

# CITY OF SANIBEL

## **SPECIFICATIONS FOR BEACH ROAD WEIR RESTORATION**

**ITB-PW-3-2026/SK**

**January 5, 2026**



*Public Works Department  
800 Dunlop Road, Sanibel, FL 33957  
(239)472-6397*

**BIDS DUE BY: 2:30 PM on February 5, 2026**

**PRE-BID CONFERENCE: NONE**

**NO QUESTIONS WILL BE ACCEPTED AFTER: 5:00 PM, (ET) January 26, 2026 all questions must be submitted in writing to [brett.schira@mysanibel.com](mailto:brett.schira@mysanibel.com) and received by stated time.**

**SEALED ENVELOPES MUST BE MARKED WITH THE TITLE OF THE BID, BID NUMBER, NAME AND ADDRESS OF THE BIDDER.**

Courier Packages (FedEx, UPS) shall clearly state on the outer packaging, the Invitation to Bid Title and the Invitation to Bid Number. If the proper information is not on the courier's outer packaging the Bid/RFP may be sent back to the Vendor without being opened and/or given consideration for that project.

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15 pages

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1. Construction Plans Beach Road Weir Restoration – December 2025  
(Plans prepared by Kimley-Horn and Associates, Inc.) 12 pages
2. Original Beach Road Weir Construction Plans (for reference only) 12 pages

CITY OF SANIBEL, FLORIDA

ADVERTISEMENT FOR BIDS

Legal Notice is hereby given that sealed proposals will be received at the Office of the City Procurement Manager, City of Sanibel, Florida, at the City Hall Building, 800 Dunlop Road, Sanibel, until **2:30 P.M.**, on **FEBRUARY 5, 2026** and shortly thereafter will be publicly opened and read aloud. Any proposal offered later than the above time will be returned unopened.

The work for which proposals are to be received consists of the following:

**BEACH ROAD WEIR RESTORATION:**

This work consists of **repairs to the Beach Road weir including dewatering, concrete crack, spall and leak repairs, sluice gate seal repair, corroded steel elements cleaning, and gate operator cleaning and repair work.**

Proposals shall be properly and completely executed on a standard proposal form. Each proposal shall be accompanied by an acceptable certified check or cashier's check made payable to the City of Sanibel, or an acceptable Bidders Bond, in an amount not less than five percent (5%) of the total bid price.

The Contractor to whom the work is awarded will be required to furnish an acceptable Surety Bond in an amount of one hundred percent (100%) of the contract price.

No bidder may withdraw his proposal within a period of sixty (60) days following the date set for receiving proposals. The City of Sanibel reserves the right to hold any and all bids for a period of not more than sixty (60) days and said bids shall be and remain valid and in full force and effect during said period. The City of Sanibel reserves the right to reject any and all proposals and to waive informalities.

Plans and Specifications for the work may be obtained online at:

<https://www.mysanibel.com/297/City-Bids>

AFFIDAVIT REQUESTED  
PUBLISH ONE TIME  
Fort Myers News-Press  
**January 5, 2026**

## **INFORMATION FOR BIDDERS**

### **1.01 SCOPE**

- A. The contract work provides for the **Beach Road Weir Restoration Project** and other related items pertinent and incidental thereto including the furnishing of all labor, materials, supplies, equipment, work and services, ready for satisfactory and continuous operation, in accordance with the drawings and specifications.
- B. The work included in this contract is described briefly as follows:

**Repairs to the Beach Road weir including dewatering, concrete crack, spall and leak repairs, sluice gate seal repair, corroded steel elements cleaning, and gate operator cleaning and repair work.**

Construction is scheduled to begin **MARCH 2026**.

### **1.02 CONTRACT DOCUMENTS AND SPECIFICATIONS**

- A. Work to be performed shall be in accordance with drawings and specifications prepared by Kimley-Horn and Associates, Inc. and the City of Sanibel.

### **1.03 BIDDER TO EXAMINE SITE**

- A. All bidders are to inform themselves of the conditions under which the work is to be performed, the site of the work, the obstacles which may be encountered, and all other relevant matters concerning the work to be performed. The successful bidder will not be allowed any extra compensation by reason of any matter or thing concerning which said bidder might have fully informed themselves because of their failure to have so informed themselves prior to the bidding.

### **1.04 INFORMATION NOT GUARANTEED**

- A. All information given relating to borings, material encountered, and groundwater is from the reports of the boring CONTRACTOR. Such information is furnished only for the information and convenience of the bidders. It is understood and agreed that the OWNER does not warrant or guarantee as to the accuracy or completeness of such information. Each bidder must satisfy themselves regarding the character, quantities, and conditions of the various materials and work to be done.
- B. It is further understood and agreed that the bidder or the CONTRACTOR will not use any information made available to themselves or obtained by any examination made by them in any manner as a basis or ground of claim or demand of any nature against the OWNER arising from or by reason of any variance which may exist between the information offered and the actual materials and structures encountered during the construction work.

## **1.05 QUESTIONS REGARDING CONTRACT DOCUMENTS**

- A. In general, no answer will be given in reply to an oral question if the question involves an interpretation of the intent or meaning of the drawings or contract documents, or the equality or use of products or methods other than those definitely designated or described on the drawings or in the specifications. Any information given to bidders other than by means of the drawings and contract documents or by addenda as described below is given informally and shall not be used as the basis of a claim against the OWNER or the Engineer.
- B. To receive consideration, such questions shall be submitted in writing to the OWNER at least **TEN (10)** days before the advertised date for receipt of bids. If the question involves equality or use of products or methods, it must be accompanied by drawings, specifications, or other data, in sufficient detail to enable the OWNER to determine the equality or suitability of the product or method. In general, the OWNER will neither approve nor disapprove particular products prior to the opening of the bids; such products will be considered when offered by the CONTRACTOR for incorporation into the work.
- C. The OWNER will arrange as addenda, which shall become a part of the Contract, all questions received as above provided, with his decision regarding each. Addenda will be posted at least **FIVE (5)** days prior to the receipt of bids. It shall be the responsibility of the CONTRACTOR, prior to submitting a proposal, to check the Demandstar online marketplace to download any and all addenda associated with the project. CONTRACTOR shall acknowledge issued addenda on Proposal document page (P-2).
- D. Unless such action shall have been taken by the CONTRACTOR and approval obtained, he agrees to use the product or method designated or described in the specifications or as amended by these addenda.

## **1.06 PROPOSAL FORM**

- A. All bids must be submitted upon the Proposal Form which will be furnished by the OWNER. The Proposal Form shall be completely executed and shall give the price bid for each item of work proposed, both in words and figures, and shall be signed by the bidder.
- B. In the event of a discrepancy between the prices written in words and prices written in figures, the prices written in words shall govern.
- C. The successful bidder shall be prepared to complete the work within **SIXTY (60)** Calendar days.

## **1.07 LETTER FROM SURETY**

- A. The CONTRACTOR shall submit with their executed bid proposal a letter or statement from their surety company that it will execute and deliver a one hundred percent (100%) Performance and Payment Bond.

## **1.08 AWARD OF CONTRACT**

- A. Lump Sum Proposals - The award of Contract shall be made to the low, responsive and responsible bidder on the lump sum proposals submitted for the work except as provided in

for in 1.23 LOCAL PREFERENCE. The Contract shall be deemed as having been awarded when formal notice shall have been served upon the successful bidder by an officer or agent of the OWNER duly authorized to give such notice.

## B. Unit Price Proposals

- (1) The award of the Contract will be made to the lowest responsible bidder on the total bid price given on the Proposal Form, page P-1 except as provided in for in 1.23 LOCAL PREFERENCE. The Contract shall be deemed as having been awarded when formal notice shall have been served upon the successful bidder by an officer or agent of the OWNER duly authorized to give such notice.
- (2) The quantities listed in the unit price proposal form are to be considered as approximate and are to be used for the comparison of bids only. The unit prices to be tendered by the bidders are to be tendered expressly for the scheduled quantities, as they may be increased or decreased as hereinafter provided. Payments, except for lump sum items in the unit price Contract, will be made to the CONTRACTOR for the actual quantities of work performed or materials furnished in accordance with the plans and specifications; and it is understood that the scheduled quantities of work to be done and materials to be furnished may each be increased or diminished as hereinbefore provided without in any way invalidating the unit price bid. Where there is a conflict between the unit price and the extension thereof made by the bidder, the unit price shall govern, and the Engineer shall be authorized to make a correct extension of such unit bid price and to use such corrected extension in comparing bids.
- (3) When bids are requested on "Alternate" items, the City reserves the right to select the lowest responsible bidder based upon either the base bid or the base bid with any or all of the alternate bid prices.
- (4) The City reserves the right to accept or reject any or all bids and to waive any formal irregularities in the bids, when deemed to be in the best interest of the City.

## **1.09 BID SECURITY**

- A. Each bid shall be accompanied by a cashier's check made payable to the OWNER or an acceptable bidder's bond in an amount of not less than five percent (5%) of the total bid price. The checks will be returned to all except the three lowest formal bidders within three days after the date of opening the bids. Any checks remaining with the OWNER shall be returned upon execution of a contract.

## **1.10 COMPARISON OF BIDS**

- A. Bids will be compared on the basis of the lump sum bid or the sum of unit price extensions plus the sum determined in evaluating the time of completion stated by the bidders in their proposals if the OWNER desires to make such evaluation. The net sum thus obtained shall be used to determine the order of bidding.
- B. The sum to be used for evaluation of the time of completion stated by the bidder, if used, shall be only for comparison of bids. It shall be the product of \$300.00 and the number of calendar days named by the bidder.

### **1.11 EXPERIENCE AND ABILITY OF CONTRACTOR**

- A. It is the intent of the OWNER not to award the Contract to any bidder who does not furnish satisfactory evidence they have the ability and experience in this class of work, and that they have sufficient capital and plant to enable them to prosecute the same successfully and to complete it in the time named in the proposal. CONTRACTOR shall have a minimum of **FIVE (5)** years' experience with similar projects.

### **1.12 EXECUTION OF CONTRACT**

- A. The successful bidder to whom the Contract is awarded shall be required to execute **three (3)** copies of the Construction Contract and **three (3)** copies of the Performance and Payment Bond.

### **1.13 FORFEITURE OF BID SECURITY**

- A. In the event that the party to whom the Contract is awarded shall fail or neglect to execute the Contract and furnish satisfactory bonds within TEN (10) days after the OWNER has notified him that the Contract is ready for execution, the OWNER may determine that the bidder abandoned the Contract, and thereupon the proposal and acceptance shall be null and void; and the security accompanying the proposal shall be forfeited to and retained by the OWNER as liquidated damages for such failure and neglect, and to indemnify the OWNER for any loss which may be sustained by failure of the bidder to execute the Contract. After the execution of the Contract and the acceptance of the bonds by the OWNER, the bid securities which have been retained by the OWNER shall be returned to the respective bidders.

### **1.14 UNAVAILABILITY OF MATERIALS**

- A. Bids must be based on use of the materials specified, subject to the provisions of any addenda issued. If the CONTRACTOR is unable to furnish or use any of the materials or equipment specified because of any order by a governmental agency limiting the manufacture or use, or because of the supply situation in the general market for such material or equipment, the CONTRACTOR shall offer substitutes therefor. The substitutes shall be suitable for the purpose, considering the factors of quality, serviceability, appearance, and maintenance. No substitute shall be used until it has been approved by the Engineer.
- B. No consideration will be given to the use of substitutes on account of market conditions unless the CONTRACTOR demonstrates that for the item in question, CONTRACTOR placed their order and submitted shop drawings without delay, that CONTRACTOR has shown due diligence in attempting to locate the item as specified, and that the unavailability is due to market conditions in general throughout the particular industry.
- C. If substitutes are used in the work, the compensation to be paid to the CONTRACTOR shall be subject to review and adjustment. As a general principle, if the Engineer shall determine that the substitute will be less satisfactory, the CONTRACTOR shall allow a credit to the

OWNER; only "under unusual circumstances shall there be an increase in" compensation to the CONTRACTOR on account of substitution. The basis upon which the amount of price adjustments will be founded shall be the cost of the appropriate items at the time the bids were opened.

### **1.15 LOCAL LABOR AND MATERIALS**

- A. Whenever possible, the CONTRACTOR, their sub-contractors, material personnel, or others who employ labor, shall employ such labor locally.

### **1.16 NONDISCRIMINATION IN EMPLOYMENT**

- A. Contracts for work under this proposal may obligate the CONTRACTOR and sub-contractors not to discriminate in employment practices.
- B. Bidders must, if requested, submit a compliance report concerning their employment practices and policies in order to maintain their eligibility to receive the award of the Contract.

### **1.17 RIGHT-OF-ACCESS**

- A. The CONTRACTOR agrees that a representative of the OWNER or Engineer will have access to the work wherever it is in preparation of progress and that the CONTRACTOR will provide facilities for such access and inspection.

### **1.18 SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION**

- A. The successful bidder shall be responsible for all obligations prescribed as employer obligations under Chapter XVII of Title 29, Code of Federal Regulations, Part 1926, otherwise known as "Safety and Health Regulations for Construction."

### **1.19 UTILITIES**

- A. All existing utility systems which conflict with the construction of the work herein shall be relocated or temporarily removed and replaced as required. Such relocating or temporary removal and replacement shall be accomplished at the expense of the CONTRACTOR, and the work shall be done by the Utility unless the Utility approves in writing that the work may be done by the CONTRACTOR.
- B. The CONTRACTOR shall make all necessary applications and arrangements and pay all fees and charges for electrical energy for power and light required for the construction of this Contract during its entire progress. CONTRACTOR shall provide and pay for all temporary wiring, switches, connections and meters.

