

INVITATION TO BID



**SUBJECT: INVITATION TO BID FOR THE FEDERAL AID
ROADS SIDEWALK REPLACEMENT PROJECT
FOR THE CITY OF NORTH MIAMI BEACH
(ARRA PROJECT #426558-1)**

DUE DATE: OCTOBER 15, 2009

DUE TIME: 2:00 P.M.

**SUBMIT TO: CITY OF NORTH MIAMI BEACH
PROCUREMENT MANAGEMENT DIVISION
ROOM 315
17011 NORTH EAST 19th AVENUE
NORTH MIAMI BEACH, FLORIDA 33162**

BID NO: 2009-19

5% BID BOND

100% PERFORMANCE & PAYMENT BOND

**MANDATORY PRE-BID CONFERENCE: WEDNESDAY, SEPTEMBER
30, 2009 AT 11:00 A.M. AT CITY HALL, 2ND FLOOR, COUNCIL
CHAMBERS, 17011 NE 19 AVENUE.**



BID CHECKLIST

BID #2009-19

FEDERAL AID ROADS SIDEWALK REPLACEMENT PROJECT

Required	Done	Requirement	Found in Section
		Original and one (1) copy of bid	1.7
		Products Information Sheets (2 Sets)	N/A
		Bid Guarantee (Bond)	2.2
		Insurance (including declaration of coverage pages)	2.4
		Licenses (occupational license and state license)	2.7
		Permits	2.17
		Bid Proposal Page	4.0
		Statement of No Bid	5.1
		Reference Questionnaire	5.2
		Bid Signature Page (if a Corporation)	5.3
		Bid Signature Page (if a Proprietorship or Partnership)	5.4
		Drug Free Workplace Program	5.5
		Solicitation, Giving and Acceptance of Gifts Policy	5.6
		Sample Agreement	6.0
		Drawings	N/A
☒		Bid Form (signed and completed)	

SECTION I. GENERAL TERMS AND CONDITIONS**I.1 DEFINITIONS**

- A. Bid: shall refer to any offer(s) submitted in response to this solicitation.
- B. Bidder: shall refer to anyone submitting a Bid in response to this solicitation.
- C. Bid Solicitation: shall mean this solicitation documentation, including any and all addenda.
- D. City: shall refer to the City of North Miami Beach, Florida.
- E. PMD: shall refer to the City of North Miami Beach Procurement Management Division
- F. Enrolled Vendor: shall refer to a firm that has completed the necessary documentation in order to receive Bid notifications from the City.
- G. Registered Vendor: shall refer to a firm that has completed the Vendor Application and has satisfied all requirements to enter into business agreements with the City.

I.2 INSTRUCTIONS TO BIDDERS

It is the policy of the City to encourage full and open competition among all available qualified vendors. All vendors regularly engaged in the type of work specified in the Bid Solicitation are encouraged to submit bids. Vendors may enroll with the City to be included on a mailing list for selected categories of goods and services. To be eligible for award of a contract (including small purchase orders), Bidders must complete a Vendor Application. For information and to apply as a vendor, please visit our website at www.citynmb.com/purchasing to download an application and submit it to Procurement Management Division, 17011 NE 19 Avenue, Suite 315 North Miami Beach, Florida 33162.

NOTE: THIS PROJECT IS WHOLLY OR PARTIALLY FUNDED BY THE AMERICAN REINVESTMENT AND RECOVERY ACT (ARRA). THUS, DAVIS BACON WAGES AND BUY AMERICAN PROVISIONS APPLY

I.3 REQUEST FOR ADDITIONAL INFORMATION

Pursuant to Section 2-11.1(t) of the County Code, all Bid solicitations, once advertised and until an award recommendation has been forwarded to the appropriate authority are under the "Cone of Silence". Any communication or inquiries, except for clarification of process or procedure already contained in the solicitation, are to be made in writing to the attention of the Chief Procurement Officer. Such inquiries or request for information shall be submitted to the Chief Procurement Officer and shall contain the requester's name, address, and telephone number. If transmitted by facsimile, the request should also include a cover sheet with Bidder's facsimile number. The request may also be emailed to bids@citynmb.com or mailed to Procurement Management Division, 17011 NE 19 Avenue, Suite 315, North Miami Beach, Florida 33162.

I.4 BIDDERS RESPONSIBILITIES

Bidders are required to submit their proposals upon the following express conditions:

- A. Bidders shall thoroughly examine the drawings, specifications, schedules, instructions and all other contract documents.
- B. Bidders shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the bid conditions. No plea of ignorance, by the bidder, of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the bidder.
- C. Bidders are advised that all City contracts are subject to all legal requirements provided for in the City of North Miami Beach Purchasing Code and applicable County Ordinances, State Statutes and Federal Statutes.

I.5 PREPARATION OF BIDS

Bids will be prepared in accordance with the following:

- A. Our enclosed Bid Proposal Form is to be used in submitting your bid. **NO OTHER FORM WILL BE ACCEPTED.**
- B. All information required by the bid form shall be furnished. The bidder shall sign each continuation sheet (where indicated) on which an entry is made.
- C. Unit prices shall be shown and where there is an error in extension of prices, the unit price shall govern.
- D. Alternate bids will not be considered unless authorized in the Invitation to Bid document.
- E. Proposed delivery time must be shown in calendar days, which shall include weekends and holidays.
- F. The City of North Miami Beach is exempt from payment to its vendors of State of Florida sales tax and, therefore, such taxes should not be figured into the bid. However, this exemption does not transmit to suppliers to the City in their (supplier) purchases of goods or services, used in work or goods supplied to the City. Contractors are responsible for any taxes, sales or otherwise, levied on their purchases, subcontracts, employment, etc. An exemption certificate will be signed where applicable, upon request. The City will pay no sales tax.

