

SUPPLEMENTARY CONDITIONS (CONSTRUCTION)

Florida Department of Environmental Protection
State Revolving Fund Program
Supplementary Conditions
for

Formally Advertised
Construction Procurement

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FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

The intent of the Florida Department of Environmental Protection (FDEP) Supplementary Conditions is to complement and supplement other provisions of the Bidding Documents. However, if there is any conflict between the FDEP Supplementary Conditions and other provisions of the Bidding Documents, the FDEP Supplementary Conditions shall take precedence over the other provisions except when the other provisions are similar to, but more stringent than, the FDEP Supplementary Conditions. When other provisions of the Bidding Documents are similar to, but more stringent than, the FDEP Supplementary Conditions, the more stringent provisions shall apply.

ARTICLE 1 - DEFINITIONS

Wherever used in these Supplementary Conditions (except in the appendices to these Supplementary Conditions), the following terms have the meanings indicated, which are applicable to both the singular and plural thereof.

- 1.1 Addendum - A written or graphic instrument that is issued prior to the opening of bids and that clarifies, corrects, or changes the Bidding Documents.
- 1.2 Agreement or Contract - The written agreement between the Owner and the Contractor covering the Work to be performed and furnished; these Supplementary Conditions and other Contract Documents are attached to the Agreement/Contract and made a part thereof as provided therein.
- 1.3 Bid - The offer or proposal of a bidder submitted on the prescribed form and setting forth the price(s) for the Work to be performed and furnished.
- 1.4 Bidder - Any person, firm, or corporation that submits a bid directly to the Owner.
- 1.5 Bidding Documents - The Advertisement for Bids or the Invitation to Bid, the Instructions to Bidders or the Information for Bidders, the Bid Form, the proposed Contract Documents, and all addenda.
- 1.6 Bond - An instrument of security.
- 1.7 Change Order - A document that is recommended by the Engineer and signed by the Contractor and the Owner; that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time; and that is issued on or after the Effective Date of the Agreement/Contract.
- 1.8 Contract Documents - The Agreement/Contract; the Contractor's Bid when attached as an exhibit to the Agreement/Contract; the Performance and Payment Bond(s); the General Conditions; the Supplementary Conditions (including these Supplementary Conditions); the Specifications (written technical descriptions of material, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto); the Drawings (drawings that show the character and scope of the Work to be performed and furnished); all addenda that pertain to the Contract Documents; and all change orders.
- 1.9 Contract Time - The number of days or the date stated in the Contract Documents for completion of the Work.
- 1.10 Contractor - The person, firm, or corporation with whom or which the Owner enters into the Agreement/Contract.
- 1.11 Effective Date of the Agreement/Contract - The date indicated in the Agreement/Contract on which the Agreement/Contract becomes effective, or if no such date is indicated in the Agreement/Contract, the date on which the Agreement/Contract is signed and delivered by the last of the two parties to sign and deliver the Agreement/Contract.
- 1.12 Engineer - The person, firm, or corporation named as such in the Contract Documents.
- 1.13 Minority Business Enterprise (MBE) - A historically Black college or university or a business that is (a) certified as socially and economically disadvantaged by the Small Business Administration, (b) certified as an MBE by a state or federal agency, or (c) an independent business concern which is at least 51-percent owned and controlled by minority group members. (A minority group member is an individual who is a citizen of the United States and one of the following: [i] Black American; [ii] Hispanic American [with origins from Puerto Rico, Mexico, Cuba, or South or Central America]; [iii] Native American [American Indian, Eskimo, Aleut, or native Hawaiian]; or [iv] Asian-Pacific American

[with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, or the Indian Subcontinent].)

1.14 Notice to Proceed -The written notice given by the Owner to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform its obligations under the Contract Documents.

1.15 Owner - The local government (municipality, county, district, or authority; or any agency thereof; or a combination of two or more of the foregoing acting jointly) with which the Florida Department of Environmental Protection (FDEP) may execute, or has executed, a State Revolving Fund loan agreement and for which the Work is to be provided.

1.16 Project - The total construction or facilities described in a State Revolving Fund loan agreement between the FDEP and the Owner, of which the Work to be provided under the Contract Documents may be the whole or a part.