### **1.20 EASEMENTS**

- A. The OWNER will obtain right-of-way easements over and through certain private lands for the construction and rehabilitation. The width or limits of such rights-of-way will be defined

by the OWNER before the work or construction shall begin. If the methods of construction employed by the CONTRACTOR are such as to require the use of land beyond the limits obtained, CONTRACTOR shall make their own agreements with the property owners affected for the use of such additional land and submit a copy of the agreement to the "owner".

- B. In all such easement rights-of-way, the CONTRACTOR shall be required to carefully remove the Owner's fences, or other obstacles to the construction procedure, and replace the same after the work is installed. The backfilling shall be to the grade of the existing ground level or to the grade as established by the Owner in the event the Owner permits the deposit of excess material upon such land.
- C. The cost of all such restoration of property shall be included and no additional payment will be allowed for this work.

### **1.21 OPERATIONS WITHIN RIGHT-OF-WAY**

- A. In public thoroughfares, all operations of the CONTRACTOR, including those of temporary nature, must be confined within the applicable right-of-way limits. If the methods of the construction employed by the CONTRACTOR are such as to require the use of land beyond the public thoroughfares, CONTRACTOR shall make their own agreements with the property owners affected for the use of such additional land and submit a copy of the agreement to the "owner".

### **1.22 PUBLIC RECORDS**

- A. OWNER is a public agency subject to Chapter 119, Florida Statutes, the Public Records Law. As a CONTRACTOR or service provider to OWNER, CONTRACTOR is also subject to the Public Records Law pursuant to Section 119.0701, Florida Statutes, and shall comply with Florida's Public Records Law. Unless specifically exempted by Florida law, in whole or part, the CONTRACTOR shall:
  - (1) Keep and maintain public records required by the OWNER in order to perform the service. This shall include all records relating to CONTRACTOR'S services provided to the OWNER and includes "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics or means of transmission."
  - (2) Upon request from the OWNER'S custodian of public records, provide the OWNER with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the OWNER.

(4) Upon completion of the contract, transfer, at no cost to the OWNER, all public records in possession of the CONTRACTOR, or keep and maintain public records required by the OWNER to perform the service. If the CONTRACTOR transfers all public records to the OWNER upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the OWNER, upon request from the OWNER'S custodian of public records, in a format that is compatible with the information technology systems of the OWNER.

B. As required by Section 119.0701(2)(a), the following contact information is provided to the CONTRACTOR in the format required by statute:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**SANIBEL CITY CLERK  
800 DUNLOP ROAD  
SANIBEL, FLORIDA 33957  
(239) 472-3700  
[scotty.kelly@mysanibel.com](mailto:scotty.kelly@mysanibel.com)**

### **1.23 DELETED**

### **1.24 E-Verify**

A. In compliance with Section 448.095, Fla. Stat., CONTRACTOR and its sub-contractor must be registered with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

(1) CONTRACTOR shall require each of its sub-contractors to provide CONTRACTOR with an affidavit stating that the sub-contractor does not employ, contract with, or sub-contract with an unauthorized alien. CONTRACTOR shall maintain a copy of the sub-contractor's affidavit as part of and pursuant to the records retention requirements of this Agreement.

(2) The OWNER, CONTRACTOR, or any sub-contractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.

(3) The OWNER, upon good faith belief that a sub-contractor knowingly violated the provisions of this section, but CONTRACTOR otherwise complied, shall promptly notify CONTRACTOR, and CONTRACTOR shall immediately terminate the contract with the sub-contractor.

(4) A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. CONTRACTOR acknowledges that upon termination of this Agreement by the OWNER for a violation of

this section by CONTRACTOR, CONTRACTOR may not be awarded a public contract for at least one (1) year. CONTRACTOR further acknowledges that CONTRACTOR is liable for any additional costs incurred by the OWNER as a result of termination of any contract for a violation of this section.

- (5) Subcontracts. CONTRACTOR or sub-contractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the sub-contractor to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in this section.

**PROPOSAL**

**CITY OF SANIBEL, FLORIDA**

**Beach Road Weir Restoration Project**

**February 5, 2026 @ 2:30PM**

TO: CITY OF SANIBEL  
Public Works Department  
800 Dunlop Rd.  
SANIBEL, FLORIDA 33957

Pursuant to the advertisement for bids, the undersigned having read the Specifications and examined the Drawings prepared by the City of Sanibel and Kimley-Horn and Associates, Inc. for the **Beach Road Weir Restoration Project** in the City of Sanibel, Florida, and having inspected the site of work and conditions affecting and governing same, hereby proposes to provide all materials, and all equipment, tools, etc., and to perform all labor necessary for the installation as specified and described in said Specifications.

The Total Bid Price for the work based on the summation of the extensions of the unit prices on the attached itemized proposal is:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ )  
(written)

**TIME OF COMPLETION**

The undersigned further agrees to complete the furnishings and construction of such work, ready for continuous and satisfactory operation in all respects, within **SIXTY (60)** calendar days of the Notice to Proceed.

**TIME OF VALIDITY**

It is hereby agreed that this proposal shall remain in full force and effect and may not be withdrawn for a period of sixty (60) days from the date of receiving proposals by the City of Sanibel.

**BID SECURITY**

The undersigned encloses herewith a certified check or cashier's check payable to the City of Sanibel, Florida or a bidder's bond bonding the undersigned and surety to the City of Sanibel, Florida in an amount not less than five percent (5%) of the total bid price as set out above, guaranteeing that the undersigned will enter into contract for the performance of the work if this proposal is accepted. It is hereby agreed that this proposal shall remain in full force and effect and may not be withdrawn for a period of sixty (60) days from the date of receiving proposals by the City of Sanibel, Florida.

ADDENDA

Receipt of Addenda Nos. \_\_\_\_\_ is hereby acknowledged.

Respectfully submitted,

\_\_\_\_\_  
Contractor

(Individual\_\_\_\_), (Partnership\_\_\_\_) or (Corporation\_\_\_\_)

(SEAL)

Signed \_\_\_\_\_

Name (print) \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

City / State \_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

Email \_\_\_\_\_

DATE:

\_\_\_\_\_

NOTE: The legal status of the bidder, whether as an individual, partnership or corporation, must be indicated above, and all pertinent information as required of the Specifications must be furnished.



**CITY OF SANIBEL**  
**BEACH ROAD WEIR RESTORATION**

**BID OPENING**  
**February 5, 2026 @ 2:30p.m.**

<b>PAY ITEMS</b>						
<b>Item No.</b>	<b>Quantity</b>	<b>Unit</b>	<b>Description</b>	<b>Unit Price (Words)</b>	<b>Unit Price \$ (Figures)</b>	<b>Extended Price \$ (Figures)</b>
1	1	LS	Insurance, Mobilization, Permit, General Conditions		\$	\$
2	1	LS	Dewatering		\$	\$
3	200	LF	Crack Repair		\$	\$
4	30	EA	Leak Repair		\$	\$
5	5	SF	Spall Repair (3 inches deep)		\$	\$
6	2	EA	Ladder Removal		\$	\$
7	5	EA	Salinity Barrier Pilon Extensions and Hinge Reposition		\$	\$
8	4	EA	Salinity (Flap Gate) Weleded Extensions		\$	\$
9	2	EA	Gate Operator Clean and Paint		\$	\$
10	1	LS	Demobilization and Clean up		\$	\$
11	1	LS	Owner's Contingency *		\$50,000.00	\$50,000.00
<b>PROJECT TOTAL</b>						\$

\*Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs. Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions associated with construction. Markups for Construction Fees will be applied by the Contractor at the time contingency is used.

**City of Sanibel  
Required Bid Items**

**Beach Road Weir Restoration Project**

**February 5, 2026**

<b>No.</b>	<b>Name</b>	<b>Page Reference</b>
1	Bid Package in sealed envelope marked with Title of Bid, Bid Number, Name & Address of Bidder	Cover page Invitation to Bid
2	Complete proposal on form provided	Sheet A-1 Sheets P1 & P2
3	Complete Unit Price Proposal	Sheet P-3
4	Include Certified Check or Bid Bond 5% or more of total bid price	Sheet A-1 and IB-3
5	Acknowledge issued addenda on page 2 of Proposal Form	Sheet IB-2, P2, GC-1
6	Letter or statement from Bidder's surety company it will execute and deliver a 100% Performance and Payment Bond	Sheet IB-2
7	Furnish evidence they have ability & experience, have sufficient capital and plant, and minimum FIVE (5) years of experience	Sheet IB-4

## SPECIMEN FORM OF CONTRACT

THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by and between THE CITY OF SANIBEL, FLORIDA, hereinafter called "OWNER", and \_\_\_\_\_ a Florida profit corporation, hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the covenants set forth below and other good and valuable consideration, the sufficiency and receipt of which is acknowledged, OWNER and CONTRACTOR hereby agree as follows:

1. The term "CONTRACT DOCUMENTS" means and includes the following, all of which are incorporated herein and made part of the CONTRACT:
  - A. Specifications for "Beach Road Weir Restoration Project" dated January 5, 2026, including, without limitation, all General Specifications, General Conditions, Special Provision, Required Contract Provisions, Technical Specifications, Drawings and Appendices
  - B. Bidding Documents, including Advertisement, Information to Bidders, and Addenda
  - C. CONTRACTOR'S Proposal in response to ITB-PW-3-2026/SK
  - D. This CONTRACT
  - E. Florida DEP Standard Terms and Conditions Applicable to Grant Agreements
  - F. Performance and Payment Bond
  - G. Notice of Award
  - H. Notice to Proceed
  - I. Change Order(s)
  
2. The CONTRACTOR will commence and complete the construction which includes:  
**"Beach Road Weir Restoration Project" as described in the CONTRACT DOCUMENTS (the "WORK")**
  
3. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the WORK.
  
4. The CONTRACTOR will commence the WORK within 6 calendar days after date of the NOTICE TO PROCEED and will complete the same no later than **SIXTY (60)** calendar days of the NOTICE TO PROCEED, unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
  
5. The CONTRACTOR agrees to perform all of the WORK in accordance with the CONTRACT DOCUMENTS for the sum of \$ \_\_\_\_\_ said amount being the total "**unit price sum / lump sum price**" as listed on the Contractor's proposal form as submitted for this project.
  
6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.
  
7. The CONTRACT DOCUMENTS embody the entire agreement of CONTRACTOR and OWNER regarding the Work. No deviation from the CONTRACT DOCUMENTS will be allowed, honored or compensated unless accompanied by a fully executed change order.
  
8. This CONTRACT shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns; however, CONTRACTOR shall not assign or otherwise

transfer its rights, duties or obligations under this CONTRACT without prior written consent of OWNER.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in counterparts each of which shall be deemed an original on the date first above written.

(SEAL)

OWNER City of Sanibel

ATTEST \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

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

ATTEST \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Email \_\_\_\_\_

Approved as to form

\_\_\_\_\_  
City Attorney

**SPECIMEN FORM OF CONTRACT**  
**PERFORMANCE AND PAYMENT BOND**

BY THIS BOND, WE

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

A \_\_\_\_\_, as principal, and  
(Corporation, Partnership, or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

a Corporation, as Surety, are bound to

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Address of Owner)

herein called Owner, in the sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars, (\$\_\_\_\_\_)

for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract dated \_\_\_\_\_, **“Year”** between Principal and Owner for construction of:

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the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract and;

2. Promptly makes payments to call claimants, as defined in Section 255.05 (1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract and;
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract and;
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract; then this bond is void; otherwise it remains in full force.

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

DATED ON \_\_\_\_\_, **“Year”**.

ATTEST:

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

\_\_\_\_\_  
Principal

By \_\_\_\_\_

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(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

ATTEST:

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

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

(SEAL)

\_\_\_\_\_  
(Witness as to Surety)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_

NOTE: Date of bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

**PERIODIC ESTIMATE FOR PARTIAL PAYMENT**

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

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

PERIODIC ESTIMATE NO. \_\_\_\_\_ FOR PERIOD \_\_\_\_\_ TO \_\_\_\_\_

**ANALYSIS OF ADJUSTED CONTRACT AMOUNT TO DATE**

- A. Original contract amount (Col.6) \_\_\_\_\_
- B. Plus: Change Order Additions (Col.13) \_\_\_\_\_
- C. Less: Change Order Deductions (Col.16) \_\_\_\_\_
- D. Adjust contract amount to date \_\_\_\_\_

**ANALYSIS OF WORK PERFORMED**

- 1. Amount of original contract work performed to date (Col.8) \_\_\_\_\_
- 2. Change Order work performed to date \_\_\_\_\_
- 3. Total amount of work performed to date \_\_\_\_\_
- 4. Add: Materials stored at close of this period  
(Attach detailed schedule \_\_\_\_\_)
- 5. Less: Amount retained \_\_\_\_\_ percent \_\_\_\_\_
- 6. Net amount earned on contract work to date \_\_\_\_\_
- 7. Less: Amount of previous payments \_\_\_\_\_
- 8. Balance due this payment \_\_\_\_\_

**CERTIFICATION OF CONTRACTOR**

According to the best of my knowledge and belief, I certify that all items and amounts shown on the face of this periodic estimate are correct; that all work has been performed and/or material supplied in full accordance with the Terms and Conditions of the Contract, and/or duly authorized deviations, substitutions, alterations, and/or additions; that this estimate is as true and correct statement of the contract account up to and including the last day of the period covered by this Periodic Estimate, and that no part of the "Balance Due This Payment" has been received:

\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_  
(Authorized Representative)

\_\_\_\_\_  
Title \_\_\_\_\_

**RECOMMENDATION OF ENGINEER**

In accordance with the contract and this Periodic Estimate for Partial Payment, the Contractor is entitled to payment in the amount shown above.