I.6 DESCRIPTION OF SUPPLIES

- A. Any manufacturer's names, trade names, brand names, or catalog numbers used in these applications are for the purpose of describing and establishing minimum requirements or level of quality, standards of performance, and design required, and is in no way intended to prohibit the bidding of other manufacturers' items of equal material, unless specifications state "NO SUBSTITUTIONS."
- B. Bidders must indicate any variances to the specifications, terms, and conditions, no matter how slight. If variations are not stated in the Proposal, it shall be construed that the bid fully complies with the Specifications, Terms and Conditions.
- C. Bidders are required to state exactly what they intend to furnish; otherwise they shall be required to furnish the items as specified.

- D. Bidders will submit, with their proposal, necessary data (factory information sheets, specifications, brochures, etc.) to evaluate and determine the quality of the item(s) they are bidding.
- E. The City shall be the sole judge of equality and its decision shall be final.

I.7 SUBMISSION OF BIDS

- A. Bids and Addenda thereto shall be enclosed in sealed envelopes addressed to the Chief Procurement Officer, Brian K. O'Connor, City of North Miami Beach, 17011 NE 19 Avenue, Room 315, North Miami Beach, Florida 33162. The name and address of the bidder, the bid number, the date and hour of the bid opening, and the bid name shall be placed on the outside of the envelope.
- B. Bids must be submitted on the forms furnished. Electronically mailed and facsimile bids will not be considered. Bids, however, may be modified by telegraphic notice provided such notice is received prior to the time and date set for the bid opening. Bids shall be dated and time stamped in Room 315 prior to bid opening. Bidders shall have sole responsibility of insuring delivery of bids on time and to the proper location.
- C. Bidders requesting a copy of the bid tabulation shall include a stamped, self-addressed envelope.
- D. Bids should be submitted in duplicate. Submit one **original** and one **copy**.

I.8 ADDENDA

The Procurement Management Division may issue an addendum in response to any inquiry received, prior to Bid opening, which changes, adds to or clarifies the terms, provisions or requirements of the solicitation. The Bidder should not rely on any representation, statement or explanation whether written or verbal, other than those made in this Bid solicitation document or in any addenda issued. Where there appears to be a conflict between this Bid solicitation and any addenda, the last addendum issued shall prevail. It is the Bidder's responsibility to ensure receipt of all addenda and any accompanying documents. The Bidder is required to submit with its Bid a signed "Acknowledgment of Addenda" form when any addenda have been issued.

I.9 REJECTION OF BIDS

- A. The City may reject a bid if:
 - 1. The Bidder fails to acknowledge receipt of an addendum, or if
 - 2. The Bidder misstates or conceals any material fact in the bid, or if
 - 3. The bid does not strictly conform to the law or requirements of bid, or if
 - 4. The bid is conditional, except that the bidder may qualify his bid for acceptance by the City on an "all or none" basis, group basis, or a "low item" basis. An "all or none" basis bid must include all items upon which bids are invited.
- B. The City may, however, reject all bids whenever it is deemed in the best interest of the City to do so, and may reject any part of a bid unless the bid has been qualified as provided in paragraph A4 above.

I.10 WITHDRAWAL OF BIDS

- A. Bids may not be withdrawn for a period of 90 days after the time set for the bid opening.
- B. Bids may be withdrawn prior to the time set for the bid opening. Such request must be in writing.
- C. The City will permanently retain as liquidated damages the bid deposit furnished by any bidder who requests to withdraw a bid after the bid opening.

I.11 LATE BIDS OR MODIFICATIONS

Only bids or proposals received as of opening date and time will be considered timely. Bids and modifications received after the time set for the bid opening will be rejected as late.

I.12 CONFLICTS WITHIN THE BID SOLICATION

Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, the Technical Specifications, the Bid Submittal Section, or any addendum issued, the order of precedence shall be the last addendum issued, the Bid Submittal Section, the Technical Specifications, the Special Conditions, and then the General Terms and Conditions.

I.13 CLARIFICATION OR OBJECTION TO BID SPECIFICATIONS

If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of the specifications or other bid documents or any part thereof, he/she may submit to the City Buyer on or before ten days prior to scheduled opening, a request for clarification. All such requests for clarification shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the bid, if made, will be made only by Addendum duly issued. A copy of such Addendum will be mailed or delivered to each person receiving an Invitation for Bids. The City will not be responsible for any other explanation or interpretation of the proposed bid made or given prior to the award of the contract. Any objection to the specifications and requirements as set forth in this bid must be filed in writing with the Purchasing Supervisor on or before ten days prior to scheduled opening.

I.14 INVOICING/PAYMENT

All invoices should be sent to: City of North Miami Beach, Finance Department, 17011 NE 19 Avenue, 3rd Floor, North Miami Beach, Florida 33162. In accordance with Florida State Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Bidders should state any payment discount in the space provided on the proposal form.

I.15 DISCOUNTS

- A. Bidders may offer a cash discount for prompt payment; however, such discounts shall NOT be considered in determining the lowest net cost for bid evaluation purposes. Bidders are encouraged to reflect cash discounts in the unit prices quoted.
- B. In connection with any discount offered, time will be computed from the date of receipt of supplies or services or from the date a correct invoice is received, whichever is the later date. Payment is deemed to be made on the date of mailing of the check.

I.16 COMPETENCY OF BIDDERS

- A. Pre-award inspection of the Bidder's facility may be made prior to the award of contract. Bids will be considered only from firms which are regularly engaged in the business of providing the goods and/or services as described in this Bid(s); have a record of performance for a reasonable period of time; have sufficient financial support, equipment and organization to insure that they can satisfactorily deliver the material and/or services if awarded a Contract under the terms and conditions herein stated. The terms "equipment and organization" as used herein shall be construed to mean a fully equipped and well established company in line with the best business practices in the industry and as determined by the proper authorities of the City.
- B. The City may consider any evidence available to it of the financial, technical and other qualifications and abilities of a Bidder, including past performance (experience) with the City in making the award in the best interest of the City.