1.17 Sponsor – The recipient of the State Revolving Fund loan agreement that provides funds for the project.

1.18 Subcontract - A direct contract between a subcontractor and the Contractor, or any other subcontractor at any tier, for the furnishing of goods (material and equipment) or the performance of services (including construction) necessary to complete the Work.

1.19 Subcontractor - A person, firm, or corporation having a direct contract with the Contractor, or any other subcontractor at any tier, for the furnishing of goods (material and equipment) or the performance of services (including construction) necessary to complete the Work.

1.20 Successful Bidder - The lowest responsive, responsible bidder to whom or which the Owner intends to award the Agreement/Contract.

1.21 Women's Business Enterprise (WBE) - A business that is (a) certified as a WBE by a state or federal agency or (b) an independent business concern which is at least 51-percent owned and controlled/operated by women. (Determination of whether a business is at least 51-percent owned by women shall be made without regard to community property laws [e.g., an otherwise qualified WBE that is 51-percent owned by a married woman in a community property state will not be disqualified because the married woman's husband has a 50-percent interest in the married woman's share of the business; similarly, a business that is 51-percent owned by a married man and 49-percent owned by women will not become a qualified WBE by virtue of the married man's wife having a 50-percent interest in the married man's share of the business].)

1.22 Work - The entire completed construction or the various separately identifiable parts thereof required to be performed and furnished under the Contract Documents; Work is the result of performing services, furnishing labor, furnishing material and equipment, and incorporating material and equipment into the construction as required by the Contract Documents.

ARTICLE 2 - PRIVACY OF AGREEMENT/CONTRACT

2.1. The Owner expects to finance this Agreement/Contract with assistance from the FDEP, which administers a State Revolving Fund loan program supported in part with funds directly made available by grants from the United States Environmental Protection Agency (USEPA). Neither the State of Florida nor the United States (nor any of their departments, agencies, or employees) will be a party to this Agreement/Contract or any lower-tier subcontract.

ARTICLE 3 - PROCUREMENT REQUIREMENTS

3.1. This Agreement/Contract and the Owner's solicitation and award of this Agreement/Contract are subject to requirements contained in Chapter 62-503 (Revolving Loan Program) and/or Chapter 62-552, Florida Administrative Code as applicable.

ARTICLE 4 - RESOLUTION OF PROTESTS AND CLAIMS/DISPUTES

Resolution of Protests Concerning the Owner's Solicitation and/or Award of this Agreement/Contract:

- 4.1. Protests concerning the Owner's solicitation and/or award of this Agreement/Contract must be filed in writing with the Owner to be considered.
- 4.2. All timely written protests concerning the Owner's solicitation and/or award of this Agreement/Contract are to be resolved in accordance with the Owner's dispute resolution process. A copy of the ordinance(s), resolution(s), or written policy (policies) that set forth the Owner's dispute resolution process is included elsewhere in the Bidding Documents or is to be made available by the Owner upon request.
- 4.3. Neither the (FDEP) nor the USEPA will become a party to, or have any role in resolving, protests concerning the Owner's solicitation and/or award of this Agreement/Contract. Protest decisions made by the Owner cannot be appealed to the FDEP or the USEPA.

Resolution of Claims and Disputes Between the Owner and the Contractor:

- 4.4. Unless otherwise provided in the Contract Documents, all claims and disputes between the Owner and the Contractor arising out of, or relating to, the Contract Documents or the breach thereof are to be decided by arbitration (if the Owner and the Contractor mutually agree) or in a court of competent jurisdiction within the State of Florida.
- 4.5. Neither the FDEP nor the USEPA will become a party to, or have any role in resolving, claims and disputes between the Owner and the Contractor.

ARTICLE 5 - CHANGES TO THE BIDDING AND CONTRACT DOCUMENTS

- 5.1. All changes to the Bidding Documents made subsequent to the FDEP's acceptance of the Bidding Documents and prior to the opening of bids are to be documented via addendum (addenda) to the Bidding Documents; all changes to the Contract Documents made after the opening of bids are to be documented by change order(s) to the Contract Documents. The Owner shall submit all addenda and change orders to the FDEP.

ARTICLE 6 - BONDS AND INSURANCE

Bid Guarantees:

- 6.1. Each bidder's bid is to be accompanied by a bid guarantee made payable to the Owner in an amount at least equal to five percent of the bidder's maximum bid price and in the form of a certified check or bid bond.