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

**PERIODIC ESTIMATE FOR PARTIAL PAYMENT**

PROJECT:

OWNER:

ENGINEER:

CONTRACTOR:

PERIODIC ESTIMATE NO. \_\_\_\_\_ FOR PERIOD \_\_\_\_\_ TO \_\_\_\_\_

CONTRACT AMOUNT						COMPLETED TO DATE		
ITEM NO.	DESCRIPTION OF ITEM	QUANTITY	UNIT OF MEAS.	COST PER UNIT	TOTAL AMOUNT	QUANTITY	AMOUNT	% COMPLETE
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

---

TOTAL

**PERIODIC ESTIMATE FOR PARTIAL PAYMENT**

PROJECT:

OWNER:

ENGINEER:

CONTRACTOR:

PERIODIC ESTIMATE NO. \_\_\_\_\_ FOR PERIOD \_\_\_\_\_ TO \_\_\_\_\_

**SCHEDULE OF CHANGE ORDERS**

CHANGE ORDER					ADDITIONS	
NO.	DATE	DESCRIPTION	AMOUNT	PERCENT COMPLETE	AMOUNT COMPLETED TO DATE	DEDUCTIONS
(10)	(11)	(12)	(13)	(14)	(15)	(16)

---

TOTAL

**CONTRACTOR'S LETTERHEAD**

**CONTRACTOR'S CERTIFICATE**

I, \_\_\_\_\_, the duly qualified, acting and authorized agent of the Contractor, \_\_\_\_\_ on the project, do hereby certify that we have performed all of the work set forth in strict accordance with the plans, specifications, laws and ordinances applicable thereto and do further certify that all materials and equipment listed herein have been paid for in full as allowed on all prior Estimates and, if requested to do so, will show evidence of payment for same in writing before the final payment of this Estimate No. \_\_\_\_\_.

I further certify (if this is a Final Estimate) that the amount received hereunder is considered compensation and final payment in full for all work performed under the Contract, including any amendments thereto, and upon payment of said sum, hereby release the Owner, its employees, agents, and representatives in accordance with said Contract. We further certify that we fully guarantee all work performed hereunder for a period of twelve months from the date of payment for the Final Estimate, (in accordance with the terms of our original Contract and all Amendments thereto), during which time all terms and conditions of the original Contract Documents shall remain in full force and effect, including the insurance requirements, Hold Harmless Agreement and Indemnifying Agreements as contained in said Contract Documents.

CERTIFIED TO FOR PAYMENT ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, "Year".

CONTRACTOR'S SEAL

\_\_\_\_\_

Contractor

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

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

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, "Year".

\_\_\_\_\_  
NOTARY

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

(NOTARY SEAL)

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

OWNER: City of Sanibel \_\_\_\_\_

CHANGE ORDER NO. \_\_\_\_\_

TO: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

You are hereby authorized to make the following additions and/or deductions to your contract amount.

	PREVIOUS CONTRACT AMOUNT	NET CHANGE		REVISED		CONTRACT AMOUNT
		INCREASE	DECREASE	(DEDUCT)	(ADD)	
TOTAL:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Description of Change:      Add      Deduct

RECOMMENDED:

APPROVED:

OWNER \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

ACCEPTED:

CONTRACTOR \_\_\_\_\_

BY \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

## **GENERAL CONDITIONS OF THE CONTRACT**

### **SECTION 2.1 - CONTRACT DOCUMENTS**

#### **2.1.01 GENERAL:**

The Contract Documents comprise the following general classifications of documents, including all additions, deletions, modifications, or other documents incorporated therein:

1. Bidding Documents
2. Contract
3. General Conditions of the Contract
4. Special Conditions
5. Specifications

#### **2.1.02 BIDDING DOCUMENTS:**

The Bidding Documents are issued by the OWNER to assist bidders in preparing their proposal include:

1. Advertisement
2. Information for Bidders
3. Proposal: The offer of a Bidder to perform the work described by the Contract Documents made out and submitted on the prescribed Proposal Form, properly signed and guaranteed.
4. Addenda to Contract Documents: Any addenda issued during the time of bidding, or forming a part of the Contract Documents loaned to the Bidder for the preparation of his Proposal, shall be covered in the Proposal, and shall be made a part of the Contract. Receipt of each Addendum shall be acknowledged in the Proposal.

#### **2.1.03 CONTRACT:**

The Contract defines the "Contract Documents" and covers the performance of the work described in the Contract Documents including all supplemental addenda thereto and all general and special provisions pertaining to the work or materials.

#### **2.1.04 GENERAL CONDITIONS OF THE CONTRACT:**

The General Conditions of the Contract outline certain general responsibilities of the OWNER and the CONTRACTOR (who are the parties to the Contract) and those responsibilities delegated by the OWNER to the Engineer who acts as the agent of the OWNER.

1. Definitions: Wherever the words hereinafter defined, or pronouns used in their stead, occur in these specifications and contract documents, they shall have the meanings herein given:
  - A. The word "OWNER" shall mean the municipality, person, firm, or corporation as specified in the Advertisement for Bids, for whom the work is to be done.

- B. The word "CONTRACTOR" shall mean the person, firm, or corporation entering into a contract with the OWNER to construct and complete the work as herein specified, set out and shown.
- C. The word "sub-contractor" shall mean a person, firm, or corporation, other than a CONTRACTOR, supplying labor and materials or labor for work at the site of the project.
- D. The word "Engineer" shall mean the project engineer as designated by the OWNER.

#### **2.1.05 SPECIAL CONDITIONS:**

Special Conditions are special provisions not included in the General Conditions of the Contract, which apply to this specific project.

#### **2.1.06 DRAWINGS AND SPECIFICATIONS:**

The intent of the Drawings and Specifications is that the CONTRACTOR shall furnish all labor, materials, equipment, and transportation necessary for the proper execution of the work, unless specifically noted otherwise. The CONTRACTOR shall do all the work outlined in the Contract Documents and all incidental work necessary to complete the project in a substantial and acceptable manner, and fully complete the work or improvement, operational and ready for occupancy by the OWNER.

1. Discrepancies: Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings and Specifications shall be immediately reported to the Engineer, who shall promptly correct such inconsistencies or ambiguities in writing. Any work done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies, or ambiguities shall be done at the CONTRACTOR'S risk.
2. Adequacy: Responsibility for adequacy of the design and for sufficiency of the Drawings and Specifications shall be borne by the OWNER. The complete requirements of the work to be performed under the Contract shall be set forth in Drawings and Specifications to be supplied by the OWNER through the Engineer or by the Engineer as representative of the OWNER. The Drawings and Specifications shall be considered inseparable documents; and in considering them, the CONTRACTOR shall rely upon both instruments in order to perform the work in accordance with their combined intent.
3. Additional Instructions: Further instructions may be issued by the Engineer during the progress of the work by means of Drawings, or otherwise to make more clear or specific the Drawings and Specifications or as may be necessary to explain or illustrate changes in the work to be done. Where said correction of errors or omissions, except as provided in the next two paragraphs below, adds to the amount of work to be done by the CONTRACTOR, compensation for said additional work shall be made under the item for Extra Work except where the additional work may be classed under some item of work for which a unit price is included in the proposal.
4. The fact that specific mention of the fixture, or of any part of work, is omitted in the specifications, whether intentionally or otherwise, when the same is clearly shown or indicated on the drawings, or is usually and customarily required to fully complete such work as is specified herein, will not entitle the CONTRACTOR to consideration in the matter

of any claim for extra compensation, but the said fixtures or work or both must be installed or done the same as if called for by both drawings and specifications.

5. All work indicated on the drawings and not mentioned in the specifications or vice versa, and all work and material usual and necessary to make work complete in all its parts, whether or not they are indicated on the drawings or mentioned in the specifications, shall be furnished and executed the same as if they were called for by both the drawings and specifications.
6. Plans and Specifications: The Engineer may furnish the CONTRACTOR up to 5 sets of plans and specifications covering this project at no cost to the CONTRACTOR. For each set of plans and specifications furnished to the CONTRACTOR, or any of his sub-contractor's, in excess of this number, the CONTRACTOR shall be billed at actual cost of printing and delivery.
7. Dimensions: Only figured dimensions on the Drawings will be used by the CONTRACTOR. Where the work of the CONTRACTOR is affected by finish dimensions, these shall be determined by the CONTRACTOR at the site, and he shall assume the responsibility, therefore.

#### **2.1.07 CONTRACT DOCUMENTS FOR THE USE OF THE ENGINEER:**

The CONTRACTOR shall maintain one complete set of the Contract Documents at the job site which shall always be available to the Engineer and upon which the CONTRACTOR shall record all changes and field adjustments. The CONTRACTOR shall keep one copy of plans, shop drawings, and supplemental drawings at the site in good order and annotated to show all changes made during construction. An as-built survey of the project shall be performed and submitted to OWNER prior to final acceptance. The survey shall be conducted in accordance with the standards set forth in Chapter 472 of the Florida Statutes and the Minimum Technical Standards for such survey as specified in Chapter 61G17 of the Florida Administrative Code. The cost of the survey shall be borne by the CONTRACTOR.

### **SECTION 2.2 - OWNER-CONTRACTOR-ENGINEER RELATIONS**

#### **2.2.01 OWNER'S RIGHTS AND RESPONSIBILITIES:**

1. Lands by OWNER: The OWNER will provide the lands shown on the Drawings or described in the Specifications upon which the work under the Contract is to be performed and to be used for right-of-way for access. Any delay in furnishing these lands by the OWNER will be deemed proper for adjustment in the Contract Amount and in the time of completion.
2. Base Lines and Bench Marks: Unless otherwise specified, the OWNER will establish base lines, and bench marks.
3. OWNER'S Right to Correct Deficiencies: Upon failure to perform the work in accordance with the Contract Documents, including any requirements with respect to the Schedule of Completion, and after five days' written notice to the CONTRACTOR, the OWNER may, without prejudice to any other remedy he may have, correct such deficiencies in work intended to become a permanent part of the project. The cost to correct such deficiencies may be deducted from the payment due the CONTRACTOR.

4. Suspension of Work by OWNER: The OWNER shall have the authority to suspend the work, wholly or in part, for such period or periods as he may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable to carry out the provisions of the Contract, or to supply materials meeting the requirements of the Contract Documents.
  - A. Notice: The work or any portion thereof may be suspended at any time by the OWNER provided that he gives the CONTRACTOR five days' notice of suspension which shall set forth the date on which work is to be resumed. The CONTRACTOR shall resume the work upon written notice from the OWNER and within ten days after the date set forth in the notice of suspension. If the OWNER does not give written notice to resume work within ten days of the date fixed in the notice of suspension, the CONTRACTOR may abandon that portion of the work so suspended and shall be entitled to payment in accordance with Paragraph 2.6.09, Payment for Work Suspended by the OWNER.
  - B. In case of any suspensions, the time in which the CONTRACTOR is required to complete the work shall be extended as many working days as the same is suspended; provided, however, that if the work is suspended on account of failure on the part of the CONTRACTOR to comply with specifications, such extensions of time will not be allowed.
5. OWNER'S Right to Terminate Agreement and Complete the Work: The OWNER shall have the right to terminate his agreement with the CONTRACTOR after giving ten days' written notice of termination to the CONTRACTOR in the event of any default by the CONTRACTOR.
  - A. Default by CONTRACTOR: It shall be considered a default by the CONTRACTOR whenever he shall:
    - (i) Declare bankruptcy, become insolvent, or assign his assets for the benefit of his creditors.
    - (ii) Disregard or violate provisions of the Contract Documents or fail to prosecute the work according to the agreed Schedule of Completion, including extensions thereof.
    - (iii) Fail to provide a qualified superintendent, competent workmen or sub-contractor's, or proper materials, or fail to make prompt payment, therefore.
  - B. Completion by the OWNER: In the event of termination of the Agreement by the OWNER because of default by the CONTRACTOR, the OWNER may take possession of the work and of all materials and equipment thereon and may finish the work by whatever method and means he may select.

#### **2.2.02 CONTRACTOR'S RIGHTS AND RESPONSIBILITIES:**

All work shall be done in strict accordance with the Contract Documents. Observations, construction reviews, tests, recommendations or approvals by the Engineer or persons other than the CONTRACTOR, shall in no way relieve the CONTRACTOR of his obligation to complete all work in accordance with the Contract Documents. All work shall be done under the direct supervision of the

CONTRACTOR. The CONTRACTOR shall be responsible for construction means, methods, techniques and procedures, and for providing a safe place for the performance of the work by the CONTRACTOR, Sub-contractor's, suppliers and their employees, and for access use, work or occupancy by all authorized persons. The CONTRACTOR shall be responsible for all obligations prescribed as employer obligations under Chapter XVII of Title 29, Code of Federal Regulations, Part 1926, otherwise known as "Safety and Health Regulations for Construction".

