (BIL).

Other potential forms of documentation for BABA compliance:

- Purchase orders or invoices:

These can be used to identify the product and potentially support BABA compliance if they include information about the product's origin.

- Bill of lading:

A document that can provide details about the shipment origin, which can be helpful in verifying BABA compliance.

- Manufacturing records:

In some cases, manufacturers may need to provide additional documentation outlining their manufacturing processes to fully demonstrate BABA compliance.

## Additional Resources:

See <https://www.nationalguard.mil/Leadership/Joint-Staff/Special-Staff/Director-of-Acquisitions/Build-America-Buy-America-Act/> for information.

## Federal Funding Contract Provisions

### Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount

determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

~~(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.~~

~~(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60 1.3 must include the equal opportunity clause provided under 41 CFR 60 1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."~~

~~(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must~~

report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment

and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323. Procurement of recovered materials—A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(K) See § 200.216. Prohibition on certain telecommunications and video surveillance services or equipment.

(L) See § 200.322. Domestic preferences for procurements—(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and

construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including

optical fiber; and lumber.

# EXHIBIT 1 (Sample)

| <b>AGREEMENT BETWEEN OWNER AND CONTRACTOR</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                            |                                  |                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|----------------------------------|------------------|
| This Agreement between Owner and Contractor made this _____ day of _____ in the year Two Thousand Twenty Two.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                            |                                  |                  |
| MCCA Number:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | N/A                                                                        |                                  |                  |
| Project Number                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | pjt #                                                                      | Project Location:                | pjt location     |
| Project Name:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | pjt name                                                                   |                                  |                  |
| AMSCO:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | N/A                                                                        | FUNDING:                         | funding          |
| BY AND BETWEEN: The Department of Military Affairs (DMA), 2305 State Road 207, St. Augustine, FL 32086, hereinafter called the OWNER, and                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                            |                                  |                  |
| Contractor Name:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | contractor name                                                            |                                  |                  |
| Address:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | contractor add                                                             |                                  | contractor city  |
| POC:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | contractor name                                                            | FEIN:                            | 0                |
| Phone/Fax:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | contractor phone                                                           | Email:                           | contractor email |
| SAM.GOV Unique Entity ID:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 0                                                                          |                                  |                  |
| hereinafter called the CONTRACTOR. The Owner and Contractor agree as set forth below:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                            |                                  |                  |
| <b>ARTICLE 1. THE CONTRACT DOCUMENTS</b> - The Contract Documents consist of the Agreement, the Contractor's proposal, conditions of the Contract (General, Supplementary and other conditions), Specifications, Drawings, all Addenda issued prior to execution of the Agreement, the Non-Technical Specifications as provided, and all Modifications to the above, issued subsequent thereto. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the specifications, drawings, and addenda is as follows: |                                                                            |                                  |                  |
| <b>Specifications and Drawings prepared By:</b> a/e name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                            |                                  |                  |
| Address:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | a/e address                                                                |                                  | a/e city         |
| POC:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | a/e poc                                                                    | Phone/Fax                        | a/e phone        |
| Email:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | a/e email                                                                  |                                  |                  |
| <b>Addenda:</b> Sample: Addendum #1 dtd 10/25/19, Addendum #2 dtd 10/31/19                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                            |                                  |                  |
| In the event of conflict in the provisions of said Contract Documents, the provisions of the basic Agreement which immediately precedes the signatures of the Parties shall control over the Specifications, the General Conditions and Supplementary General Conditions; and the Supplementary General Conditions shall control over the General conditions of said Standard Form A201 of the American Institute of Architects.                                                                                                                                                                     |                                                                            |                                  |                  |
| <b>ARTICLE 2. THE WORK</b> - The Contractor shall perform all work required by the Contract Documents for items as specified in the Scope of Work. No alteration of the original scope shall be accepted in the Bidder's proposal unless approved in writing by the DMA.                                                                                                                                                                                                                                                                                                                             |                                                                            |                                  |                  |
| <b>ARTICLE 3. CONTRACT SUM</b> - The Owner shall pay the Contractor for the performance of the work, subject to additions and deductions by Change Order as provided in the Conditions of the Contract, in current funds, the                                                                                                                                                                                                                                                                                                                                                                        |                                                                            |                                  |                  |
| Contract Sum:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Sample: One Hundred Fifty Thousand Dollars and 00/100.                     |                                  |                  |
| Contract Amount:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Sample: \$150,000 (Base Bid \$100,000 + ABI #1 \$30,000 + ABI #2 \$20,000) |                                  |                  |
| Days in Contract:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | # days in contract to final                                                |                                  |                  |
| <b>ARTICLE 4. FUNDING</b> - The State of Florida's performance and obligation to pay under this contract is contingent upon availability of funding and an annual appropriation by the State Legislature.                                                                                                                                                                                                                                                                                                                                                                                            |                                                                            |                                  |                  |
| IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                            |                                  |                  |
| <b>CONTRACTOR</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                            | <b>OWNER</b>                     |                  |
| APPROVED:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                            | APPROVED:                        |                  |
| By                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                            | By                               |                  |
| Corporate President's Signature                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Date Signed                                                                | Owner's Signature                | Date Signed      |
| ATTEST:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                            | AS WITNESSED:                    |                  |
| By                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                            | By                               |                  |
| Corporate Secretary's Signature                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Date Signed                                                                | Witness' Signature               | Date Signed      |
| AS WITNESSED:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                            | APPROVED AS TO FORM AND LEGALITY |                  |
| By                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                            | By                               |                  |
| Witness' Signature                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Date Signed                                                                | Office of the General Counsel    | Date Signed      |
| CORPORATE SEAL:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                            |                                  |                  |