Performance and Payment Bond(s):

- 6.2. The Contractor shall furnish a combined performance and payment bond in an amount at least equal to 100 percent of the Contract Price (or, if required elsewhere in the Contract Documents, the Contractor shall furnish separate performance and payment bonds, each in an amount at least equal to 100 percent of the Contract Price) as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. This(these) bond(s) are to be delivered to the Owner by the Contractor along with the executed Agreement/Contract. The Owner shall forward a copy of this (these) bond(s) to the FDEP.

Insurance:

- 6.3. The Owner and/or the Contractor (as required elsewhere in the Contract Documents) shall purchase and maintain, during the period of construction, such liability insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims that may arise out of, or result from, the Contractor's performance and furnishing of the Work (whether the Work is to be performed or furnished by the Contractor or any subcontractor at the Work site) and the Contractor's other obligations under the Contract Documents. This insurance is to include workers' compensation insurance, comprehensive general liability insurance, comprehensive automobile liability insurance, and contractual liability insurance applicable to the Contractor's indemnification obligations and is to be written for not less than the limits of liability and coverages determined by the Owner or required by law, whichever is greater.

6.4. The Owner and/or the Contractor (as required elsewhere in the Contract Documents) shall purchase and maintain, during the period of construction, property insurance upon the Work at the Work site in an amount equal to the full replacement cost of the Work or the full insurable value of the Work. This insurance is to include the interests of the Owner, the Contractor, and all subcontractors at the Work site (all of whom are to be listed as insured or additional insured parties); is to insure against the perils of fire and extended coverage; and is to include "all-risk" insurance for physical loss or damage due to theft, vandalism and malicious mischief, collapse, water damage, and/or all other risks against which coverage is obtainable.

6.5. Before any Work at the Work site is started, the Contractor shall deliver to the Owner certificates of insurance that the Contractor is required to purchase and maintain in accordance with Paragraphs 6.3 and 6.4 of this Article and other provisions of the Contract Documents, and the Owner shall deliver to the Contractor certificates of insurance that the Owner is required to purchase and maintain in accordance with Paragraphs 6.3 and 6.4 of this Article and other provisions of the Contract Documents.

ARTICLE 7 - AWARD OF AGREEMENT/CONTRACT

7.1. If this Agreement/Contract is awarded, it is to be awarded to the lowest responsive, responsible bidder. A fixed price (lump sum or unit price or both) agreement/contract is to be used. A clear explanation of the method of evaluating bids and the basis for awarding this Agreement/Contract are included elsewhere in the Bidding Documents. All bids may be rejected when in the best interest of the Owner. After the contract has been awarded, the Owner shall give the Contractor a notice to proceed fixing the date on which the Contract Time will commence to run. The Owner shall forward a copy of this notice to proceed to the FDEP.

ARTICLE 8 - ITEMIZED CONSTRUCTION COST BREAKDOWN; CONSTRUCTION AND PAYMENT SCHEDULES

8.1. The Contractor shall submit to the Owner, within ten calendar days after the Effective Date of this Agreement/Contract, an itemized construction cost breakdown and construction and payment schedules.

8.1.1. The itemized construction cost breakdown, or schedule of values, is to include quantities and prices of items aggregating the Contract Price and is to subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices are to include an appropriate amount of overhead and profit applicable to each item of Work.

8.1.2. The construction, or progress, schedule is to indicate the Contractor's estimated starting and completion dates for the various stages of the Work and is to show both the projected cost of Work completed and the projected percentage of Work completed versus Contract Time.

8.1.3. The payment schedule is to show the Contractor's projected payments cumulatively by month.

ARTICLE 9 – FDEP/USEPA ACCESS TO RECORDS AND PROJECT SITE

9.1. Authorized representatives of the Owner, the FDEP, and the USEPA shall have access to, for the purpose of inspection, the Work site(s), any books, documents, papers, and records of the Contractor that are pertinent to this Agreement/Contract at any reasonable time. The Contractor shall retain all books, documents, papers, and records pertinent to this Agreement/Contract for a period of five years after receiving and accepting final payment under this Agreement/Contract.