1. Lands by CONTRACTOR: Any land and access thereto not specifically shown to be furnished by the OWNER that may be required for temporary construction facilities or for storage of materials shall be provided by the CONTRACTOR with no liability to the OWNER. The CONTRACTOR shall confine his apparatus and storage to such additional areas as he may provide at his expense.
  - A. Private and Public Property: The CONTRACTOR shall not enter upon private property for any purpose without obtaining permission; and he shall be responsible for the preservation of all public property, trees, monuments, structures, and improvements, along and adjacent to the street and/or right-of-way and shall use every precaution necessary to prevent damage or injury thereto. He shall use suitable precautions to prevent damage to pipes, conduits, and other underground structures, and shall protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.
2. Surveys: Based upon the information provided by the OWNER, the CONTRACTOR shall develop and make all detailed surveys necessary for construction, including slope stakes, batter boards, stakes for pile locations and other working point lines, and elevations. The CONTRACTOR shall carefully preserve bench marks, reference points and stakes; and, in the case of destruction thereof by the CONTRACTOR or resulting from his negligence, the CONTRACTOR shall be charged with the expense and damage resulting there from and shall be responsible for any mistakes that may be caused by the loss or disturbance of such bench marks, reference points, and stakes.
3. Public Utilities: The elevation and location of all public utilities shown on the Drawings were taken from existing public records. It shall be the duty of the CONTRACTOR to make final and exact determination of the location and extent of all utilities, and he will be liable for any expense resulting from damage to them.
4. Superintendent: A qualified superintendent, who is acceptable to the OWNER, shall be maintained on the work and give efficient supervision to the work until its completion. The superintendent shall have full authority to act in behalf of the CONTRACTOR, and all instruction given to the superintendent shall be considered as given to the CONTRACTOR. It shall be the responsibility of this CONTRACTOR's superintendent to coordinate the work of all the sub-contractor's. The superintendent shall be present on the site at all times required to perform adequate supervision and coordination.
5. Subcontracts: At the time set forth in the Contract Documents or when requested by the OWNER, the CONTRACTOR shall submit in writing for review of the OWNER the names of the sub-contractor's proposed for the work. Sub-contractor's may not be changed, except at the request or with the approval of the OWNER. The CONTRACTOR is responsible to the OWNER for the acts and deficiencies of his sub-contractor's, and of their direct and indirect employees, to the same extent as he is responsible for the acts and deficiencies of his employees. The Contract Documents shall not be construed as creating

any contractual relation between any sub-contractor and the OWNER. The CONTRACTOR shall bind every sub-contractor by the terms of the Contract Documents.

- A. For convenience of reference and to facilitate the letting of Contracts and Subcontracts, the Specifications are separated into titled sections. Such separation shall not, however, operate to make the OWNER or the Engineer an arbiter to establish limits to the contracts between CONTRACTOR and sub-contractor.
6. CONTRACTOR'S Right to Suspend Work or Terminate Agreement: CONTRACTOR may suspend work or terminate his Agreement with the OWNER upon ten days' written notice to the OWNER for any of the following reasons:
    - A. If an order of any court or other public authority caused the work to be stopped or suspended for a period of 90 days through no act or fault of the CONTRACTOR or his employees.
    - B. If the OWNER should fail to pay the CONTRACTOR any sum within 45 days after its award by arbitrators.
  7. Work During an Emergency: The CONTRACTOR shall perform any work and shall furnish and install any materials and equipment necessary during an emergency endangering life or property. In all cases, he shall notify the OWNER of the emergency as soon as practicable, but he shall not wait for instruction before proceeding to properly protect both life and property.

### **2.2.03 RESPONSIBILITY OF THE ENGINEER:**

The Engineer shall decide questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of work, interpretation of Drawings and Specifications, and all questions as to the acceptable fulfillment of the Agreement on the part of the CONTRACTOR. The duties and responsibilities of the Engineer as set forth herein shall not be extended, except through written consent of the Engineer and the OWNER.

1. Observation of the Work: All materials and each part or detail of the work shall always be subject to observation by the Engineer and the OWNER; and the CONTRACTOR will be held strictly to the intent of the Contract Documents in regard to quality of materials, workmanship, and the diligent execution of the Contract. Observations may be made at the site or at the source of material supply, whether mill, plant, or shop. The Engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the CONTRACTOR as is required to make his observations and construction review.
2. Acceptability of Work: The Engineer's decision as to the acceptability or adequacy of the work shall be final and binding upon the CONTRACTOR. The CONTRACTOR agrees to abide by the Engineer's decision relative to the performance of the work.
3. Engineer's Decisions: All claims of the OWNER or the CONTRACTOR shall be presented to the Engineer for decision which shall be final, except in cases where time and/or financial considerations are involved, which shall be subject to arbitration.

#### **2.2.04 ORAL AGREEMENTS:**

No oral order, objection, claim, or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the Contract Documents; and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than a definitely agreed waiver or modification thereof in writing; and no evidence shall be introduced in any proceeding of any other waiver or modification.

#### **2.2.05 OBSERVATION OF COMPLETED WORK**

The CONTRACTOR shall remove or uncover such portions of the completed work as may be directed by the OWNER at any time before acceptance of the work. After examination, the CONTRACTOR shall restore the work to the standard required by the Contract Documents. Should the work thus exposed or examined prove acceptable, the uncovering or removing and the restoring of the work shall be paid for as Extra Work; but should the work exposed or examined prove unacceptable, the uncovering, removing, and restoring of the work shall be at the CONTRACTOR'S expense.

#### **2.2.06 WORK BY OWNER OR OTHER CONTRACTOR'S:**

1. Separate Contracts: The OWNER may let other contracts in connection with the work of the CONTRACTOR. The CONTRACTOR shall cooperate with other CONTRACTOR'S regarding storage of materials and execution of their work. It shall be the CONTRACTOR'S responsibility to inspect all work by other CONTRACTOR'S affecting his work and to report to the OWNER any irregularities which will not permit him to complete his work in a satisfactory manner. His failure to notify the OWNER of such irregularities shall indicate the work of other CONTRACTOR'S has been satisfactorily completed to receive his work. The CONTRACTOR shall not be responsible for defects of which he could not have known, which develop in the work of others after the work is completed. It shall be the responsibility of the CONTRACTOR to measure the completed work in place and report to the OWNER immediately any difference between completed work by others and the provisions of the Contract Documents.
2. Written Agreement: Whenever work being done by the OWNER through his own employees or through other CONTRACTOR'S is contiguous to work covered by the Contract Documents, the respective rights of the various interests involved shall be established by written agreement to secure the completion of the various portions of the work in general harmony.

#### **2.2.07 SECTION DELETED**

#### **2.2.08 NIGHT AND SUNDAY WORK:**

No night or Sunday work requiring the presence of an Engineer or Inspector will be permitted, except in case of emergency and then only to such an extent as it is absolutely necessary and with written approval of the Engineer, provided that the clause shall not operate in case of a gang organized for regular and continuous night work, and on work which, in the opinion of the Engineer, can be performed satisfactorily at night or on Sunday.

## **SECTION 2.3 - MATERIALS, EQUIPMENT, AND WORKMANSHIP**

### **2.3.01 MATERIALS AND EQUIPMENT:**

The materials and equipment installed in the work shall meet the requirements of the Contract Documents, and no materials or equipment shall be ordered until reviewed by the Engineer. All materials and equipment not otherwise specifically indicated shall be furnished by the CONTRACTOR. The CONTRACTOR shall guarantee all materials and equipment he provides in accordance with Paragraph 2.3.08.

1. Substitutions: In order to establish standards of quality, the Engineer has, in the detailed Specifications, referred to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design.
  - A. The CONTRACTOR shall furnish the complete list of proposed desired substitutions prior to signing of the Contract, together with such engineering and catalog data as the Engineer may require.
  - B. The CONTRACTOR shall abide by the Engineer's recommendation when proposed substitute materials or items of equipment are not recommended for installation and shall furnish the specified material or item of equipment in such case. All proposals for substitutions shall be submitted in writing by the General CONTRACTOR and not by individual trades or material suppliers. The Engineer will review proposed substitutions and make his recommendations in writing within a reasonable time.
2. Space Requirements: It shall be the responsibility of the CONTRACTOR to ensure that materials and equipment to be furnished fit the space available. He shall make necessary field measurements to ascertain space requirements, including those for connections and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the Contract Documents.
3. Arrangement: Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the CONTRACTOR to install the equipment to operate properly, and in harmony with the intent of the Contract Documents, and to make all changes in the work required by such arrangement.
4. Unacceptable Materials and Equipment: Materials and equipment which do not conform to the requirements of the Contract Documents, are not equal to samples reviewed by the Engineer, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall not be furnished nor installed.
5. Storage: Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. When considered necessary, they shall be placed on wooden platforms or other hard, clean surfaces, and not on the ground, and/or they shall be placed under cover. Stored materials and equipment shall be located to facilitate prompt inspection. Private property shall not be used for storage purposes without the written permission of the OWNER or lessee.

6. Manufacturer's Directions: Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer.

### **2.3.02 SAMPLES:**

All samples called for in the Specifications or required by the Engineer shall be furnished by the CONTRACTOR and shall be submitted to the Engineer for his review. Samples shall be furnished so as not to delay fabrication, allowing the Engineer reasonable time for the consideration of the samples submitted.

1. Samples for Tests: CONTRACTOR shall furnish such samples of material as may be required for examination and test. All samples of materials for tests shall be taken according to standard methods or as provided in the Contract Documents.
2. CONTRACTOR'S Guaranty: All samples shall be submitted by the CONTRACTOR with a covering letter indicating that such samples are recommended by the CONTRACTOR for the service intended and that the CONTRACTOR'S Guaranty will fully apply.
3. All materials, equipment, and workmanship shall be in accordance with samples guaranteed by the CONTRACTOR and reviewed by the Engineer.

### **2.3.03 SHOP DRAWINGS:**

The CONTRACTOR shall provide shop drawings, setting schedules and such other drawings as may be necessary for the prosecution of the work in the shop and in the field as required by the Drawings, Specifications, or the Engineer's instructions. Deviations from the Drawings and Specifications shall be called to the attention of the Engineer at the time of the first submission of shop drawings and other drawings for consideration. The Engineer's review of any drawings shall not release the CONTRACTOR from responsibility for such deviations. Shop drawings shall be submitted according to a schedule prepared jointly by the CONTRACTOR and the Engineer.

1. CONTRACTOR'S Certification: When submitted for the Engineer's review, shop drawings shall bear the CONTRACTOR'S certification that he has reviewed, checked, and approved the shop drawings; that they are in harmony with the requirements of the Project and with the provisions of the Contract Documents; and that he has verified all field measurements and construction criteria, materials, catalog numbers, and similar data. CONTRACTOR shall also certify that the work represented by the shop drawings is recommended by the CONTRACTOR and the CONTRACTOR'S Guaranty will fully apply.

### **2.3.04 EQUIPMENT DATA:**

The CONTRACTOR shall submit for the Engineer's review complete catalog data for every manufactured item of equipment and all components to be used in the work, including specific performance data, material description, rating, capacity, working pressure, material gage or thickness, brand name, catalog number, and general type. This submission shall be compiled by the CONTRACTOR and reviewed by the Engineer before any of the equipment is ordered.

1. Index: Each data sheet or catalog in the submission shall be indexed according to specification section and paragraph for each reference.

2. Relation to Contract Documents: Catalog data for equipment reviewed by the Engineer shall not supersede the Engineer's Contract Documents. The review of the Engineer shall not relieve the CONTRACTOR from responsibility for deviations from Drawings or Specifications, unless he has in writing called the Engineer's attention to such deviations at the time of submission, nor shall it relieve him from responsibility for error of any sort in the items submitted. The CONTRACTOR shall check the work described by the catalog data with the Engineer's Contract Documents for deviations and errors.
3. CONTRACTOR'S Certification: Equipment data shall be submitted by the CONTRACTOR with a covering letter indicating that he has reviewed, checked and approved the data submitted; that they are in harmony with the requirements of the project and with the provisions of the Contract Documents; and that he has verified all field measurements and construction criteria, materials, catalog numbers, and similar data. CONTRACTOR shall also certify that the work represented by the shop drawings is recommended by the CONTRACTOR and that his Guaranty will fully apply.

### **2.3.05 REJECTED WORK AND MATERIALS:**

Any defective work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause shall be removed within ten days after written notice is given by the OWNER, and the work shall be re-executed by the CONTRACTOR. The fact that the Engineer may have previously overlooked such defective work shall not constitute an acceptance of any part of it.

1. Should the CONTRACTOR fail to remove rejected work or materials within ten days after written notice to do so, the OWNER may remove them and may store the materials.
2. Correction of faulty work after final payment shall be in accordance with Paragraph 2.5.12.

### **2.3.06 CUTTING AND PATCHING:**

The CONTRACTOR shall do all necessary cutting and patching of the work that may be required to properly receive the work of the various trades or as required by the Drawings and Specifications to complete the structure. He shall restore all such cut or patched work as approved by the Engineer. Cutting of existing structure that may endanger the work, adjacent property, workmen, or the public shall not be done.

### **2.3.07 CHARACTER OF WORKMEN:**

The CONTRACTOR shall always be responsible for the conduct and discipline of his employees and/or any sub-contractor or persons employed by sub-contractor's. All workmen must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any foreman or workman employed by the CONTRACTOR or sub-contractor who does not perform his work in a skillful manner or appears to be incompetent or to act in a disorderly or intemperate manner shall, at the written request of the OWNER, be discharged immediately and shall not be employed again in any portion of the work without the approval of the OWNER.

### **2.3.08 GUARANTY:**

The CONTRACTOR shall guarantee all materials and equipment furnished and work performed for a period of one year from the date of written acceptance of the work.

1. Correction of faulty work after final payment shall be as provided in Paragraph 2.5.12.

### **2.3.09 A.S.T.M. DESIGNATION:**

Wherever the letters "A.S.T.M." are used in these specifications, it shall be understood as referring to the American Society for Testing Materials. When reference is made to a certain Designation Number of a specification or test as set out or given by the American Society of Testing Materials, it shall be understood to mean the current, up-to-date standard specification or tentative specification for that particular process, material, or test as currently published by that group.