**EXHIBIT 2**  
**(Sample)**

---

**PERFORMANCE BOND**

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

---

KNOW ALL MEN BY THESE PRESENTS: that (Contractor Name and Address)

as Principal, hereinafter called Contractor, and,

(Surety Name and Address)

as Surety, hereinafter called Surety, are held and firmly bound unto the (State Agency's Name) as Obligee, hereinafter called Owner, in the amount of

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

WHEREAS,

Contractor has by written agreement, dated \_\_\_\_\_, entered into a contract with the Owner for \_\_\_\_\_, Project Number \_\_\_\_\_ in accordance with Drawings and Specifications prepared by \_\_\_\_\_ which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, 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 on this bond against the Surety or Contractor shall be determined by the pertinent Florida Statutes.

(Front)

## EXHIBIT 2 CONTINUED

SIGNED AND SEALED THIS (Date)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Contractor) (Seal)

\_\_\_\_\_  
(Type Name)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Surety's Attorney-In-Fact) (Seal)

\_\_\_\_\_  
(Type Name)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Surety's Florida Resident Agent) (Seal)

\_\_\_\_\_  
(Type Name & Registration Number)

**Power of Attorney attached hereto.**

### NOTES CONCERNING SURETY AND EXECUTION

#### A. SURETY COMPANY REQUIREMENTS

To be acceptable to the Owner, A Surety Company shall comply with all of the requirements of Article B-12 of the 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 1 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. Insert 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).
5. Have each copy of the Bond signed by the person authorized to sign on behalf of the Surety Company. Insert 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). Insert that person's name and license 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 1 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.

(Back)

**EXHIBIT 3**  
**(Sample)**

---

**LABOR AND MATERIAL PAYMENT BOND**

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 PRESENTS: that (Contractor Name and Address)

as Principal, hereinafter called Contractor, and,

(Surety Name and Address)

as Surety, hereinafter called Surety, are held and firmly bound unto the (State Agency's Name) as Obligee, hereinafter called Owner, for the use and benefit of claimants as herein below defined, in the amount of

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

WHEREAS,

Contractor has by written agreement dated \_\_\_\_\_, entered into a contract with Owner for \_\_\_\_\_, Project Number \_\_\_\_\_ in accordance with drawings and Specifications prepared by \_\_\_\_\_ which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

THE CONDITIONS OF THIS BOND ARE AS FOLLOWS:

1. If 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/her. 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 attorneys 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.