NOTE: ARTICLE 10 ONLY APPLIES TO FEDERAL CAP GRANT PROJECTS

ARTICLE 10 - DISADVANTAGED BUSINESS ENTERPRISES

If bidders or prospective contractors (including the Contractor) intend to let any lower-tier goods or services (including construction) subcontracts for any portion of the Work, they shall take good faith efforts to assure that MBEs and WBEs are utilized, when possible, as sources of goods and services.

Good faith efforts are to include the following:

- 10.1.1. Require Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
 - 10.1.2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
 - 10.1.3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
 - 10.1.4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
 - 10.1.5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
 - 10.1.6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs 10.1.1 through 10.1.5 of this section.
- 10.2. Within ten calendar days after being notified of being the apparent Successful Bidder, the apparent Successful Bidder shall submit to the Owner documentation of the affirmative steps it has taken to utilize Minority and Women's Business Enterprises (MBEs and WBEs) in the Work and documentation of its intended use of MBEs and WBEs in the Work. The Owner shall keep this documentation on file and shall forward to the FDEP a copy of the apparent Successful Bidder's documentation concerning its intended use of MBEs and WBEs in the Work.

ARTICLE 11 - DEBARMENT AND SUSPENSION (EXECUTIVE ORDER 12549)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

- 11.1. The bidder certifies, by submission of this proposal, that neither the bidder nor its principals, nor the bidder's subcontractors nor their principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- 11.2. Where the bidder is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
- 11.3. The bidder also certifies that it and its principals and the bidder's subcontractors and their principals:
 - 11.3.1. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 11.3.2. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 11.3.1 of this certification; and
 - 11.3.3. Have not within a three-year period preceding this proposal had one or more public transactions (federal, state or local) terminated for cause or default. Where the bidder is unable to certify to any of the above, such owner shall attach an explanation to this proposal.

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

11.3.5. The bidder shall incorporate the foregoing requirements 11.1 through 11.3 in all subcontracts.

ARTICLE 12 – EMPLOYEE ELIGIBILITY

The Contractor is required to use the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all employees used by the Contractor under this Contract, pursuant to Section 448.095, F.S. Also, the Contractor shall include in related subcontracts, if authorized under this Contract, a requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify employment eligibility of all employees used by the subcontractor for the performance of the Work. The subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of such affidavit for a period of five years from the SRF execution date of the Final Amendment, and shall allow the Owner; the Department, or its designee; the Chief Financial Officer; or the Auditor General, access to such records upon request. If the Owner or the Department has a good faith belief that a subcontractor knowingly violated §448.095(1), F.S. and notifies the Contractor of such, but the Contractor otherwise complied with this statute, the Contractor shall immediately terminate the contract with the subcontractor.

ARTICLE 13 – ENVIRONMENTAL COMPLIANCE

The Contractor, and all subcontractors at any tier, shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 (Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans).

ARTICLE 14 – FEDERAL LABOR STANDARDS PROVISION

Contracts being constructed with assistance from the State Revolving Fund Program are currently required to comply with the Federal Labor Standards Provisions as provided in Appendix B. Signing Appendix A certifies compliance with these provisions.

ARTICLE 15 – AMERICAN IRON AND STEEL PROVISION

Contracts being constructed with assistance from the State Revolving Fund Program are currently required to comply with The American Iron and Steel Provision as provided in Appendix C. Signing Appendix A certifies compliance with these provisions.

ARTICLE 16 - PROHIBITED LOCAL GOVERNMENT CONSTRUCTION PREFERENCES

- A. Pursuant to Section 255.0991, F.S., for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation, a state, college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:
 - 1. The contractor’s maintaining an office or place of business within a particular local jurisdiction;
 - 2. The contractor’s hiring employees or subcontractors from within a particular local jurisdiction; or
 - 3. The contractor’s prior payment of local taxes, assessments, or duties within a particular local jurisdiction.
- B. For any competitive solicitation that meets the criteria in Paragraph A., a state college, county, municipality, school district, or other political subdivision of the state shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by Paragraph A.

NOTE: ARTICLE 17 ONLY APPLIES TO FEDERAL CAP GRANT PROJECTS

ARTICLE 17 – BUILD AMERICA, BUY AMERICA PROVISION

Contracts being constructed with assistance from the State Revolving Fund Program are currently required to comply with The Build America, Buy America provision as provided in Appendix D. Signing Appendix A certifies compliance with the Build America, Buy America provision if the project is a Federal Cap Grant project.