I.17 TERMINATION OF CONTRACT

- A. The City may, by written notice to the Contractor, terminate the Contract if the Contractor has been found to have failed to perform his services in a manner satisfactory to the City as per specifications, including delivery as specified. The date of termination shall be stated in the notice. City shall be sole judge of non-performance.
- B. The City may cancel the contract upon 30 days written notice for reasons other than cause.

I.18 EMPLOYEES

All employees of the Contractor shall be considered to be at all times the sole employees of the Contractor, under the Contractor's sole direction, and not an employee or agent of the City of North Miami Beach. The Contractor shall supply competent and physically capable employees and the City may require the Contractor to remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose presence on City property is not in the best interest of the City. Each employee shall have and wear proper identification.

I.19 AWARD OF BID

- A. The bid will be awarded to the lowest responsible bidder(s) whose bid(s), conforming to the Invitation for Bids, is most advantageous to the City, price and other factors

considered.

- B. The City reserves the right to accept and award item by item, and/or by group, or in the aggregate, unless the bidder qualifies his bid by specified limitations as provided for in paragraph (A) above.
- C. Successful Bidder shall be notified in writing of award.
- D. Delivery of materials and/or services shall be performed upon receipt by successful bidder of a numbered, signed purchase order.

I.20 BID PROTESTS

The City shall provide notice of its decision to award or reject to all bidders by U.S. mail. If bidders wish to protest a decision of award, they must file a notice of protest in writing to the Chief Procurement Officer within three (3) working days after receipt of the notice of the City's decision of award, and shall file a formal written protest within 10 days after filing the notice of protest. The notice of protest must be either hand delivered and date time stamped by the Procurement Management Division, or sent via Certified U.S. mail, return receipt requested. Failure to file a protest within the time specified herein shall constitute a waiver of all rights to protest the City's decision regarding the award of bid.

I.21 AGREEMENT

An agreement (see sample included as part of these specifications) shall be sent to the awarded bidder to be signed, witnessed, and returned to the City for execution. The City will provide a copy of the fully executed agreement to the awarded bidder.

I.22 DISQUALIFICATION OF BIDDERS

A bidder may be disqualified temporarily or permanently and his/her bid(s) rejected for:

- A. Poor performance or default, in the City's opinion, on previous contracts with the City.
- B. Poor performance or default, in the City's opinion, on previous contracts with other public entities.
- C. Insufficient financial or company size, in the City's opinion, to perform the requirements of the contract.

I.23 SUBCONTRACTING

Unless otherwise specified in this Bid Solicitation, the successful Bidder shall not subcontract any portion of the work without the prior written consent of the City. The ability to subcontract may be further limited by the Special Conditions. Subcontracting without the prior consent of the City may result in termination of the contract for default.

I.24 ASSIGNMENT

The successful Bidder shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title or interest therein, or its power to execute such contract to any person, company or corporation without the prior written consent of the City.

I.25 LOCAL, STATE AND FEDERAL COMPLIANCE REQUIREMENTS

Bidders shall comply with all local, state and federal directives, orders and laws as applicable to this bid and subsequent contract(s).

Including but not limited to:

- A. Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this contract.
- B. Occupational Safety and Health Act (OSHA) as applicable to this contract.

I.26 FRAUD AND MISREPRESENTATION

In accordance with City Purchasing Policy 3.6 and pursuant to Section 2-8-1.4 of the Miami-Dade County Code, any individual, corporation or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement, may be debarred from doing business with the City. The City as further sanction may terminate or cancel any other contracts with such individual, corporation or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

I.27 COLLUSION

The bidder, by affixing his signature to this proposal, agrees to the following: "Bidder certifies that his/her bid is made without previous understanding, agreement, or connection with any person, firm or corporation, making a bid for the same items, or the initiating City department, and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action."

I.28 MAINTAINING BID STATUS

To be retained on the active bidders list, bidder **MUST** respond to this Invitation to Bid. To protect your status as an active bidder, please complete and return the last page of the bid proposal form indicating reason for "No Bid" at this time. Three (3) consecutive failures to respond to bid invitations could result in automatic removal from the bidders list.

I.29 PATENTS AND COPYRIGHTS

It shall be understood and agreed that by the submission of a proposal, the bidder, if awarded a contract, shall save harmless and fully indemnify the City and any of its officers or agents from any and all damages that may, at any time, be imposed or claimed for infringement of any patent right, trademark, or copyright, of any person or persons, association, or corporation, as the result of the use of such articles by the City, or any of its officers, agents, or employees, and of which articles the contractor is not the patentee, assignee, licensee, or owner, or lawfully entitled to sell same.

I.30 PUBLIC RECORDS LAW

Pursuant to Florida Statute 119.07, public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under

supervision by the custodian of the public record. Sealed Bids and Proposals become subject to this statute, notwithstanding bidders' or proposers' requests to the contrary, at the time the City provides notice of a decision or intended decision, or 10 days after bid or proposal opening, whichever is earlier.

Financial statements submitted in response to a request by the City are confidential, and exempt from disclosure. Data processing software obtained under a licensing agreement which prohibits its disclosure is also exempt.

Bidders are hereby notified that all information submitted as part of, or in support of bid

submittals will be available for public inspection after opening of bids in compliance with Chapter 119 of the Florida Statutes. The bidder shall not submit any information in response to this invitation, which the bidder considers to be a trade secret, proprietary or confidential. The submission of any information to the City in connection with this invitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to the bidder. In the event that the bidder submits information to the City in violation of this restriction, either inadvertently or intentionally and clearly identifies that information in the bid as protected or confidential, the City shall endeavor to redact and return that information to the bidder as quickly as possible, and if appropriate, evaluate the balance of the bid. The redaction or return of information pursuant to this clause may render a bid non-responsive.

I.31 INFORMATION

Further information, if desired, may be obtained from the City Buyer, 17011 N.E. 19th Avenue, Room 315, North Miami Beach, Florida 33162, Telephone (305) 948-2946.