(Front)

### EXHIBIT 3 CONTINUED

SIGNED AND SEALED THIS (Date)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Contractor) (Seal)

\_\_\_\_\_  
(Type Name)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Surety's Attorney-In-Fact) (Seal)

\_\_\_\_\_  
(Type Name)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Surety's Florida Resident Agent) (Seal)

\_\_\_\_\_  
(Type Name & Registration Number)

**Power of Attorney attached hereto.**

#### NOTES CONCERNING SURETY AND EXECUTION

##### A. SURETY COMPANY REQUIREMENTS

To be acceptable to the Owner, A Surety Company shall comply with all of the requirements of Article B-12 of the 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 1 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. Insert 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).
5. Have each copy of the Bond signed by the person authorized to sign on behalf of the Surety Company. Insert 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). Insert that person's name and license 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 1 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.

(Back)

**EXHIBIT 4 (Sample)**  
Department Of Military Affairs  
Construction & Facility Management Office  
**CERTIFICATE OF PARTIAL PAYMENT**

CFMO Transmittal No.: \_\_\_\_\_

Contractor Name: 0  
Contractor Address: 0  
0  
POC 0  
Telephone No. / Facsimile No.: 0  
State Project Number: 0  
Contract: 0

Pay Request No: \_\_\_\_\_  
For Period starting: \_\_\_\_\_ Ending: \_\_\_\_\_  
Project Name: 0  
FEIN Number: 0  
Unique Entity ID: \_\_\_\_\_ 0  
Notice to Proceed Date: TBD  
Funding Source January 0, 1900

|                                                 | <u>ADDITIONS \$</u> | <u>DEDUCTIONS \$</u> |
|-------------------------------------------------|---------------------|----------------------|
| Change Orders approved<br>in previous months by |                     |                      |
| Owner -- TOTAL                                  |                     |                      |

|                                        |               |
|----------------------------------------|---------------|
| <b>Original Contract Sum</b> . . . . . | <b>\$0.00</b> |
| Change Orders (Net) . . . . .          | \$0.00        |
| Contract Sum to Date . . . . .         | \$0.00        |
| <b>Completed To Date</b> . . . . .     |               |
| <b>Materials Stored</b> . . . . .      |               |
| Total Completed & Stored . . . . .     | \$0.00        |
| Total Retainage                        | \$0.00        |

Subsequent Change Orders  
for this month

| <u>Number</u> | <u>Approved (Date)</u> |
|---------------|------------------------|
|               |                        |
|               |                        |
|               |                        |
|               |                        |
| TOTALS        | \$0.00 \$0.00          |

|                                   |        |
|-----------------------------------|--------|
| Total Earned Less Retainage .     | \$0.00 |
| <b>Less Previous Certificates</b> |        |
| Less Material Purchased           |        |
| Directly By Owner . . . . .       | \$0.00 |

Net Change by Change Orders \$ \$0.00

|                                  |               |
|----------------------------------|---------------|
| <b>TOTAL THIS CERTIFICATE</b> .  | <b>\$0.00</b> |
| Balance To Finish Incl. Retainag | \$0.00        |
| Retainage REFUND Requested       |               |

**CERTIFICATION BY THE CONTRACTOR:** According to the best of my knowledge and belief, I certify that all items and amounts shown on the face of this application are true and correct, that all work has been performed and material supplied in full accordance with the terms and conditions of the Contract, and that all materialmen, laborers and subcontractors, as defined in Chapter 713.01, Florida Statutes, have been paid the amounts due them out of any previous payments made to the contractor by the Owner. Further, I agree to promptly pay each materialman, laborer and 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 or subcontractor's work, the amount to which said materialman, laborer and subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to myself on account of such materialman's, laborer's and subcontractor's work. By providing this electronic signature, I am attesting that I understand that electronic signatures are legally binding and have the same meaning as handwritten signatures. I am also confirming that internal controls have been maintained, and that policies and procedures were properly followed to ensure the authenticity of the electronic signature.

|           |                     |      |
|-----------|---------------------|------|
| Signature | Printed Name, Title | Date |
|-----------|---------------------|------|