ARTICLE 18 – UNITED STATES-PRODUCED IRON AND STEEL IN PUBLIC WORKS PROJECTS

Contracts being constructed with assistance from the State Revolving Fund Program are currently required to comply with The United States-Produced Iron and Steel in Public Works Projects provision as provided in Appendix E. Signing Appendix A certifies compliance with these provisions.

ARTICLE 19 – CIVIL RIGHTS LAWS

The Contractor, and all subcontractors at any tier, shall comply with the Age Discrimination Act of 1975, Section 13 of the Federal Water Pollution Control Act Amendments of 1972 [CWSRF only], Section 504 of the Rehabilitation Act of 1973, and Title VI of the Civil Rights Act of 1964. These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, handicap or age.

ARTICLE 20 – PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Contractor, and all subcontractors at any tier, shall comply with the Prohibition on Certain Telecom and Video Surveillance Services or Equipment as specified by Section 889 of Public Law 115-232 (National Defense Authorization Act 2019), 2 CFR 200.216, and 2 CFR 200.471. This law and regulations prohibit the expending of funds to procure or obtain; extending or renewing a contract to procure or obtain; or entering into a contract (or extending or renewing a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

ARTICLE 21 – UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT

The Contractor, and all subcontractors at any tier, shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. This Act establishes a uniform policy for fair and equitable treatment of persons who are displaced from their homes, farms, or businesses to make way for federal or federally assisted projects. It provides basic guidelines for negotiating the acquisition of real property by the federal government. The Act also requires agencies to reimburse individuals for actual and reasonable expenses incident to relocation, such as moving costs, direct loss of tangible personal property associated with moving or discontinuing a business, and expenses involved in searching for a replacement home or business site.

**APPENDIX A TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION SUPPLEMENTARY CONDITIONS**

**CERTIFICATION OF COMPLIANCE WITH THE FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS**

This certification relates to a construction contract proposed by _____,
(insert the name of the Owner)

which expects to finance the proposed construction contract with assistance from the Florida Department of Environmental Protection (which administers a State Revolving Fund loan program supported in part with funds directly made available by grants from the United States Environmental Protection Agency). I am the undersigned prospective construction contractor or subcontractor.

I certify that I have read the Florida Department of Environmental Protection's Supplementary Conditions and agree to incorporate the following articles into the bid and/or contract:

- ARTICLE 11 DEBARMENT AND SUSPENSION (EXECUTIVE ORDER 12549)
- ARTICLE 12 EMPLOYEE ELIGIBILITY
- ARTICLE 13 ENVIRONMENTAL COMPLIANCE
- ARTICLE 14 FEDERAL LABOR STANDARDS PROVISION
- ARTICLE 15 AMERICAN IRON AND STEEL PROVISION
- ARTICLE 17 BUILD AMERICA, BUY AMERICA PROVISION – IF A FEDERAL CAP GRANT PROJECT
- ARTICLE 18 UNITED STATES-PRODUCED IRON AND STEEL IN PUBLIC WORKS
PROJECTS
- ARTICLE 19 CIVIL RIGHTS LAWS
- ARTICLE 20 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE
SERVICES OR EQUIPMENT
- ARTICLE 21 UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT

I agree that I will obtain identical certifications from prospective lower-tier construction subcontractors prior to the award of any lower-tier construction subcontracts with a price exceeding \$2,000. I also agree that I will retain such certifications in my files.

(Signature of Authorized Official)

(Date)

(Name and Title of Authorized Official [Print or Type])

(Name of Prospective Construction Contractor or Subcontractor [Print or Type])

(Address and Telephone Number of Prospective Construction Contractor or Subcontractor [Print or Type])

(Employer Identification Number of Prospective Construction Contractor or Subcontractor)

APPENDIX B TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

Davis-Bacon Requirements

FEDERAL LABOR STANDARDS PROVISIONS

(Davis-Bacon Act, Copeland Act, and Contract Works Hours & Safety Standards Act)

The Project to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such federal assistance.