## **SECTION 2.4 – INSURANCE, LEGAL RESPONSIBILITY, AND SAFETY**

### **2.4.01 INSURANCE:**

CONTRACTOR shall purchase and maintain such comprehensive general liability and other insurance as well as provide protection from claims set forth below which may arise out of or result from CONTRACTOR'S performance of the Work and CONTRACTOR'S other obligations under the Contract Documents, whether such performance is by CONTRACTOR, by any sub-contractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance policies shall be with insurers qualified to do business in the state of the Project location.

1. Types: The types of insurance the CONTRACTOR is required to obtain and maintain for the full period of the Contract will be: Workmen's Compensation and Employer's Liability, Comprehensive General Liability and Automobile Liability, U.S.L.& H. coverage (if applicable), Jones Act (if applicable) and an Excess Liability Umbrella Insurance as detailed in the following specifications.
2. Evidence: As evidence of specified insurance coverage, the OWNER may, in lieu of actual policies, accept a Certificate of Insurance on Accord Form 25 issued by the insurance carrier showing such policies in force for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without ten days notice in writing to be delivered by registered mail to the OWNER. Should any policy be canceled before final payment by the OWNER to the CONTRACTOR and the CONTRACTOR fails immediately to procure other insurance as specified, the OWNER reserves the right to procure such insurance and to deduct the cost thereof from any sum due the CONTRACTOR under this Contract.
3. Adequacy of Performance: Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guaranty period. Should such insurance be canceled before the end of the guaranty period and the CONTRACTOR fails immediately to procure other insurance as specified, the OWNER reserves the right to procure such insurance and to charge the cost thereof to the CONTRACTOR.
4. Payment of Damages: Nothing contained in these insurance requirements is to be construed as limiting the extent of the CONTRACTOR'S responsibility for payment of damages resulting from his operations under this Contract.

### **2.4.02 COMPREHENSIVE GENERAL LIABILITY INSURANCE:**

1. General liability insurance shall provide full comprehensive form coverage for both bodily injury and property damage. Such coverage shall include premises-operations, underground hazard, products/completed operations hazard, contractual insurance, broad

form property damage, independent CONTRACTOR'S, and personal injury. The limits for bodily injury shall be \$500,000 each occurrence and \$500,000 aggregate. The limits for property damage shall be \$100,000 each occurrence and \$100,000 aggregate.

2. Automobile liability insurance shall provide full comprehensive form coverage for both bodily injury and property damage. Such coverage shall include owned, hired, and non-owned vehicles. The limits for bodily injury shall be \$500,000 each person and \$500,000 each accident. The limits for property damage shall be \$100,000.
3. Excess liability insurance shall provide an umbrella form coverage for both bodily injury and property damage combined with a minimum limit of \$2,000,000.
4. Indemnity: Included in such insurance will be contractual coverage sufficiently broad to insure the OWNER, the Engineer, their consultants and each of their officers, agents, and employees as additional insured under the General Liability Policy. See Paragraph 2.4.05 below for provisions of Indemnity.

#### **2.4.03 WORKMEN'S COMPENSATION INSURANCE:**

CONTRACTOR'S shall provide the statutory Workmen's Compensation and Employer's Liability Insurance requirements of the most current and applicable state Workmen's Compensation Insurance Laws.

#### **2.4.04 DELETED**

#### **2.4.05 INDEMNITY:**

The CONTRACTOR (sub-contractor) hereinafter "Indemnitor", hereby agrees to indemnify, save and hold harmless, and defend at its own expense the Engineer, OWNER, their respective partners, agents, employees, and anyone else acting for or on behalf of any of them, and any other person or entity for whom any of them may be legally responsible (herein collectively called "Indemnities") from all claims, losses, damages, suits, costs and expenses, including attorneys' fees, or actions of any nature whatsoever which arise out of or are connected with, or are alleged to arise out of or be connected with, the Work to be performed herein; including without limiting the generality of the foregoing, all liability for damages, loss, claims, demands, and actions arising or alleged to arise from injury including death, damage to property including the loss of use thereof and consequential damages therefrom, or damages arising out of economic loss, to any person or entity including any Indemnitee or Indemnitor or its employees, servants and agents whether based upon, or claimed to be based upon, statutory (including without limiting the generality of the foregoing, workmen's compensation), contractual, tort or other liability of any Indemnitee whether or not caused, or alleged to be caused, in whole or in part, by the joint, several or sole negligence, breach of contract, breach of warranty, strict liability, or other breach of duty by any Indemnitee, its partners, employees, agents, and anyone else for or on behalf of any of them, or any other person for whom any Indemnitee may be responsible.

In the event more than one Indemnitor is responsible or alleged to be responsible in respect to an accident or occurrence covered by this indemnification, then all of such Indemnitor shall be jointly and severally responsible to the Indemnities for indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee.

The indemnity provided hereunder shall not include indemnification of the Engineer in respect to claims arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, or (2) the giving of or the failure to give directions or instructions by

the Engineer, his agents or employees; provided that such giving or failure to give is a primary cause of the injuries and damages.

If any part of these indemnity provisions is adjudged to be contrary to law, the remaining parts of these provisions shall in all other respects be and remain legally effective and binding. Moreover, these indemnity provisions shall not be construed to eliminate or in any way reduce any other indemnification or right which the Engineer and OWNER has by law.

#### **2.4.06 WAIVER OF SUBROGATION:**

The OWNER and the CONTRACTOR waive all rights against (1) each other and other sub-contractor's, agents, and employees of each other, and (2) the Engineer and separate CONTRACTOR'S, if any, and their sub-contractor's, agents, and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Section 2.4 or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such insurance held by the OWNER as trustees. The OWNER or the CONTRACTOR, as appropriate, shall require of the Engineer, separate CONTRACTOR'S and sub-contractor's by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this subparagraph 2.4.06.

#### **2.4.07 PATENTS AND ROYALTIES:**

If any design, device, material, or process covered by letters, patent or copyright is used by the CONTRACTOR, he shall provide for such use by legal agreement with the OWNER of the patent or a duly authorized licensee of such OWNER, and shall save harmless the OWNER and the Engineer from any and all loss or expense on account thereof, including its use by the OWNER.

#### **2.4.08 PERMITS:**

All permits and licenses (except as listed hereafter) necessary for the prosecution of the work shall be secured and paid for by the CONTRACTOR. The permits for construction within or across the property, rights-of-way, or easements of highways, railroads, gas lines, electric power transmission lines, water lines, telephone lines, telegraph lines, levees, or other utilities shall be secured and paid for by the OWNER. City of Sanibel Building Dept. permit fees shall be paid for by the OWNER.

#### **2.4.09 LAWS TO BE OBSERVED:**

The CONTRACTOR shall give all notices and comply with all Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work, and all such orders and decrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the OWNER and the Engineer against any claim or liability arising from, or based on, the violation of any such law, ordinance, regulation, order or decree, whether by himself or his employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for this work in relation to any such law, ordinance, regulations, order or decree, the CONTRACTOR shall forthwith report the same to the Engineer in writing.

1. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein; and the contract shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract shall forthwith be physically amended to make such insertion. This shall include but not be limited to the Occupational Safety and Health Act of 1970.

#### **2.4.10 WRITTEN NOTICE:**

Written notice shall be considered as served when delivered in person or sent by registered mail to the individual, firm, or corporation, or to the last business address of such known to him who serves the notice.

1. Change of Address: It shall be the duty of each party to advise the other parties to the Contract as to any change in his business address until completion of the Contract.

#### **2.4.11 ASSIGNMENT OF CONTRACT:**

Neither the CONTRACTOR nor the OWNER shall sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of his right, title, or interest therein, or his obligations thereunder, without written consent of the other party.

#### **2.4.12 ORAL AGREEMENTS:**

No oral order, objection, claim, or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the Contract Documents; and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing, and no evidence shall be introduced in any proceeding of any other waiver or modification.

#### **2.4.13 WORK DURING AN EMERGENCY:**

The CONTRACTOR shall perform any work and shall furnish and install any materials and equipment necessary during an emergency endangering life or property. In all cases he shall not wait for instructions before proceeding to properly protect both life and property.

#### **2.4.14 WARNING SIGNS AND BARRICADES:**

The CONTRACTOR shall provide adequate signs, barricades, warning lights, and watchmen and take all necessary precautions for the protection of the work and the safety of the public. All barricades and obstructions shall be protected at night by suitable signal lights which shall be kept burning from sunset to sunrise. Barricades shall be of substantial construction and shall be painted such as to increase their visibility at night. Suitable warning signs shall be so placed and illuminated at night as to show in advance where construction, barricades, or detours exist.

#### **2.4.15 PUBLIC CONVENIENCE:**

The CONTRACTOR shall at all times so conduct his work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of persons and property. No road or street shall be closed to the public, except with the permission of the proper authorities. Fire hydrants on or adjacent to the work shall always be kept accessible to fire-fighting equipment. Temporary provisions shall be made by the CONTRACTOR to ensure the use of sidewalks and the proper functioning of all gutters, sewer inlets, drainage ditches, and irrigation ditches, which shall not be obstructed.

#### **2.4.16 SAFETY:**

In accordance with general accepted construction practices, the CONTRACTOR shall be solely and completely responsible for conditions of the job site, including safety of all persons and property affected

directly or indirectly by his operations during the performance of the work. This requirement will apply continuously 24 hours per day until acceptance of the work by the OWNER and shall not be limited to normal working hours.

1. The duty of the Engineer to conduct construction review of the CONTRACTOR'S performance is not intended to include review of the adequacy of the CONTRACTOR'S safety measures in, on, or near the construction site.

#### **2.4.17 EXISTING CONSTRUCTION:**

When new construction is adjacent to or crosses highways, railroads, streets, or utilities under the jurisdiction of State, County, City, or other public agency, public utility, or private entity, the OWNER shall secure written permission from the proper authority before executing such new construction. The CONTRACTOR shall satisfy himself that the OWNER has secured written permission before any work is done. The CONTRACTOR shall acquaint himself with and shall execute the work in accordance with any and all requirements of the written permit. The CONTRACTOR shall replace or repair all existing construction damaged in the execution of this Contract. The CONTRACTOR will be required to furnish a release from the proper authority before final acceptance of the work.

#### **2.4.18 SANITARY PROVISIONS:**

The CONTRACTOR shall provide and maintain such sanitary accommodations for the use of his employees and those of his sub-contractor's as may be necessary to comply with the requirements and regulations of the local and state departments of health.

#### **2.4.19 NONDISCRIMINATION IN EMPLOYMENT:**

The CONTRACTOR agrees:

1. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no CONTRACTOR, or sub-contractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen who is qualified and available to perform the work to which the employment relates;
2. That no CONTRACTOR, sub-contractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;
3. The CONTRACTOR agrees to comply with any Federal, State, or local law with respect to nondiscrimination in employment.

## **SECTION 2.5 - PROGRESS AND COMPLETION OF WORK**

### **2.5.01 NOTICE TO PROCEED:**

Following the execution of the Contract by the OWNER and the CONTRACTOR, written Notice to Proceed with work shall be given by the OWNER to the CONTRACTOR. The CONTRACTOR shall begin and shall prosecute the work regularly and uninterruptedly thereafter and not before (except as provided for herein) with such force as to secure the completion of the work within the Contract Time.

### **2.5.02 CONTRACT TIME:**

The CONTRACTOR shall complete, in an acceptable manner, all of the work contracted for in the time stated herein. Computation of Contract Time shall commence on the day specified in the Notice to Proceed and every calendar day following, except as herein provided, shall be counted as Contract Time.

### **2.5.03 SCHEDULE OF COMPLETION:**

The CONTRACTOR shall submit, at such times as may reasonably be requested by the Engineer, schedules showing the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the various parts of the work, and estimated date of completion of each part.

### **2.5.04 CHANGES IN THE WORK:**

The OWNER may, as the need arises, order changes in the work through additions, deletions, or modifications to the extent of 25% of the original Contract Amount, without invalidating the Contract. Compensation and time of completion affected by the change shall be adjusted at the time of ordering such change.

### **2.5.05 EXTRA WORK:**

New and unforeseen items of work found to be necessary and which cannot be covered by any item or combination of items for which there is a Contract price, shall be classed as Extra Work. The CONTRACTOR shall do such Extra Work and furnish such materials as may be required for the proper completion or construction of the whole work contemplated, upon written order from the OWNER as approved by the Engineer. In the absence of such written order, no claim for Extra Work shall be considered. Extra Work shall be performed in accordance with these Contract Documents where applicable and work not covered by such shall be done in accordance with the best construction practice and in a workmanlike manner. Extra Work required in an emergency to protect life and property shall be performed by the CONTRACTOR as required.

### **2.5.06 EXTENSION OF CONTRACT TIME:**

A delay beyond the CONTRACTOR'S control occasioned by an Act of God, by act or omission on the part of the OWNER, or by strikes, lockouts, fire, etc., may entitle the CONTRACTOR to an extension of time in which to complete the work as agreed by the OWNER, provided, however, that the CONTRACTOR shall immediately give written notice to the OWNER of the cause of such delay.

1. Act of God shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature. Rain, wind, flood, or other natural phenomenon of normal intensity for the locality

shall not be construed as an Act of God, and no reparation shall be made to the CONTRACTOR for damages to the work resulting therefrom.

**2.5.07 USE OF COMPLETED PORTIONS:**

The OWNER shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the completion of uncompleted work or causes refinishing of completed work, the CONTRACTOR shall be entitled to such extra compensation or extension of time or both, as agreed by the OWNER.