**CERTIFICATION BY THE ARCHITECT / ENGINEER:** I certify that I have checked and verified this Partial Payment Application; that to the best of my knowledge and belief, the above application is a true and correct statement of the value of the work performed and the materials suitably stored on the site; 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 material supplied in full accordance with the terms of this Contract; and I approved for payment the amount noted above. By providing this electronic signature, I am attesting that I understand that electronic signatures are legally binding and have the same meaning as handwritten signatures. I am also confirming that internal controls have been maintained, and that policies and procedures were properly followed to ensure the authenticity of the electronic signature.

|           |                       |      |
|-----------|-----------------------|------|
| Signature | Printed Name, Company | Date |
|-----------|-----------------------|------|

By providing this electronic signature, I am attesting that I understand that electronic signatures are legally binding and have the same meaning as handwritten signatures. I am also confirming that internal controls have been maintained, and that policies and procedures were properly followed to ensure the authenticity of the electronic signature.

**VALIDATED FOR PAYMENT - SERVICES RECEIVED**

Project Manager: 0  
Directorate: CFMO  
Telephone Number: 0  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Amount Certified: \_\_\_\_\_

Date Received (Date Stamp) \_\_\_\_\_

EXHIBIT 5  
(SAMPLE)

DEPARTMENT OF MILITARY AFFAIRS  
CONTRACTOR'S AFFIDAVIT OF CONTRACT COMPLETION

AGENCY: \_\_\_\_\_

PROJECT: \_\_\_\_\_

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

CONTRACT FOR: \_\_\_\_\_

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

DATE ISSUED FOR SUBSTANTIAL COMPLETION: \_\_\_\_\_

DATE ISSUED FOR FINAL COMPLETION: \_\_\_\_\_

***CONTRACTOR'S AFFIDAVIT***

I solemnly swear and affirm: That the work under the above named 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 of work on the project under the contract; that all Workmen's Compensation claims are covered by insurance, and that the Contractor shall save, protect, defend, indemnify, and hold the Owners 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:

\_\_\_\_\_  
(Contractor must sign in the presence of a Notary)

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

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
\_\_\_\_\_,  
(date)

by \_\_\_\_\_, of \_\_\_\_\_  
\_\_\_\_\_  
(name & title of officer or agent) (name of corporation acknowledging)

a \_\_\_\_\_, corporation, on behalf of the corporation. He/She is personally  
(state/place incorporated)

known to me or has produced \_\_\_\_\_ as identification.  
(type of identification)

Notary Signature: \_\_\_\_\_

Name typed printed or stamped: \_\_\_\_\_

**EXHIBIT5  
CONTINUED**

**CERTIFICATE OF CONTRACT COMPLETION BY CONTRACTOR**

PROJECT NO.: \_\_\_\_\_

PROJECT TITLE: \_\_\_\_\_

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

CONTRACT DATE: \_\_\_\_\_ DATE OF FINAL COMPLETION: \_\_\_\_\_

**CERTIFICATE OF ARCHITECT/ENGINEER**

I CERTIFY: That the work under the above contract has been satisfactorily completed on the date set forth in accordance with the terms of the contract; that the contractor has submitted his sworn affidavit as evidence that he has paid all labor, material

Architect/Engineer Firm Name \_\_\_\_\_ Architect/Engineer Signature \_\_\_\_\_ Architect/Engineer Name Printed \_\_\_\_\_ Date \_\_\_\_\_