1 Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 29 CFR Part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) The sponsor, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The FDEP shall approve a request for an additional classification and wage rate and fringe benefits; therefore, only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sponsor(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the sponsor to the FDEP. The FDEP will transmit the request to the Administrator of the Wage and Hour Division, employment Standards Administration, U. S. Department of Labor. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional

classification action within 30 days of receipt and so advise the FDEP or will notify FEDP within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event that the Contractor, the laborers or mechanics to be employed in the Classification or their representatives, and the sponsor do not agree on the proposed classification and wage rate (including the amount designed for fringe benefits, where appropriate), the FDEP shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of FDEP, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding.

The sponsor shall, upon written request of the EPA or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, EPA may, after written notice to the contractor, sponsor, applicant, or owners, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed, a copy of all payrolls to the sponsor. Such documentation shall be available upon request by FDEP. As to each payroll copy received, the sponsor shall provide a certification that the project is in compliance with the requirements of 29 CFR 5.5(a)(1) with each disbursement request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(I), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current addresses of each covered worker, and shall provide them upon request to the sponsor for transmission to the FDEP or EPA if requested by EPA, the FDEP, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsor. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

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

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR Part 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR Part 5.5 (a)(3)(I), and that such information is correct and complete;

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

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

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

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

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

4. Apprentices and Trainees.

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

of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with the determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

5. Compliance with Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts.

The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination, Debarment.

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

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are herein incorporated by referenced in this contract.

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded EPA contracts or participate in EPA programs pursuant to Executive Order 12549.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded EPA contracts or participate in EPA programs pursuant to Executive Order 12549.

(iii) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U. S. C. 1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U. S. C., Federal Housing Administration transactions, provides in part "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both".

11. Complaints, Proceedings, or Testimony by Employees.

A. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

B. Contract Work Hours and Safety Standards Act. The sponsor shall insert the following clauses set forth in paragraphs B.(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by item 3 above or 29 CFR 4.6. As used in the paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

(3) Withholding for unpaid wages and liquidated damages. The sponsor, upon written request of the FDEP or an authorized representative of the Department of Labor, may withhold or cause to be withheld, from any moneys payable on

account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contract, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

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

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54.83 State 96).

(3) The contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

12. Guidance to Contractor for Compliance with Labor Standards Provisions

a) Contracts with Two Wage Decisions

If the contract includes two wage decisions, the contractor, and each subcontractor who works on the site, must submit either two separate payrolls (one for each wage decision) or one payroll which identifies each worker twice and the hours worked under each wage decision. One single payroll, reflecting each worker once, may be submitted provided the Contractor uses the higher rate in the wage decisions for each identical job classification. However, where a job classification is not listed in a wage decision and is needed for that portion of the work, the classification **must** be added to the wage decision. A worker may not be paid at the rate for a classification using the hourly rate for that same classification in another wage decision. After the additional classification is approved, the contractor may pay the higher of the two rates and submit one payroll, if desired.

b) Complying with Minimum Hourly Amounts

1) The minimum hourly amount due to a worker in each classification is the total of the amounts in the Rates and Fringe Benefits (if any) columns of the applicable wage decision.

2) The contractor may satisfy this minimum hourly amount by any combination of cash and bona fide fringe benefits, regardless of the individual amounts reflected in the Rates and Fringe Benefits columns.

3) A contractor payment for a worker which is required by law is not a fringe benefit in meeting the minimum hourly amount due under the applicable wage decision. For example, contractor payments for FICA or unemployment insurance are not a fringe benefit; however, contractor payments for health insurance or retirement are a fringe benefit. Generally, a fringe benefit is bona fide if (a) it is available to most workers and (b) involves payments to a third party.

4) The hourly value of the fringe benefit is calculated by dividing the contractor's annual cost (excluding any amount contributed by the worker) for the fringe benefit by 2080. Therefore, for workers with overtime, an additional payment may be required to meet the minimum hourly wages since generally fringe benefits have no value for any time worked over 40 hours weekly. (If a worker is paid more than the minimum rates required by the wage decision, this should not be a problem. As long as the total wages received by a worker for straight time equals the hours worked times the minimum hourly rate in the wage decision, the requirement of the Davis-Bacon and Related Acts has been satisfied.)

c) Overtime

For any project work over 40 hours weekly, a worker generally must be paid 150% of the actual hourly cash rate received, not the minimum required by the wage decision. (The Davis-Bacon and Related Acts only establishes minimum rates and does not address overtime. The Contract Work Hours Act contains the overtime requirement and uses basic rate of pay as the base for calculation, not the minimum rates established by the Davis-Bacon and Related Acts.)