**2.5.08 REMOVAL OF CONSTRUCTION EQUIPMENT, TOOLS, AND SUPPLIES:**

At the termination of this Contract, before acceptance of the work by the OWNER, the CONTRACTOR shall remove all of his equipment, tools, and supplies from the property of the OWNER. Should the CONTRACTOR fail to remove such equipment, tools, and supplies, the OWNER shall have the right to remove them at the expense of the CONTRACTOR.

**2.5.09 CLEANING UP:**

The CONTRACTOR shall remove from the OWNER'S property, and from all public and private property, all temporary structures, rubbish, and waste materials resulting from his operation or caused by his employees, and shall remove all surplus materials leaving the site smooth, clean, and true to line and grade.

**2.5.10 ENGINEER'S CERTIFICATE OF SUBSTANTIAL COMPLETION:**

When the work to be performed under this Contract is substantially completed in accordance with the Contract Documents, the Engineer shall prepare an Engineer's Certificate of Substantial Completion to be acknowledged and accepted by the OWNER and the CONTRACTOR. The Certificate may list items to be completed or corrected, but such Certificate shall not relieve the CONTRACTOR of his obligation to complete all work, whether listed or not, in accordance with the Contract Documents nor will it preclude any right the OWNER may have for recourse in accordance with the Contract Documents.

**2.5.11 TERMINATION OF CONTRACTOR'S RESPONSIBILITY:**

The Contract will be considered complete when all work has been finished, the final review made up by the Engineer, and the project accepted in writing by the OWNER. The CONTRACTOR'S responsibility shall then cease, except as set forth in his Performance and Payment Bond, as provided in Paragraph 2.3.08 Guaranty, and as provided in Paragraph 2.5.12 Correction of Faulty Work After Final Payment.

**2.5.12 CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT:**

The making of the final payment by the OWNER to the CONTRACTOR shall not relieve the CONTRACTOR of responsibility for faulty materials or workmanship. The CONTRACTOR shall promptly replace any such defects discovered within one year from the date of written acceptance of the work.

### **2.5.13 LIQUIDATED DAMAGES:**

In the event the CONTRACTOR fails to complete satisfactorily the entire work contemplated and provided for under this contract on or before the date of completion determined as described elsewhere herein, the OWNER shall deduct from the monies due to CONTRACTOR the sum of One ~~Thousand~~ ~~Five~~-Hundred Dollars (\$1,500.00) for each calendar day of delay, which sum is agreed upon not as a penalty but as a fixed and liquidated damage for each day of such delay, to be paid in full and subject to no deduction, it being understood and agreed that the time of completion is of the essence. If the monies due the CONTRACTOR are less than the amount of such liquidated damages, then the CONTRACTOR shall pay the balance to the OWNER.

### **2.5.14 INCENTIVE CLAUSE:**

The City of Sanibel will pay the CONTRACTOR an "Incentive Bonus" in the sum of One Hundred Dollars (\$100.00) for each calendar day if the work in the Contract is completed in accordance with the Contract Documents, as determined by the Engineer, before the documented project completion date.

The parties anticipate that delays may be caused by or arise from any number of events during the course of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of Suppliers, sub-contractor's or other CONTRACTOR'S, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspension of CONTRACTOR'S operations, or other such events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on performance by the CONTRACTOR are specifically contemplated and acknowledged by the parties in entering into this Contract and shall not extend the "Incentive Bonus" Completion Date set forth above.

## **SECTION 2.6 – PAYMENTS TO CONTRACTOR**

### **2.6.01 DETAILED BREAKDOWN OF CONTRACT AMOUNT:**

Except in cases where unit prices form the basis for payment under the Contract, the CONTRACTOR shall, within ten days of receipt of Notice to Proceed, submit a complete breakdown of the Contract Amount showing the value assigned to each part of the work, including an allowance for profit and overhead. Upon approval of the breakdown of the Contract Amount by the Engineer, it shall be used as the basis for all Requests for Payment.

### **2.6.02 REQUESTS FOR PAYMENT:**

Progress Payments. OWNER may make progress payments on the project based on the CONTRACTOR'S Applications for Payment as recommended by the Engineer during construction as provided below.

1. Prior to Substantial Completion progress payments will be in an amount equal to 90% of the Work completed, and 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as Engineer shall determine in accordance with paragraph 2.6.05 of the General Conditions.

**2.6.03 DELETED**

**2.6.04 OWNER'S ACTION ON REQUEST FOR PAYMENT:**

Within 30 days after receipt of a Request for Payment from the CONTRACTOR, the OWNER shall:

1. Process the Request for Payment as recommended by the Engineer.
2. Pay such other amount, in accordance with Paragraph 2.6.05, as he shall decide is due the CONTRACTOR, informing the CONTRACTOR and the Engineer in writing of his reasons for paying the amended amount.
3. Withhold payment in accordance with Paragraph 2.6.05, informing the CONTRACTOR and the Engineer of his reasons for withholding payment.

**2.6.05 OWNER'S RIGHT TO WITHHOLD PAYMENT OF A REQUEST FOR PAYMENT:**

The OWNER may withhold payment, in whole or in part, of a Request for Payment to the extent necessary to protect himself from loss on account of any of the following:

1. Defective work.
2. Evidence indicating the probable filing of claims by other parties against the CONTRACTOR which may adversely affect the OWNER.
3. Failure of the CONTRACTOR to make payments due to sub-contractor's, material suppliers, or employees.
4. Damage to another CONTRACTOR.

**2.6.06 PAYMENT FOR UNCORRECTED WORK:**

Should the OWNER direct the CONTRACTOR not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Amount shall be made to compensate the OWNER for the Uncorrected work.

**2.6.07 PAYMENT FOR REMOVAL OF REJECTED WORK AND MATERIALS:**

The removal of work and materials rejected in accordance with Paragraph 2.3.05 and the re-execution of acceptable work by the CONTRACTOR shall be at the expense of the CONTRACTOR, and he shall pay the cost of replacing the work of other CONTRACTOR'S destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement of acceptable work.

1. Removal by OWNER: Removal of rejected work or materials and storage of materials by the OWNER, in accordance with Paragraph 2.3.05, shall be paid by the CONTRACTOR within 30 days after written notice to pay is given by the OWNER. If the CONTRACTOR does not pay the expenses of such removal and after ten days written notice being given by the OWNER of his intent to sell the materials, the OWNER may sell the materials at

auction or at private sale and will pay the CONTRACTOR the net proceeds therefrom after deducting all the costs and expenses that should have been borne by the CONTRACTOR.

**2.6.08 PAYMENT FOR EXTRA WORK:**

Written notice of claims for payment for Extra Work shall be given by the CONTRACTOR within ten days after receipt of instructions from the OWNER to proceed with the Extra Work and before any work is commenced, except in an emergency endangering life or property. No claim shall be valid unless so made. In all cases, the CONTRACTOR'S itemized estimate sheets showing all labor and material shall be submitted to the OWNER. The OWNER'S order for Extra Work shall specify any extension of the Contract Time and one of the following methods of payment.

1. Unit prices or combinations of unit prices which formed the basis of the original Contract.
2. A lump sum based on the CONTRACTOR'S estimate and accepted by the OWNER.
3. Actual cost plus 15% for overhead and profit. Actual costs are defined as follows:
  - A. Labor costs, including all allowances for holidays, vacation, sick leave, apprentice programs, hospitalization, or other "fringe benefits" and including time of foreman while engaged directly upon extra work.
  - B. Labor insurance and taxes.
  - C. Materials and supplies used on the work.
  - D. Associated General CONTRACTOR'S of America standard rental rates on each piece of equipment having a value in excess of \$50.00. Equipment and tools of lesser value are considered "small tools" and, as such, are considered to be part of overhead.

**2.6.09 PAYMENT FOR WORK SUSPENDED BY THE OWNER:**

If the work or any part thereof shall be suspended by the OWNER and abandoned by the CONTRACTOR as provided in Paragraph 2.2.01 d., Suspension of Work by OWNER, the CONTRACTOR will then be entitled to payment for all work done on the portions so abandoned, plus 15% of the value of the abandoned work to compensate for overhead, plant expense, and anticipated profit.

**2.6.10 PAYMENT FOR WORK BY THE OWNER:**

The cost of the work performed by the OWNER, in removing construction equipment, tools, and supplies in accordance with Paragraph 2.5.08, Removal of Construction Equipment, Tools, and Supplies, and in correcting deficiencies in accordance with Paragraph 2.2.01 e., OWNER'S Right to Terminate the Agreement and Complete the Work shall be paid by the CONTRACTOR.

**2.6.11 PAYMENT FOR WORK BY THE OWNER FOLLOWING HIS TERMINATION OF THE CONTRACT:**

Upon termination of the Contract by the OWNER in accordance with Paragraph 2.2.01 e., OWNER'S Right to Terminate Agreement and Complete the Work, no further payments shall be due the CONTRACTOR until the work is completed. If the unpaid balance of the Contract Amount shall exceed

the cost of completing the work including all overhead costs, the excess shall be paid to the CONTRACTOR. If the cost of completing the work shall exceed the unpaid balance, the CONTRACTOR shall pay the difference to the OWNER. The cost incurred by the OWNER, as herein provided, and the damage incurred through the CONTRACTOR'S default, shall be certified by the OWNER.

1. Unpaid Balance: If the unpaid balance of the Contract Sum exceeds the cost of finishing the work, including compensation for the Engineer's additional services, such shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR shall pay the difference to the OWNER. The cost incurred by the OWNER as herein provided shall be certified by the Engineer.

#### **2.6.12 PAYMENT FOR WORK TERMINATED BY THE CONTRACTOR:**

Upon suspension of the work or termination of the Contract by the CONTRACTOR in accordance with Paragraph 2.2.02f, CONTRACTOR'S Right to Suspend Work or Terminate Agreement, the CONTRACTOR shall recover payment from the OWNER for the work performed, plus loss on plant and materials, plus established profit and damages.

#### **2.6.13 PAYMENT FOR SAMPLES AND TESTING OF MATERIALS:**

Samples furnished in accordance with Paragraph 2.3.02, Samples, shall be furnished by the CONTRACTOR at his expense and may be used in the work, after acceptance.

1. Testing of samples and materials furnished in accordance with Paragraph 2.3.02, Samples, shall be arranged and paid for by the OWNER.

#### **2.6.14 ACCEPTANCE AND FINAL PAYMENT:**

When the CONTRACTOR shall have completed the work in accordance with the terms of the Contract Documents, he shall certify completion of the work to the OWNER and submit a final Request for Payment, which shall be the Contract Amount plus all approved additions, less all approved deductions and less previous payments made. The CONTRACTOR shall furnish evidence that he has fully paid all debts for labor, materials, and equipment incurred in connection with the work, and, upon acceptance by the OWNER, the OWNER will release the CONTRACTOR, except as to the conditions of the Performance and Payment Bond, any legal rights of the OWNER, required guaranties, and Correction of Faulty Work after Final Payment, and will pay the CONTRACTOR'S final Request for Payment. The CONTRACTOR shall allow sufficient time between the time of completion of the work and approval of the final Request for Payment for the Engineer to assemble and check the necessary data.

1. Release of Liens: The CONTRACTOR shall deliver to the OWNER a complete release of all liens arising out of this Contract before the final Request for Payment is paid. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to the OWNER such amounts as the OWNER may have been compelled to pay in discharging such liens including all costs and a reasonable attorney's fee.
2. Final Payment: The CONTRACTOR shall be paid in full within 61 days after the date of substantial completion. If within 61 days after substantial completion there remains uncompleted minor items, an amount equal to 200% of the value of each item as determined by the Engineer shall be withheld and paid 61 days following completion of all such items. This payment shall constitute final settlement.

## **SECTION 2.7 - CONTROL OF THE WORK**

### **2.7.01 GENERAL:**

The following general provisions have been taken verbatim from the Florida Department of Transportation Standard Specifications for Road and Bridge Construction with certain modifications to meet specific requirements of the City of Sanibel. The CONTRACTOR is advised to read these provisions very carefully and ensure that he fully understands all of the requirements.

### **2.7.02 PLANS AND WORKING DRAWINGS:**

1. Plans and Contract Documents:

The CONTRACTOR will be furnished an appropriate number of copies of the plans and special provisions as required for the particular project. Copies of the Standard Specifications may be purchased from the Florida Department of Transportation. The CONTRACTOR shall have available on the work, at all times, one copy each of the plans, specifications and special provisions.

2. Plans:

The plans furnished by the Engineer consist of general drawings showing such details as are necessary to give a comprehensive idea of the construction contemplated. Roadway plans will show in general, alignment, profile grades, typical cross sections and general cross sections. Structure plans, in general, will show in detail all dimensions of the work contemplated. When the structure plans do not show the dimensions in detail, they will show general features and such details as are necessary to give a comprehensive idea of the structure.

3. Alterations in Plans:

All authorized alterations affecting the requirements and information given on the approved plans shall be in writing. No changes shall be made on any plan or drawing after its approval by the Engineer, except by direction of the Engineer.

4. Working Drawings (for Structures):

A. General:

The CONTRACTOR shall furnish, on sheets not larger than 24 inches by 36 inches, such working and detail drawings as may be required for any part of the structure and which are not included in plans furnished by the Engineer.

B. For Steel Structures:

Working Drawings for steel structures shall consist of shop detail, erection details and other working plans, showing details, dimensions, sizes of material, and other information necessary for the complete fabrication and erection of the metal work.