Questions or requests for clarification of the specifications shall be in writing and received by the Procurement Management Division at least seven days prior to the date and time of the bid opening. They may be mailed or faxed to (305) 957-3522 or emailed to Bids@citynmb.com

I.32 REQUEST FOR PROPOSAL

Should these "General Conditions" be used in the specifications for a Request for Proposal, every reference to a bid shall be and mean the same as proposal.

I.33 CONFLICT IN SPECIFICATIONS

Where there appears to be a variance or conflict between these General Conditions and the Special Conditions or Technical Specifications outlined in the Bid Package, the order of preference shall be Technical Specifications, Special Conditions, then General Terms and Conditions.

I.34 EXCEPTIONS TO PROPOSAL

The bidder shall list on the space provided on the proposal page or on a separate sheet of paper any exceptions to the conditions of this Bid Proposal. This sheet shall be labeled, "Exceptions to Proposal Provisions," and shall be attached to the Bid Proposal. If no exceptions are stated, it will be understood that all General, Special and Technical Conditions will be complied with, without exception.

I.35 NOTICE TO PROCEED

A signed Purchase Order will be the Contractor's authorization to proceed and may substitute for a "Notice to Proceed" form.

I.36 HOLD HARMLESS AGREEMENT

The awarded bidder agrees to indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages in an amount not less than \$1,000,000 per occurrence, which shall include attorney's fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this project by the awarded bidder or its employees, agents, servants, partners principals or subcontractors. Furthermore, the awarded bidder shall pay all claims and losses in an amount not less than \$1,000,000 per occurrence in connection therewith and shall investigate and defend all claims, suits or actions of any kind of nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The awarded bidder expressly understands and agrees that any insurance protection required by the resulting agreement or otherwise provided by the awarded bidder shall cover the City, its officers, employees, agents and instrumentalities and shall include claims or damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying party and persons employed or by utilized by the indemnifying party in the performance of the construction contract.

I.37 COPELAND "ANTI-KICKBACK"

Contractor and all subcontractors will comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

I.38 CONFLICT OF LAW

If and when this contract is disputed, and should it be necessary to litigate, the substantive and procedural laws of the State of Florida shall govern the outcome of such litigation. This shall apply notwithstanding such factors which include, but are not limited to, place where contract is entered into, place where accident arises, or any other such incident.

I.39 INTERPRETATION OF THE APPROXIMATE QUANTITIES

The bidder's attention is called to the fact that the estimate of quantities to be furnished under the specifications is approximate only and not guaranteed. The City does not assume any responsibility that the final quantities shall remain in strict accordance with the estimated quantities, nor shall the Bidder plead misunderstanding or deception because of such estimate of quantities.

I.40 QUANTITIES

The City specifically reserves the right to accept all or any part of the bid, to split the award, to increase or decrease the quantity to meet additional or reduced requirements of the City, without such change affecting the contract unit price set forth in the proposal form by the bidder.

I.41 DELIVERY

Prices quoted and deliveries are to be FOB Destination and unloaded unless otherwise specified in the Invitation for Bids and made during regular business hours. Title and risk of loss shall pass to the City upon inspection and acceptance at the delivery point and/or as may be otherwise provided for.

I.42 WARRANTY

Unless otherwise specified, all items proposed by the bidder shall include a warranty covering parts and labor for a specified period of time. The bidder shall submit information on both manufacturer and dealer warranties, where applicable, with the bid proposal. All goods furnished shall be fully guaranteed by the successful Bidder against factory defects and workmanship. At no expense to the City, the successful Bidder shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty. The Special Conditions of the Bid solicitation may supersede the manufacturer's standard warranty.

I.43 DURATION OF AGREEMENT

Unless otherwise stated, the prices and conditions stated in this bid shall be in effect for a period of one year from the date of the issuance of a letter of award, or date of executed contract, whichever is later.

I.44 CLAIMS

Successful bidder(s) will be responsible for making any and all claims against carriers for missing or damaged items.

I.45 CONTRACT RENEWAL

Any contract or agreement executed in conjunction with the award of a bid may be renewed for additional twelve month periods if agreed to in writing by both parties.

I.46 MODIFICATION OF CONTRACT

The contract may be modified by mutual consent, in writing through the issuance of a modification to the contract, purchase order, change order or award sheet, as appropriate.

I.47 MATERIAL SAFETY DATA SHEET (MSDS)

Under the terms of the Florida Right-to-Know Law (Chapter 442, Florida Statutes), all suppliers of products deemed to be toxic in substance, as indicated in the State of Florida Substance List, are required to submit a Material Safety Data Sheet (MSDS) for each substance as a condition of the award of the bid by the City.

I.48 CONDITION OF MATERIALS AND PACKAGING

All equipment, materials, supplies, and components supplied under this bid must be new and unused, free from defects, and shall be the latest manufacturer's models unless otherwise specified. No others will be accepted under the terms and intent of this bid. All containers shall be new and suitable for storage or shipment, and bid price shall include standard commercial packaging. Any exceptions to this provision shall be detailed on the proposal page under exceptions to specifications.

I.49 SAMPLES

Samples, when required, must be submitted within the time specified at no expense to the City. If not destroyed or used up during testing, samples will be returned upon request at the bidder's expense. Each individual sample must be labeled with bidder's name and manufacturer's brand name and number.

I.50 PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statutes, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

I.51 DISCRIMINATION

Any entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

I.52 DRUG-FREE WORKPLACE PROGRAM

In the event of identical tie low bids, preference shall be given to businesses with drug-free workplace programs. Bidders with such programs shall complete and submit the attached form with bid.

I.53 SOLICITATION, GIVING, AND ACCEPTANCE OF GIFTS POLICY

Bidders shall sign and submit this attached form indicating understanding and compliance with the City's and State's policies prohibiting solicitation and acceptance of gifts by public officers, employees, or candidates.