d) Deductions

Workers who have deductions, not required by law, from their pay must authorize these deductions in writing. The authorization must identify the purpose of each deduction and the amount, which may be a specific dollar amount or a percentage. A copy of the authorization must be submitted with the first payroll containing the deduction. If deducted amounts increase, another authorization must be submitted. If deducted amounts decrease, no revision to the original authorization is needed. Court-ordered deductions, such as child support, may be identified by the responsible payroll person in a separate document. This document should identify the worker, the amount deducted and the purpose. A copy of the court order should be submitted.

e) Classifications Not Included in the Wage Decision

If a classification not in the wage decision is required, please advise the owner's representative in writing and identify the job classification(s) required. In some instances, the state agency may allow the use of a similar classification in the wage decision.

Otherwise, the contractor and affected workers must agree on a minimum rate, which cannot be lower than the lowest rate for any trade in the wage decision. Laborers (including any subcategory of the laborer classification) and truck drivers are not considered a trade for this purpose. If the classification involves a power equipment operator, the minimum cannot be lower than the lowest rate for any power equipment operator in the wage decision. The owner will provide forms to document agreement on the minimum rate by the affected workers and contractor.

The U.S. Department of Labor (USDOL) must approve the proposed classification and rate. The contractor may pay the proposed rate until the USDOL makes a determination. Should the USDOL require a higher rate, the contractor must make wage restitution to the affected worker(s) for all hours worked under the proposed rate.

f) Supervisory Personnel

Foremen and other supervisory personnel who spend at least 80% of their time supervising workers are not covered by the Davis-Bacon and Related Acts. Therefore, a wage decision will not include such supervisory classifications and their wages are not subject to any minimums under the Davis-Bacon and Related Act or overtime payments under the Contract Work Hours and Safety Standards Act. However, foremen and other supervisory personnel who spend less than 80% of their time engaged in supervisory activities are considered workers/mechanics for the time spent engaged in manual labor and must be paid at least the minimum in the wage decision for the appropriate classification(s) based on the work performed.

g) Sole Proprietorships / Independent Contractors / Leased Workers

The nature of the relationship between a prime contractor and a worker does not affect the requirement to comply with the labor standards provisions of this contract. The applicability of the labor standards provisions is based on the nature of the work performed.

If the work performed is primarily manual in nature, the worker is subject to the labor standards provisions in this contract. For example, if John Smith is the owner of ABC Plumbing and performs all plumbing work himself, then Mr. Smith is subject to the labor standards provisions, including minimum wages and overtime. His status as owner is irrelevant for labor standards purposes.

If a worker meets the IRS standards for being an independent contractor, and is employed as such, this means that the worker must submit a separate payroll as a subcontractor rather than be included on some other payroll. The worker is still subject to the labor standards provisions in this contract, including minimum wages and overtime.

If a contractor or subcontractor leases its workers, they are subject to the labor standards provisions in this contract, including minimum wages and overtime. The leasing firm must submit payrolls and these payrolls must reflect information required to determine compliance with the labor standards provisions of this contract, including a classification for each worker based on the nature of the work performed, number of regular hours worked, and number of overtime hours worked.

h) Apprentices / Helpers

A worker may be classified as an apprentice **only if participating in a federal or state program**. Documentation of participation must be submitted. Generally, the apprentice program specifies that the apprentice will be compensated at a percentage of journeyman rate. For Davis-Bacon Act purposes, the hourly rate cannot be lower than the percentage of the hourly rate for the classification in the applicable wage decision.

If the worker does not participate in a federal or state apprentice program, then the worker must be classified according to duties performed. This procedure may require classification in the trade depending on tools used, or as a laborer if specialized tools of the trade are not used. The contractor may want to consult with the Wage and Hour Division of the U.S. Department of Labor located in most large cities regarding the appropriate classification.

Presently, no worker may be classified as a helper. As with apprentices not participating in a formal apprentice program, the worker must be classified according to duties performed and tools used.