C. For Concrete Structures:

Working drawings for concrete structures shall consist of such detailed plans as may reasonably be required for the effective prosecution of the work and which are not included in plans furnished by the Engineer. These may include details of falsework, bracing centering and formwork, masonry layout diagrams, and diagrams for bending reinforcing steel.

D. Submission of Working Drawings:

The CONTRACTOR shall submit to the Engineer for approval three (3) sets of any required detailed shop or working drawings. These drawings shall be submitted in sufficient time to allow adequate study and discussion and any necessary correction prior to beginning the work they cover. Prior to the approval of these drawings any work done, or materials ordered for the structures involved shall be at the CONTRACTOR'S risk. One set of these drawings will be returned to the CONTRACTOR, either approved or marked with corrections required. The other sets will be retained by the Engineer.

E. Responsibility of Accuracy of Working Drawings:

It is understood, however, that approval by the Engineer of the CONTRACTOR'S working drawings does not relieve the CONTRACTOR of any responsibility for accuracy of dimensions and details, or for conformity of dimensions and details. The CONTRACTOR shall be responsible for agreement and conformity of his working drawings with the approved plans and specifications.

F. Cost of Working Drawings:

The contract prices shall include the cost of furnishing all working drawings, and the CONTRACTOR will be allowed no extra compensation for such drawings.

**2.7.03 COORDINATION OF PLANS, SPECIFICATIONS AND SPECIAL PROVISIONS:**

These Specifications, the plans, special provisions, and all supplementary documents are integral parts of the contract, and a requirement occurring in one is as binding as though occurring in all.

They are intended to be complementary and to describe and provide for a complete work. In addition to the work and materials specifically called for in the Specifications as being included in any specific pay item, additional incidental work, not specifically mentioned, will be included in such pay item when so shown in the plans, or if indicated, or obvious and apparent, as being necessary for the proper completion of the work under such pay item and not stipulated as being covered under other pay items. In case of discrepancy, computed dimensions shall govern over scaled dimensions, plans shall govern over Standard Specifications, and special provisions shall govern over both Standard Specifications and Plans.

**2.7.04 CONFORMITY OF WORK WITH PLANS:**

All Work performed, and all materials furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown on the plans or indicated in the specifications.

In the event the Engineer finds the materials or the finished product in which the materials are used not within reasonable close conformity with the plans and specifications, but that reasonably acceptable work has been produced, he shall then make a determination if the work shall be accepted and remain in place. In this event, the Engineer will document the basis of acceptance by contract modification which will provide for an appropriate adjustment in the contract price for such work or materials as he deems necessary to conform to his determination based on engineering judgment.

In the event the Engineer finds the materials, or the finished product in which the materials are used, or the work performed are not in reasonably close conformity with the plans and specifications and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the CONTRACTOR.

In the event the OWNER accepts the work that is not within these tolerances, appropriate deductions will be made from the actual amount used to cover the cost of the extra material. The amount will be computed based on the job mix formula and the unit price stated in the Contract.

### **2.7.05 ERRORS OR OMISSIONS IN PLANS OR SPECIFICATIONS:**

The CONTRACTOR shall take no advantage of any apparent error or omission which he might discover in the plans or specifications but shall forthwith notify the Engineer of such discovery, who will then make such corrections and interpretations as he deems necessary for reflecting the actual spirit and intent of the plans and specifications.

### **2.7.06 AUTHORITY OF THE ENGINEER:**

All work shall be available for inspection by the Engineer and performed to his satisfaction.

It is agreed by the parties hereto that the Engineer shall decide all questions, difficulties and disputes, of whatever nature, which may arise relative to the interpretation of the plans, construction, prosecution and fulfillment of the contract, and as to the character, quality, amount and value of any work done, and materials furnished, under or by reason of the contract.

### **2.7.07 AUTHORITY AND DUTIES OF ENGINEER'S ASSISTANTS:**

The Engineer may appoint such assistants and representatives as he desires. They shall be authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the manufacture, preparation or fabrication of the materials to be used. Such assistants shall not be authorized to revoke, alter or waive any requirement of the specifications. They shall be authorized to call to the attention of the CONTRACTOR any failure of the work or materials to conform to the specifications and contract and shall have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer. The CONTRACTOR shall be immediately notified in writing of any such suspension of the work and such notice shall state in detail the reasons for the suspension. The presence of the inspector or other assistant shall in no way lessen the responsibility of the CONTRACTOR.

### **2.7.08 CONSTRUCTION STAKES AND MARKERS:**

1. Stakes Furnished:

The CONTRACTOR shall furnish and set, free of charge, slope stakes, grade stakes and all other stakes necessary for construction of the project. The CONTRACTOR shall furnish all templates and other materials necessary for making and maintaining points and lines

given and shall furnish the Engineer such incidental labor as he may require in reestablishing points and lines necessary to the prosecution of the work.

2. Special Requirements for Landscape Work:

For landscape work, the OWNER will furnish all stakes in the size and quantity required and the CONTRACTOR shall set all such stakes with his own forces. The CONTRACTOR shall maintain such stakes in place until the layout is approved and the digging of the holes for the plantings has begun; replacing any which may become destroyed or disturbed during such period.

**2.7.09 CONTRACTOR'S SUPERVISION:**

1. Prosecution of work:

The CONTRACTOR shall give the work the constant attention necessary to assure the scheduled progress and he shall cooperate fully with the Engineer and with other CONTRACTOR'S at work in the vicinity.

2. CONTRACTOR'S Superintendent:

The CONTRACTOR shall at all times have on the work as his agent, a competent superintendent capable of thoroughly interpreting the plans and specifications and thoroughly experienced in the type of work being performed, who shall receive the instructions from the Engineer or his authorized representatives. The superintendent shall have full authority to execute the orders or directions of the Engineer and to supply promptly any materials, tools, equipment, labor and incidentals which may be required. Such superintendence shall be furnished regardless of the amount of work sublet.

3. Supervision for Emergencies:

The CONTRACTOR shall have a responsible person available at or reasonably near the work site on a 24-hour basis, seven days a week, in order that he may be contacted in emergencies and in cases where immediate action must be taken to maintain traffic or to handle any other problem that might arise. For compliance with this requirement outside of working hours, the furnishing of the telephone number where such person can be reached will suffice.

**2.7.10 GENERAL INSPECTION REQUIREMENTS:**

1. Cooperation by CONTRACTOR:

No work shall be done, nor materials used, without suitable inspection by the Engineer or his representative, and the CONTRACTOR shall furnish the Engineer with every reasonable facility for ascertaining whether the work performed, and materials used are in accordance with the requirements and intent of the plans and specifications. If the Engineer so requests, the CONTRACTOR shall, at any time before final acceptance of the work, remove or uncover such portions of the finished work as may be directed. After examination, the CONTRACTOR shall restore the uncovered portions of the work to the standard required by the specifications. Should the work so exposed or examined prove unacceptable, the uncovering or removal, and the replacing of the covering or making good

of the parts removed, shall be at the CONTRACTOR'S expense. However, should the work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be paid for as extra work.

2. Failure of Engineer to Reject Work During Construction:

If, during or prior to construction operations, the Engineer should fail to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject shall in no way prevent his later rejection when such defect is discovered, or obligate the Engineer to final acceptance, and the CONTRACTOR shall make no claim for losses suffered due to any necessary removals or repairs of such defects.

3. Failure to Remove and Renew Defective Materials and Work:

Should the CONTRACTOR fail or refuse to remove and renew any defective materials used or work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the specifications, within the time indicated in writing, the Engineer shall have the authority to cause the unacceptable or defective materials or work to be repaired, removed and renewed, as may be necessary; all at the CONTRACTOR'S expense. Any expense incurred by the City in making these repairs, removals or renewals, which the CONTRACTOR has failed or refused to make, shall be paid for out of any moneys due or which may become due the CONTRACTOR, or may be charged against the contract bond. Continued failure or refusal on the part of the CONTRACTOR to make any or all necessary repairs promptly, fully and in an acceptable manner shall be sufficient cause for the City, at its option, to perform the work with its own organization, or to contract with any other individual, firm or corporation to perform the work. All costs and expenses incurred thereby shall be charged against the defaulting CONTRACTOR and the amount thereof deducted from any moneys due or which may become due to him or shall be charged against the contract bond. Any work performed, subsequent to forfeiture of the Contract, as described in this Article, shall not relieve the CONTRACTOR in any way of his responsibility for the work performed by him.

**2.7.11 FINAL CONSTRUCTION INSPECTION:**

1. Maintenance Until Final Acceptance:

The CONTRACTOR shall maintain all work in first-class condition until it has been completed as a whole and has been accepted by the Engineer under the provisions of 2.7.12.

2. Semifinal Inspections:

The Engineer will make a semifinal inspection within seven (7) days after notice from the CONTRACTOR of presumptive completion of the entire project. If, at the semifinal inspection, all construction provided for and contemplated by the contract is found completed to the Engineer's satisfaction, such inspection shall constitute the final inspection, as prescribed below. If, however, at any semifinal inspection any work is found unsatisfactory, in whole or in part, the Engineer shall give the CONTRACTOR the necessary instructions as to replacement of material and performance or re-performance of work necessary and prerequisite to final completion and acceptance, and the CONTRACTOR forthwith shall comply with and execute such instructions. Upon

satisfactory replacement of material and performance or reperformance of such work, another inspection shall be made, which shall constitute the final inspection if the required material is found to have been replaced and the work completed satisfactorily.

3. Final Inspection:

Whenever all materials have been furnished, all work has been performed, and the construction contemplated by the contract has been satisfactorily completed, the Engineer will make the final inspection.

**2.7.12 FINAL ACCEPTANCE:**

When, upon completion of the final construction inspection, the work is found to be completed satisfactorily, the Engineer shall give the OWNER a written recommendation for acceptance of the work. The OWNER shall then satisfy himself as to the Engineer's recommendation and within five days of said recommendation notify the CONTRACTOR, in writing, of his acceptance of the work.

**2.7.13 CLAIMS BY CONTRACTOR:**

Where the CONTRACTOR deems that extra compensation is due him for work or materials not clearly covered in the contract or not ordered by the Engineer as extra work, as defined herein, the CONTRACTOR shall notify the Engineer in writing of his intentions to make claim for extra compensation, before he begins the work on which he bases the claim. If such notification is not given, and the Engineer is not afforded proper opportunity for keeping strict account of actual cost, as defined for force account, then the CONTRACTOR thereby agrees to waive the claim for such extra compensation. Such notice by the CONTRACTOR, and the fact that the Engineer has kept account of the cost as aforesaid, shall not in any way be construed as establishing the validity of the claim. In such case the claim after consideration by the Engineer, is found to be valid, it shall be allowed and paid for as extra as provided herein.

## **SPECIAL PROVISIONS**

1. REFERENCE SPECIFICATIONS – Florida Building Code (FBC) 2023 - 8th Edition with all current revisions and supplements; Florida Fire Prevention Code (FFPC) 2023 - 8th edition with all current revisions and supplements, (includes Florida versions of NFPA 1 & NFPA 101, 2024 edition); The Florida Department of Transportation Standard Specifications for Road and Bridge Construction, Current Edition with approved Supplements and Addenda shall govern the requirements and performance of the work, except when noted otherwise. Sea Turtle Regulations; Department of Environmental Protection Bureau of Beaches and Coastal Systems; All other Federal, State and Local Codes and Ordinances which may be in effect for this construction location.
2. The Contractor shall be responsible for applying for a City of Sanibel Building Department construction permit for the project (if required). The City shall be responsible for payment of fees for the Sanibel Building Department permits. Required licensing costs and any other miscellaneous fees associated with the project shall be paid for by the Contractor. All required environmental permits shall be secured by the City unless noted otherwise in technical specifications. Contractor must possess a valid State of Florida Certified General Contractor License (CGC) at the time of the bid opening.
3. The contractor shall be responsible for all survey construction layout.
4. The Contractor shall dispose of all debris such as trees, brush, stumps and other deleterious material at location off the Island of Sanibel. No extra compensation will be allowed for hauling and providing the off-island disposal areas.
5. The Contractor is advised that he may not enter upon private property adjacent to the project without written consent of the affected property owner. A copy of the permission document shall be given to the Engineer.
6. The Contractor is hereby advised that he may not engage in any work on private property in the City of Sanibel during the contract performance period without written permission from the City of Sanibel. Failure to comply with this provision may result in suspension of all work activities until the matter is resolved.

An example of such work would be the paving of a private driveway. If the Contractor paves the driveway and the property owners does not possess the proper City permits, the entire project might be stopped until the necessary permits are obtained. The delay could be months and the Contractor could be assessed for liquidated damages.

7. No allowance for time extension of the project will be made for weather conditions common to Southwest Florida during the contract time period. The Contractor is reminded that time is of the essence and the work should proceed as quickly and efficiently as possible.
8. The Contractor shall remove and relocate as necessary all mailboxes, street signs, post fences structures such as headwalls, pipes, etc., and any other item necessary for progress and completion of the work. Payment shall be incidental to other items of work.
9. The Contractor shall include the adjustment of those structures (manholes, valves, etc.) that are required to be adjusted for the satisfactory completion of the work. These structures shall be of reinforced concrete or may be brick masonry if circular and

constructed in place and shall include the necessary metal frames and gratings. No payment will be made for these items.