Failure to submit this signed form will result in your bid being declared non-responsive; provided, however, that the low bidder may be given the opportunity to submit the form to the City within five calendar days after notification by the City, if this is determined to be in the best interest of the City.

I.54 PURCHASING AGREEMENTS WITH OTHER GOVERNMENT AGENCIES

It is hereby made part of this Invitation to Bid that the submission of any bid response to this advertised request constitutes a bid made under the same terms and conditions, for the same price, to other government agencies if agreeable by the bidder and the government agency.

At the option of the vendor/contractor, the use of the contract resulting from this solicitation may be extended to other governmental agencies, including the State of Florida, its agencies, political subdivisions, counties, and cities.

Each governmental agency allowed by the vendor/contractor to use this contract shall do so independently of any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods or services ordered, received, and accepted. No agency receives any liability by virtue of this bid and subsequent contract award

I.55 ACCESS TO RECORDS

The City reserves the right to require the Contractor to submit to an audit. The Contractor shall provide access to all of its records, which relate directly or indirectly to this Agreement at its place of business during regular business hours. The Contractor shall retain all records pertaining to this Agreement and upon request make them available to the City for three years following expiration of the Agreement. The Contractor agrees to provide such assistance as may be necessary to facilitate the review or audit by the City to ensure compliance with applicable accounting and financial standards.

SECTION 2.0 SPECIAL TERMS AND CONDITIONS**2.1 QUESTIONS REGARDING SPECIFICATIONS**

Any questions regarding the specifications shall be addressed to the Chief Procurement Officer, Procurement Management Division, City of North Miami Beach, via e-mail at bids@citynmb.com or in writing to 17011 NE 19 Avenue, Room 315, North Miami Beach, Florida 33162.

Any oral instructions given are not binding. All questions and interpretations will be clarified in writing to all bidders by written addenda. Failure of a bidder to receive and/or acknowledge any addendum shall not release the bidder from any obligations under this bid.

2.2 BID GUARANTY

Each bid must be accompanied by a bid guaranty in the amount of not less than five percent (5%) of the total amount of the bid, issued by a properly licensed surety company approved by the City of North Miami Beach. Should the successful bidder fail to furnish a Performance and Payment Bond, the bid guaranty shall be forfeit.

2.3 PERFORMANCE, PAYMENT, AND MAINTENANCE BONDS

Within ten days of the award of contract, the contractor shall provide the following surety bonds, each in the amount of one hundred percent of the contract price, and issued by a properly licensed surety company, listed in the current issue of the Federal Register published by the Department of the Treasury, acceptable to the City of North Miami Beach, on forms acceptable to the City. The bonds should provide that the surety's liability will be co-extensive with the contractor's liability, and should contain a provision that the surety waives notice of changes to the contract, including, but not limited to, changes in the times for performance.

a. A Performance and One-Year Warranty Bond covering the faithful performance of the contract and a one-year warranty on labor and materials from the date of final acceptance of the work.

b. A Labor and Material Payment Bond.

2.4 INDEMNIFICATION AND INSURANCE

In accordance with Chapter 725, Florida Statutes, the Contractor shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, in an amount not less than \$1,000,000 per occurrence which shall include attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Furthermore, the Contractor shall pay all claims and losses in an amount not less than \$1,000,000 per occurrence in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue

thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall cover the City, its officers, employees, agents and instrumentalities and shall include claims, or damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying party and persons employed by or utilized by the indemnifying party in the performance of the contract.

Upon City's notification, the Contractor shall furnish to the Procurement Management Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440. Should the Contractor be exempt from this Statute, the Contractor and each employee shall hold the City harmless from any injury incurred during performance of the Contract. The exempt contractor shall also submit a written statement detailing the number of employees and that they are not required to carry Worker's Compensation insurance, and do not anticipate hiring any additional employees during the term of this contract or a copy of a Certificate of Exemption.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **The City of North Miami Beach must be shown as an additional insured with respect to this coverage. The mailing address of City of North Miami Beach 17011 NE 19 Avenue, Suite 315, North Miami Beach, Florida 33162, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 per person and \$500,000 per occurrence and property damage limits of \$300,000; or a comprehensive single limit of liability for bodily injury and property damage combined, with minimum limits of \$500,000 per occurrence, covering all owned, non-owned, and hired vehicles used by the contractor while performing operations in connection with this contract.
4. Professional Liability Insurance in an amount not less than \$300,000 with a deductible per claim not to exceed ten percent (10%) of the limit of liability. Professional liability insurance coverage must be maintained for _____ (5 or 10) years after the completion of the contract if the policy is based on "claims made".
5. Builders Risk Complete Value Form. Fire, extended coverage, vandalism, and malicious mischief for the full value of the contract amount. The contractor, all subcontractors, and the City are to be names insured, as their interests may appear. This insurance is to be kept in force until the property has final acceptance by the City. This policy shall include a provision that the premises may be occupied and used by the City. Material and equipment theft is included in this coverage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws

of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the

State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the City.

NOTE: CITY OF NORTH MIAMI BEACH CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after City notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the City. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after City notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the City.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the City. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the City shall suspend the Contract until such time as the new or renewed certificates are received by the City in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the City may, at

its sole discretion, terminate this contract.

2.5 VARIATIONS, CONTRADICTIONS AND SUBSTITUTIONS

Any variations from bid specifications, no matter how slight, including substitutions of products or methods, must be noted and explained fully in a submittal with bid entitled "Exceptions to Specifications". If no exceptions are noted, it shall be understood that the plans and specifications will be adhered to exactly.

Where an "or equal" is specified, the City shall be the sole judge in determining equality. Any deviation from these specifications and/or changes during construction must be approved by the City and design professional, in writing. If the plans and specifications are in contradiction, or if they contain any errors or omissions, bidders shall notify the Purchasing Division in writing at least ten (10) working days before the bid opening, or at the pre-bid conference, to allow sufficient time to resolve all discrepancies.