APPENDIX C TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

American Iron and Steel Requirement

The Contractor acknowledges to and for the benefit of the _____ ("Owner") and the State of Florida (the "State") that it understands that iron and steel products to be installed as a part of this contract must be in compliance with the requirements in H.R. 3547, "Consolidated Appropriations Act, 2014," (Appropriations Act). H.R. 3547 includes the following language in Division G, Title IV, Sec. 436, under the heading, "Use of American Iron and Steel,":

(a) (1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that--

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

APPENDIX D TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

Build America, Buy America Requirement

The Contractor acknowledges to and for the benefit of the _____ (“Owner”) and the State of Florida (the “State”) that it understands that the products to be installed as a part of this contract must be in compliance with the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act requires the following Buy America preference:

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

The Contractor hereby presents and warrants to and for the benefit of the Owner and State that (a) the Contractor has reviewed and understands the Build America, Buy America Requirement, (b) all of the products used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this Acknowledgement, or information necessary to support a waiver of the Build America, Buy America Requirement, as may be requested by the Owner or the State.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

APPENDIX E TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

UNITED STATES-PRODUCED IRON AND STEEL IN PUBLIC WORKS PROJECTS

The Contractor acknowledges to and for the benefit of the _____ (“Owner”) and the State of Florida (the “State”) that it understands that iron and steel products to be installed as a part of this contract must be in compliance with the requirements in 60D-16 Florida Administrative Code (F.A.C.), which includes the following language:

(1) Contract Requirement. Unless waived in accordance with subsection 60D-16.002(3), F.A.C., a Governmental Entity entering into a contract for a Public Works Project or for the purchase of materials for a Public Works Project must include in the contract a requirement that any Iron or Steel Product Permanently Incorporated in the Project be Produced in the United States, as provided in section 255.0993, F.S., and Chapter 60D-16, F.A.C.

(2) Minimal Use. Subsection 60D-16.002(1), F.A.C., does not prevent a minimal use of foreign steel and iron materials Permanently Incorporated in the Project if:

(a) Such materials are incidental or ancillary to the primary product and are not separately identified in the Project specifications; and

(b) The cost of such materials does not exceed one-tenth of 1 percent of the Total Contract Cost or \$2,500, whichever is greater. For purposes of this subparagraph, the cost of such materials is that shown to be the value of the Iron or Steel Products as they are delivered to the Project.

(3) Waiver.

(a) The Administering Entity for a Project may waive the requirement set forth in subsection 60D-16.002(1), F.A.C., with respect to such Project if it solely determines that any of the following apply to the Project:

1. Iron or Steel Products Produced in the United States are not produced in sufficient quantities.

2. Iron or Steel Products Produced in the United States are not reasonably available.

3. Iron or Steel Products Produced in the United States are not of satisfactory quality.

4. The use of Iron or Steel Products Produced in the United States will increase the Total Cost of the Project by more than 20 percent.

5. Complying with subsection 60D-16.002(1), F.A.C., is inconsistent with the public interest.

(b) Prior to making a determination that a Waiver applies to a Project, the Administering Entity shall complete the “U.S.-Produced Iron & Steel Waiver Form,” effective 6/2025, hereby incorporated by reference and available at <https://flrules.org/gateway/reference.asp?No=Ref-18066>. To aid the Administering Entity in making a determination under paragraph 60D-16.002(3)(a), F.A.C., the Administering Entity may utilize the “U.S.-Produced Iron & Steel Sample Waiver Checklist,” effective 6/2025, hereby incorporated by reference and available at <https://flrules.org/gateway/reference.asp?No=Ref-18067>. The Administering Entity is responsible for maintaining any records associated with its determination that a Waiver applies to a Project in accordance with applicable law.

(c) If the Administering Entity for a Project waives the requirement set forth in subsection 60D-16.002(1), F.A.C., but later determines, prior to completion of the Project, that the Waiver no longer applies (e.g., Iron or Steel Products Produced in the United States become reasonably available), then the Administering Entity shall comply with subsection 60D-16.002(1), F.A.C., with respect to any contracts for the Project or for the purchase of materials for the Project entered into after the date the Administering Entity determines that the Waiver no longer applies.

(d) The governing body of the Administering Entity may designate by resolution, order, or written delegation one or more officers or employees of the Administering Entity to carry out the Administering Entity’s responsibilities under this Chapter 60D-16, F.A.C., on behalf of the Administering Entity.

(4) In accordance with section 255.0993(5), F.S., this rule does not apply to contracts procured by the Department of Transportation subject to the Buy America requirements of 23 C.F.R. s. 635.410.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.