10. The contractor will ensure that the roadway and bridges over which he hauls materials will be kept clear. If spoil material and water fall from the truck onto the roadway, the contractor will keep the road clear at all times, either by power broom or by whatever means is necessary, if excessive material continues to be deposited, the Engineer will require hauling to be discontinued until the situation is resolved.
11. Contractor responsible for any temporary markings (i.e. signs, barricades, Striping, caution tape) to assure traffic safety (Vehicular, Pedestrian and Bicycle traffic).
12. All subcontractors must be approved in writing by the City.
13. All soil and concrete tests will be made by a laboratory approved of by the Engineer. Cost of testing will be paid for by the Owner except all subsequent tests deemed necessary because the original test indicated that the work did not conform to specifications. These tests shall be paid for by the contractor. The location of these tests shall be determined by the Owner.
14. An As-Built survey of the project shall be performed and submitted to Owner prior to final acceptance. The survey shall be conducted in accordance with the standards set forth in Chapter 472 of the Florida Statutes and the Minimum Technical Standards for such surveys as specified in Chapter 61G17 of the Florida Administrative Code. The cost of the survey shall be borne by the Contractor.
15. The Contractor shall prevent erosion of soil on the site and adjacent property resulting from his construction activities. Effective measures shall be initiated prior to the commencement of clearing, grading, excavation, or other operation that will disturb the natural protection. Install silt barriers or screens for capturing sediments/solids from erosion and dewatering / jetting activities.
16. The Contractor must be in possession of or obtain from the City of Sanibel an Occupational Registration and if applicable a Vegetation Competency Card prior to the start of the contract work to be done.
17. The Contractor is responsible to pay all toll fees required by Lee County to use the Sanibel Causeway.
18. Contractor is responsible for preventing any workers on this project, including all subcontractors, from feeding alligators anywhere on Sanibel Island. Contractor is required to instruct all workers and subcontractors not to eat lunch on the edge of any waterbody on Sanibel Island and not to feed, tease or interact in any way with any alligators, which is illegal under state law. Signage provided by the City regarding alligator feeding shall be posted on all job sites in a clearly visible location. Project sites adjacent to open water of any kind shall have a minimum of two additional alligator signs posted in clearly visible locations near the water's edge. All job sites shall be maintained free of any open containers of food or any food-related garbage. All workers on this project are to be informed that the City takes this issue very seriously and will prosecute any violators to the full extent of this law. State penalties for violating this law include a fine of up to \$500 per incidence and up to 60 days in jail. Failure to inform workers of the prohibition against feeding alligators as required above or evidence of alligators being fed by workers on this

project, either at the project site or elsewhere on Sanibel Island, will result in immediate revocation of this contract.

19. Payment for work items in this contract is based on actual quantities with unit cost as per the bid schedule. The owner reserves the right to adjust quantities up to twenty-five percent (25%) over or underestimated quantities at contract unit prices. Any increase of work items shall be based on unit prices of similar work items in the vicinity. Any such adjustment resulting in the increase of the total contract price must be approved by the City Council.
20. It is up to the contractor to verify the correct scaling for printed plan documents of electronic documents provided by the City.
21. Contractor to provide Certificate of Workman's Compensation Insurance; U.S.L.& H. coverage, Jones Act (if applicable) and Public Liability in an amount not less than \$1,000,000.00

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STANDARD TERMS AND CONDITIONS  
APPLICABLE TO GRANT AGREEMENTS**

**ATTACHMENT 1**

**1. Entire Agreement.**

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

**2. Grant Administration.**

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
- i. Standard Grant Agreement
  - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
  - iii. Attachment 1, Standard Terms and Conditions
  - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
- (1) an increase or decrease in the Agreement funding amount;
  - (2) a change in Grantee's match requirements;
  - (3) a change in the expiration date of the Agreement;
  - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department; and/or
  - (5) any changes to the terms and conditions of the Agreement other than the specific instances enumerated below when a change order may be used.
- A change order to this Agreement may be used when:
- (1) task timelines within the current authorized Agreement period change;
  - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
  - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
  - (4) fund transfers between budget categories for the purposes of meeting match requirements.
- This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

**3. Agreement Duration.**

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the

**Attachment 1**

execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

#### **4. Deliverables.**

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

#### **5. Performance Measures.**

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subrecipients shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

#### **6. Acceptance of Deliverables.**

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

#### **7. Financial Consequences for Nonperformance.**

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction  
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
  - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.

- ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.
- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

**8. Payment.**

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.
- e. Rural Communities and Rural Areas of Opportunity. If Grantee is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" (RAO) as defined in subsection 288.0656(2), F.S., such Grantee may request from the Department that all invoice payments under this Agreement be directed to the relevant county or municipality or to the RAO itself. The Department will agree to Grantee's request if:
  - i. Grantee demonstrates that it is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" under subsection 288.0656(2), F.S.;
  - ii. Grantee demonstrates current financial hardship using one (1) or more of the "economic distress" factors defined in subsection 288.0656(2)(c), F.S.;
  - iii. Grantee's performance has been verified by the Department, which has determined that Grantee is eligible for invoice payments and that Grantee's performance has been completed in accordance with this Agreement's terms and conditions; and
  - iv. Applicable federal and state law(s), rule(s) and regulation(s) allow for such payments.

This subsection may not be construed to alter or limit any other applicable provisions of federal or state law, rule, or regulation. A current list of Florida's designated RAOs can be accessed at the following web address: <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity>.
- f. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- g. State Funds Documentation. Pursuant to section 216.1366, F.S., if Grantee meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Grantee must provide the Department with documentation that indicates the amount of state funds:

- i. Allocated to be used during the full term of the contract or agreement for remuneration to any member of the board of directors or an officer.
- ii. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer.

The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's the contract tracking system and maintained pursuant to section 215.985, F.S., and must be posted on the Grantee's website, if Grantee maintains a website.

- h. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- i. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- j. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- k. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates>.
- l. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

#### **9. Documentation Required for Cost Reimbursement Grant Agreements and Match.**

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual/Subaward Costs (Subcontractors/Subrecipients). Match or reimbursement requests for payments to subcontractors/subrecipients must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts/subawards which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor/subrecipient exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract/subaward is subject to the requirements set forth in chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. For grants funded with federal funds, nonconsumable and/or nonexpendable personal property or equipment costing \$10,000 or more purchased for the Project under a subcontract/subaward is subject to the requirements set forth in 2 CFR 200. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts/subawards that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts/subaward issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors/subrecipients.

#### **Attachment 1**

- i. For fixed-price (vendor) subcontracts/subawards, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts/subawards to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted/subawarded activities shall be supported with a copy of the subcontractor/subrecipient's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract/subaward. The Grantee may request approval from Department to award a fixed-price subcontract/subaward resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor/subrecipient. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract/subaward.
  - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S., or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with section 112.061, F.S.
- e. Direct Purchase Equipment. For grants funded fully or in part with state funds, equipment is defined as capital outlay costing \$5,000 or more. For grants funded fully with federal funds, equipment is defined as capital outlay costing \$10,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department and does not include any equipment purchased under the delivery of services to be completed by a subcontractor/subrecipient. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor/subrecipient, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

#### **10. Status Reports.**

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

#### **11. Retainage.**

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.

- b. If Grantee fails to perform the requested work or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

## **12. Insurance.**

- a. Insurance Requirements for Subrecipients and/or Subcontractors. The Grantee shall require its subrecipients and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its subrecipients and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Subrecipients and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

## **13. Termination.**

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.

- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

#### **14. Notice of Default.**

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

#### **15. Events of Default.**

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
  - i. Entry of an order for relief under Title 11 of the United States Code;
  - ii. The making by Grantee of a general assignment for the benefit of creditors;
  - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
  - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

#### **16. Suspension of Work.**

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

#### **17. Force Majeure.**

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts

of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors/subrecipients or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchase may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

#### **18. Indemnification.**

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, and subcontractors/subrecipients and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
  - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, and subcontractors/subrecipients; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
  - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

#### **19. Limitation of Liability.**

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

#### **20. Remedies.**

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to

other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

**21. Waiver.**

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**22. Statutory Notices Relating to Unauthorized Employment and Subcontracts/Subawards.**

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor/subrecipient knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts/subawards with private organizations issued as a result of this Agreement.
- b. Pursuant to sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
  - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, 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, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
  - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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.
  - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
  - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Development, at (850) 487-0915.

**23. Compliance with Federal, State and Local Laws.**

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts/subawards issued as a result of this Agreement.
- b. The Grantee, its subrecipients, subcontractors and agents must also comply with the following civil rights laws and regulations:
  - i. Title VI of the Civil Rights Act of 1964 as amended (prohibiting discrimination in federally assisted programs on the basis of race, color, or national origin in the delivery of services or benefits);

- ii. Section 13 of the 1972 Amendment to the Federal Water Pollution Control Act (prohibiting discrimination on the basis of sex in the delivery of services or benefits under the Federal Water Pollution Control Act as amended);
  - iii. Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination in federally assisted programs on the basis of disability, both in employment and in the delivery of services and benefits);
  - iv. Age Discrimination Act of 1975 (prohibiting discrimination in federally assisted programs on the basis of age in the delivery of services or benefits);
  - v. 40 C.F.R. Part 7, (implementing Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of the Rehabilitation Act of 1973);
  - vi. Florida Civil Rights Act of 1992 (Title XLIV Chapter 760, Sections 760.01, 760.11 and 509.092, F.S.), including Part I, chapter 760, F.S. (prohibiting discrimination on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status).
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

**24. Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.**

**This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.**

If applicable, Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. 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;
- b. 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
- c. 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.

**25. Investing in America**

Grantees of an award for construction projects in whole or in part by the Bipartisan Infrastructure Law or the Inflation Reduction Act, including the following provision:

- a. Signage Requirements
  - a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at: <https://www.epa.gov/invest/investing-america-signage>.

b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

## **26. Scrutinized Companies.**

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in section 287.135, F.S. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

## **27. Lobbying and Integrity.**

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with sections 11.062 and 216.347, F.S.

## **28. Record Keeping.**

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted or subawarded, Grantee shall similarly require each subcontractor/subrecipient to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

## **29. Audits.**

- a. Inspector General. The Grantee understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its subrecipients and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its subrecipients and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
  - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
  - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
  - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
  - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
  - iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

**30. Conflict of Interest.**

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

**31. Independent Contractor.**

The Grantee is an independent contractor and is not an employee or agent of Department.

**32. Subcontracting/Subawards.**

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.

- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor/subrecipient, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor/subrecipient, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract/subaward. The Department shall not be liable to any subcontractor/subrecipient for any expenses or liabilities incurred under any subcontract/subaward, and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract/subaward.
- e. The Department will not deny Grantee's employees, subcontractors/subrecipients, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Development at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor/subrecipient at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s)/subrecipient(s), and without the fault or negligence of either, unless the subcontracted/subawarded products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

**33. Guarantee of Parent Company.**

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

**34. Survival.**

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

**35. Third Parties.**

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract/subaward, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

**36. Severability.**

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

**37. Grantee's Employees, Subcontractors/Subrecipients and Agents.**

All Grantee employees, subcontractors/subrecipients, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors/subrecipients, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

**38. Assignment.**

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

**39. Compensation Report.**

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for

the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

**40. Disclosure of Gifts from Foreign Sources.**

If the value of the grant under this Agreement is \$100,000 or more, Grantee shall disclose to Department any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern, as defined in section 286.101, F.S., if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years. Such disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. If the disclosure requirement is applicable as described above, then within 1 year before applying for any grant, Grantee must also provide a copy of such disclosure to the Department of Financial Services.

**41. Food Commodities.**

To the extent authorized by federal law, the Department, its grantees, contractors and subcontractors/subrecipients shall give preference to food commodities grown or produced in this state when purchasing food commodities, including farm products as defined in section 823.14, F.S., of any class, variety, or use thereof in their natural state or as processed by a farm operation or processor for the purpose of marketing such product.

**42. Anti-human Trafficking.**

If the Grantee is a nongovernmental entity, the Grantee must provide the Department with an affidavit signed by an officer or a representative of the Grantee under penalty of perjury attesting that the Grantee does not use coercion for labor or services as defined in section 787.06, F.S.

**43. Iron and Steel for Public Works Projects.**

If this Agreement funds a “public works project” as defined in section 255.0993, F.S., or the purchase of materials to be used in a public works project, any iron or steel permanently incorporated in the Project must be “produced in the United States,” as defined in section 255.0993, F.S. This requirement does not apply if the Department determines that any of the following circumstances apply to the Project:

- (1) iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;
- (2) the use of iron or steel products produced in the United States will increase the total cost of the project by more than twenty percent (20%); or
- (3) complying with this requirement is inconsistent with the public interest.

Further, this requirement does not prevent the Contractor’s minimal use of foreign steel and iron materials if:

- (1) such materials are incidental or ancillary to the primary product and are not separately identified in the project specifications; and
- (2) the “cost” of such materials, as defined in section 255.0993, F.S., does not exceed one-tenth of one percent (1%) of the total Project Cost under this Agreement or \$2,500, whichever is greater.

Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system that are necessary for operation or concealment (excepting transmission and distribution poles) are not considered to be iron or steel products and are, therefore, exempt from the requirements of this paragraph.

This provision shall be applied in a manner consistent with and may not be construed to impair the state’s obligations under any international agreement.

**44. Complete and Accurate information.**

Grantee represents and warrants that all statements and information provided to DEP are current, complete, and accurate. This includes all statements and information in this Grant, as well as its Attachments and Exhibits.

**45. Execution in Counterparts and Authority to Sign.**

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**Attachment 1**

SPECIAL PROVISIONS

FLORIDA DEP STANDARD TERMS AND CONDITIONS APPLICABLE  
TO GRANT AGREEMENTS

Sections Applicable to this Contract:

Paragraph 22. Statutory Notices Relating to Unauthorized Employment and Subcontracts/Subawards

Paragraph 23. Compliance with Federal, State and Local Laws