2.6 CONTRACTOR'S RESPONSIBILITY

The Contractor shall visit the site of the work and examine the plans, and it will be assumed that the Contractor has investigated and is fully informed as to the conditions and materials to be encountered as to character, quality, and quantities of work to be performed, and materials to be furnished, and as to the requirements of the plans.

In the event Contractor discovers any apparent error or discrepancy, immediately call it to the attention of the City's Project Manager or the Chief Procurement Officer for interpretation or decision, and such decision shall be final. Bidder shall advise the City in writing, at least ten days prior to bid opening, of any conditions which may adversely affect the work.

No exceptions will be considered on behalf of the Contractor, after the bids are opened, for any error or negligence in determining the site conditions; and, the Contractor shall become responsible for any changes to the work required as a consequence of such pre-existing conditions.

2.7 LICENSES

A Copy of the Contractor's and Subcontractors' Licenses shall be enclosed with each bid or provided to the City within five working days of the bid award.

2.8 AWARD OF BID

Award will be made only to responsible, licensed contractors possessing the potential ability to perform successfully under the terms and conditions of these specifications. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, references, and financial and technical resources.

Contractors submitting bids must be regularly engaged in the trade or trades relating to the bids submitted.

2.9 NOTICE TO PROCEED

The date of commencement of construction will be established during the Pre-Construction Conference, which shall be held shortly after the award of contract, and will be stated in the Notice to Proceed.

2.10 MATERIALS, INSPECTION, AND RESPONSIBILITY

The City shall have a right to inspect any material to be used in carrying out this contract. The City does not assume any responsibility for the availability of any controlled materials or other materials and equipment required under this contract. The Contractor shall be responsible for the contract quality and standards of all materials, components or completed work finished under this contract for 12 months from the date of final approved inspection and acceptance. Materials, components, or completed work not complying therewith may be rejected by the City and shall be replaced by the Contractor at no cost to the City. Any materials or components rejected shall be removed within a reasonable time from the premises at the entire expense of the Contractor, after written notice has been mailed by the City to the Contractor that such materials or components for work have been rejected.

2.11 PROGRESS MEETINGS

The Project Managers will schedule and hold regular on-site progress meetings at least weekly, and at other times as requested by the City Project Manager. The City, Contractor, and all subcontractors active on the site shall be represented at each meeting. City or Contractor may request attendance by representatives of suppliers or manufacturers. The purpose of the meetings will be to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve problems which may develop.

2.12 PROGRESS PAYMENTS

Based on Applications for Payment submitted to the City by the Contractor, and Certificates for Payment issued by the Architect/Engineer or City, the City shall make progress payments to the Contractor based on the Schedule of Values and percentage of completion, or units completed. 10% shall be retained from each progress payment until the point of substantial completion, at which time retainage shall be reduced to 5% until final completion.

Applications for Payment shall indicate the percentage of completion of each portion of the work, or the volume, area, or linear measurement of work completed as of the end of the period covered by the Application for Payment. The period covered by each Application for Payment shall be one calendar month or as otherwise agreed upon at the Pre-construction Conference.

2.13 SUBSTANTIAL COMPLETION

For the purpose of this project, Substantial Completion shall be defined as that point which the City has occupancy and/or use of the facility under construction, including equipment and systems installed.

2.14 FINAL COMPLETION

For the purpose of this project, Final Completion shall be defined at that point after which the Director of Public Services or his representative, the City's Building Official, and the using Department have made and approved the Final Inspection and the Punch List has been completed, and all deliverable have been provided to the City.

2.15 SUBCONTRACTS

A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the work covered by these specifications.

The Contractor shall furnish in writing to the City bid the names of the Subcontractors for each of the principal portions of the work. The Contractor shall not contract with any Subcontractor to whom the City has made reasonable and timely objection. The final Subcontractor list shall be presented to the City at the Pre-Construction meeting.

2.16 SUPERVISION

The Contractor is to be responsible for his employees and Subcontractors, and for compliance with all laws and ordinances governing his work. He shall be responsible for the accuracy of the laying out and giving his personal superintendence to the work. He shall have at all times a competent representative available to answer questions or handle problems, who shall be satisfactory to the City. He shall at all times take proper precautions to protect his work and materials from damage and disfigurement until accepted.

2.17 PERMITS

The Contractor shall obtain all permits and call for inspections required for this project. Permits required by the City of North Miami Beach Community Development Department, Building Division shall be issued at no cost except for applicable State, County, and Microfilm Fees. The contractor shall be responsible for the payment of the following fees (when applicable) including but not limited to: State BPR Building Certification Fee, State DCA Surcharge, County Code Compliance Fee, Microfilm Fee, and Structural Examination Fee. The City shall reimburse Contractors for actual cost of these fees. Fees for re-inspections shall be charged to the Contractor at normal rate and all costs shall be borne by the Contractor. All other permits required for this project will be obtained and paid for by the City.

2.18 PROTECTION OF PROPERTY

The Contractor shall take extra precaution to protect all property while removing and replacing materials and equipment. Any damage done by the Contractor, whether it is necessary to the installation or accidental, shall be corrected to its original or better state, and shall be corrected to the satisfaction of the Director of the Department of Public Services.

2.19 WARRANTY

All materials and workmanship must be warranted for a minimum period of one year from the

date of final acceptance. Equipment or systems carrying more than a one year warranty shall be enumerated on the Bid Proposal form.

2.20 FINAL ACCEPTANCE

The Final Inspection shall be made only after the City is satisfied that the work described in the plans and specifications has been completed in accordance with the intent of these specifications.

The acceptance of the work shall not in any way prejudice the City's rights to demand replacement of defective materials and workmanship.