**TO BE COMPLETED BY ARCHITECT/ENGINEER THROUGH**

| THE SUBSTANTIAL COMPLETION PHASE                                                                                           | DATE | DAYS | Liquidated Damages                                          |
|----------------------------------------------------------------------------------------------------------------------------|------|------|-------------------------------------------------------------|
| 1. Notice to Proceed (N.T.P)                                                                                               |      |      |                                                             |
| 2. Time Specified in Original Contract for Substantial Completion (S.C.)                                                   |      |      |                                                             |
| 3. Extension Granted by Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)                        |      |      |                                                             |
| 4. Total Days Allowable to Substantial completion (Add Lines 2 and 3)                                                      |      |      |                                                             |
| 5. Project Substantially Completed as Certified by A/E (Total Days from N.T.P. through Date certified by A/E)              |      |      |                                                             |
| 6. Substantial Completion overrun (Subtract Line 4 from 5 and Enter Overrun. <b>If line 5 less than 4 enter 0.</b> )       |      |      | @ \$ <input type="text"/> Per Day = \$ <input type="text"/> |
| <b>THE FINAL COMPLETION PHASE</b>                                                                                          |      |      |                                                             |
| 1. Time Specified in Contract, Between Substantial & Final Completion                                                      |      |      |                                                             |
| 2. Extensions Granted by Change Orders (Days Between S.C. & Final Completion)                                              |      |      |                                                             |
| 3. Total Days Allowable Between Substantial & Final Completion (Add Lines 1 & 2)                                           |      |      |                                                             |
| 4. Date Actually Completed and Total Days Between Actual S.C. & Date Certified by A/E as Actually being Finally Completed. |      |      |                                                             |
| 5. Final Completion Overrun (Subtract Line 3 from 4 and Enter Overrun. <b>If line 4 less than 3 enter 0.</b> )             |      |      | @ \$ <input type="text"/> Per Day = \$ <input type="text"/> |
| <b>TOTAL LIQUIDATED DAMAGES</b> _____                                                                                      |      |      |                                                             |

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Date

**EXHIBIT 6**  
**(Sample)**

DEPARTMENT OF MILITARY AFFAIRS

CONSTRUCTION CONTRACTOR'S STATUS REPORT OF CERTIFIED BUSINESS ENTERPRISE (CBE) SUBCONTRACTORS

Contractor (Company Name, Street Address, City & Zip Code)

DMA Project Number

DMA Project Name

Contract Amount

Provider's Invoice #

0

Date

CERTIFIED BUSINESS ENTERPRISE (CBE) SUBCONTRACTORS

Only complete this form if the Primary Vendor is **NOT** certified by the Office of Supplier Diversity (OSD) **AND** the Subcontractor is a woman-, veteran- and/or minority-owned business enterprise.

\*Include consultants, sub-consultants, surveyors, soils testing companies, blueprint shops, travel agents, etc. who provide services on this project.

| *Non-Certified Primary Vendor Name | Primary Vendor FEIN # | Primary Vendor Payment Amount | Primary Vendor Invoice Number | <sup>1</sup> CBE Subcontractor Name (Must be certified by OSD) | CBE FEIN # | <sup>2</sup> CBE Code | Description of Service | CBE Vendor Payment Amount |
|------------------------------------|-----------------------|-------------------------------|-------------------------------|----------------------------------------------------------------|------------|-----------------------|------------------------|---------------------------|
|                                    |                       |                               |                               |                                                                |            |                       |                        |                           |
|                                    |                       |                               |                               |                                                                |            |                       |                        |                           |
|                                    |                       |                               |                               |                                                                |            |                       |                        |                           |
|                                    |                       |                               |                               |                                                                |            |                       |                        |                           |
| TOTALS                             |                       |                               |                               |                                                                |            |                       |                        |                           |

<sup>1</sup>OSD Certification Status: Check certification status using the OSD Certified Businesses Directory at <https://osd.dms.myflorida.com/directories> or

MyFloridaMarketPlace (MFMP) Vendor Information Portal at <https://vendor.myfloridamarketplace.com>

<sup>2</sup>CBE Codes: **N** - African American, Non-Certified; **H** - African American, Certified; **O** - Hispanic, Non-Certified; **I** - Hispanic, Certified; **J** - Asian American business, Certified

**K** - Native American, Certified; **M** - Women Owned, Certified; **W** - Service-Disabled Veteran Business Enterprise, Certified

The State of Florida's Office of Supplier Diversity (OSD) certifies woman-, veteran-, and minority-owned businesses for free.

If a subcontractor is a woman-, veteran-, or minority-owned business that is not certified by the State of Florida, refer them to OSD to learn more about the benefits of this free certification: [www.dms.myflorida.com/osd](http://www.dms.myflorida.com/osd) or 850-487-0915.

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