2.21 CONTRACTOR DEFAULT AND CONTRACT TERMINATION

- a. The City of North Miami Beach may, subject to the provisions of paragraph 'C' below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any of the following circumstances:
 1. If the Contractor fails to make delivery of the supplies or materials, or to perform the services within the time specified herein or any extension thereof, or
 2. If the Contractor fails to perform any of the other provisions of this contract in accordance with its terms, or in either of these two circumstances does not cure such failure within a period of seventy-two hours after receipt of notice from the City specifying such a failure.
 3. Insolvency of the Contractor.
 4. Death of the Contractor, if an individual.
- b. In the event the City terminates this contract, the city may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or services.
- c. The Contractor shall not be liable for any excess of costs if acceptable evidence has been submitted to the City that failure to perform the contract was due to causes beyond the control and without the fault of negligence of the Contractor.

2.22 SAFETY

Contractor shall provide and place safety barriers and signage to modify and direct circulation at and around construction site. Every effort shall be made to minimize and limit construction noise, dirt, and dust.

2.23 ASBESTOS

No asbestos containing materials have been designed into this project, nor have been specified. Contractor shall use no asbestos containing materials in the execution of the work covered by these specifications.

2.24 TRAINING

Contractor shall provide training to City staff on the use and maintenance of equipment and/or materials use in this project.

2.25 MANUALS

Contractor shall provide two manufacturers' training and maintenance manuals for any equipment installed.

2.26 CHANGE ORDERS

Each Change Order to the Contract must be supported in writing and signed by the Contractor and the City. Without this prior written authorization, the City will not pay for extra work performed.

2.27 CLEAN UP

Contractor shall remove and dispose of any dirt or debris resulting from this project. All debris shall be disposed of at an authorized dumping facility. Dump tickets shall be submitted to the City with each pay request.

Exposed metal shall be polished, glass shall be cleaned, surrounding structures or landscaping affected or damaged during completion of this project shall be restored to an equal or better condition. Paint shall be touched up if and where needed. Contractor's equipment and surplus material shall be removed from site.

3.0 TECHNICAL SPECIFICATIONS**FEDERAL AID ROADS SIDEWALK REPLACEMENT****3.1 SCOPE**

The City of North Miami Beach is requesting sealed bids for furnishing all labor, equipment, and materials for the removal and installation of approximately 11,103 square feet of sidewalks located in the various locations shown in the attached list in North Miami Beach, Florida. All bids must be received in the Office of the Chief Procurement Officer by October 15, 2009 at 2:00 p.m. Bids received after that due date will not be considered.

3.2 DETAILED SPECIFICATIONS

Complete detailed specifications and Dade County Public Works standards are included in the corresponding plans. The governing specifications are the Florida Department of Transportation Design Standards, Topic No. 625-010-003, latest edition and the Dade County Public Works Manual I & II, latest edition, supplements and special provisions thereto if noted in the contract specifications for this project.

3.3 CONTRACT TIME/LIQUIDATED DAMAGES

The work shall be substantially complete within sixty (60) consecutive calendar days from the date of the notice to proceed. The project shall be complete and ready for final payment within fourteen (14) consecutive calendar days of the date of substantial completion.

The City and the Contractor shall recognize that time is of the essence and that the City will suffer financial loss if the work is not completed within the times specified in the above paragraph, plus any extensions thereof approved by the City in writing. They shall also recognize the delays, expense, and difficulties involved in proving in an arbitration proceeding the actual loss suffered by the City if the work is not completed on time. Accordingly, instead of requiring such proof, the city and the Contractor agree that as liquidated damaged for delay (but not as a penalty) the Contractor shall pay the owner five hundred eighty dollars (\$580.00) for each day that expires after the time specified above for Substantial Completion and one hundred dollars (\$100.00) for each day that expires after the time specified above for Completion and ready for final payment until the Work is Complete.

3.4 MANDATORY PRE-BID CONFERENCE

A mandatory Pre-Bid Conference will be held at City Hall, 2nd Floor, Council Chambers, 17011 N.E. 19 Avenue, North Miami Beach at 11:00 AM on Wednesday, September 30, 2009.

3.5 EXHIBITS ATTACHED

Sidewalk Location/ARRA Local Participation Goal: Exhibit A
Federal Environmental Requirements
Exhibit B

SECTION 4.0 BID PROPOSAL FORM

Item #	Description	Quantity	Unit	Unit Price	Total
I01-1	Mobilization	1	LS		
I02-1	Maintenance of Traffic	1	LS		
I03-1	Removal of Existing Sidewalk	11,103	SF		
I04-1	Installation of New 4" Sidewalk	9,000	SF		
I04-2	Installation of New 6" Sidewalk	2,103	SF		
I05-1	Removal of Existing Type D Curb	500	L/F		
I05-2	Installation of Existing Type D Curb	500	L/F		
I06-1	Removal of Existing Type F Curb	600	L/F		
I06-2	Installation of Existing Type F Curb	600	L/F		
I07-1	Pressure clean & seal coat the existing stamped concrete circle with red brick color	1,043	SY		

GRAND TOTAL: \$		
WRITTEN GRAND TOTAL:		

Note: Number of Calendar days for substantial completion: Sixty (60) days (Max.)

NAME OF COMPANY: _____
 PRINTED NAME OF COMPANY SUBMITTING BID

SIGNATURE: _____
 (SIGN IN INK) (PRINT NAME)

TITLE: _____ DATE: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

TELEPHONE NO.: _____ FAX NO.: _____

SOLE PROPRIETOR: _____ PARTNERSHIP: _____ CORPORATION: _____

By signing and submitting this bid proposal, we acknowledge having read and agreeing to all terms and conditions of these specifications, including, but not limited to, agreeing to indemnify and hold the City harmless from any and all claims, suits, actions, damages, causes of action, or attorney's fees arising from any personal injury, loss of life, or damage to person or property sustained by reason of or as a result of the products or services supplied, or negligence of contractor/supplier, his employees, agents, or assigns.

By signing and submitting this bid proposal, we certify that this company has current insurance coverage specified herein. The insurance policy number(s) and expiration date(s) are provided

below, or a copy of the insurance certificate(s) are enclosed. If awarded the bid, we will provide the City with proof of the required insurance and name the City as additional insured on our general liability coverage.

INSURANCE POLICY NO.(s):

EXPIRATION

DATE(s): _____

INSURANCE CERTIFICATE(S) ENCLOSED: YES _____ NO _____

SIGNATURE

TITLE

SECTION 5.0 REQUIRED FORMS**5.1 STATEMENT OF “NO” BID**

If your company shall not be submitting a bid in response to this Invitation to Bid or Request for Proposal, please complete this Statement of “No” Bid Sheet and return, prior to the Bid/RFP Due Date established within, to:

**The City of North Miami Beach
Procurement Management Division
Room 315
17011 NE 19th Avenue
North Miami Beach, Florida 33162**

This information shall help the City of North Miami Beach in the preparation of future Bids and RFP's.

Bid/RFP/RFQ Number: _____ Title _____

Company Name: _____

Contact: _____

Address: _____

Telephone: _____ Facsimile: _____

√	Reasons for “NO” Bid:
	Unable to comply with product or service specifications.
	Unable to comply with scope of work.
	Unable to quote on all items in the group.
	Insufficient time to respond to the Invitation to Bid.
	Unable to hold prices firm through the term of the contract period.
	Our schedule would not permit us to perform.
	Unable to meet delivery requirements.
	Unable to meet bond requirements.
	Unable to meet insurance requirements.
	Other (Specify below)

Comments: _____

5.2 REFERENCE QUESTIONNAIRE

It is the responsibility of the contractor/vendor to provide a minimum of three (3) references using this form and providing this information with your submission. Failure to do so may result in the rejection of your submission.

Giving reference for:
(BID/RFP/RFQ # AND TITLE)

Firm giving Reference:

Address:

Phone:

Fax:

Email:

1. **Q:** What was the dollar value of the contract?
 A:
2. Have there been any change orders, and if so how many?
 A:
3. **Q:** Do they perform on a timely basis as required by the agreement?
 A:
4. **Q:** Was the project manager easy to get in contact with?
 A:
5. **Q:** Would you use them again?
 A:
6. **Q:** Overall, what would you rate their performance? (Scale from 1-5)
 A: ☐ **5** *Excellent* ☐ **4** *Good* ☐ **3** *Fair* ☐ **2** *Poor* ☐ **1** *Unacceptable*
7. **Q:** Is there anything else we should know, that we have not asked?
 A:

The undersigned does hereby certify that the foregoing and subsequent statements are true and correct and are made independently, free from vendor interference/collusion.

Name: _____ Title _____

Print Name: _____ Date: _____

5.3 BID SIGNATURE PAGE FOR CORPORATION

The officers of the Corporation are as follows:

NAME

ADDRESS

President _____

Vice-President _____

Secretary _____

Treasurer _____

Registered Agent _____

The full names and residences of stockbrokers, persons, or firms interested in the foregoing Bid, as principals, are as follows:

Post Office Address

BIDDER:

(CORPORATE NAME)

PRESIDENT'S SIGNATURE

Is this corporation incorporated in the State of Florida?

ATTEST: _____
SECRETARY

YES [] NO []

If no, give address of principal place of business:

5.4 BID SIGNATURE PAGE FOR SOLE PROPRIETOR OR PARTNERSHIP

The full names and residences of persons, partners or firms interested in the foregoing Bid, as principals, are as follows:

BIDDER

(FIRM NAME)

Witnesses:

(SEAL)

SIGNATURE

PRINT NAME

Title (Sole Proprietor or Partner)

Post Office Address:

TELEPHONE

CITY in which fictitious name is registered.

Attach a copy of proof of registration

5.5 DRUG-FREE WORKPLACE PROGRAM

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employee that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

5.6 SOLICITATION, GIVING, AND ACCEPTANCE OF GIFTS POLICY

Florida Statute 112.313 prohibits the solicitation or acceptance of Gifts. - “No Public officer, employee of an agency, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, or candidate would be influenced thereby.” “... the term ‘public officer’ includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.”

The City of North Miami Beach policy prohibits all public officers, elected or appointed, all employees, and their families from accepting any gifts of any value, either directly or indirectly, from any contractor, vendor, consultant, or business with whom the City does business. Only advertising office stationery or supplies of small value are exempt from this policy - e.g. calendars, note pads, pencils.

The State of Florida definition of “gifts” includes the following:

Real property, or its use.

Tangible or intangible personal property, or its use.

A preferential rate of terms on a debt, loan, goods, or services.

Forgiveness of an indebtedness.

Transportation, lodging, or parking.

Membership dues.

Entrance fees, admission fees, or tickets to events, performances, or facilities.

Plants, flowers, or floral arrangements.

Services provided by persons pursuant to a professional license or certificate. Other personal services for which a fee is normally charged by the person providing the services. Any other similar service or thing having an attributable value not already provided for in this section. To this list, the City of North Miami Beach has added food, meals, beverages, and candy.

Any contractor, vendor, consultant, or business found to have given a gift to a public officer or employee, or his/her family, will be subject to dismissal or revocation of contract.

As the person authorized to sign the statement, I certify that this firm will comply fully with this policy.

SIGNATURE

PRINTED NAME

NAME OF COMPANY

TITLE

Failure to sign this page shall render your Bid non-responsive.



CONTRACT TITLE AND NUMBER

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between _____, a corporation organized and existing under the laws of the State of _____, having its principal office at _____ (hereinafter referred to as the "Contractor"), and the City of North Miami Beach, a political subdivision of the State of Florida, having its principal office at 17011 NE 19 Avenue, North Miami Beach, Florida 33162 (hereinafter referred to as the "City"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide _____, that shall conform to the Scope of Services (Appendix A); North Miami Beach's Invitation to Bid (ITB) No. _____ and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated _____, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the City desires to procure from the Contractor such _____ for the City, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), ITB No. _____ and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean North Miami Beach's Chief Procurement Officer, Procurement Management Division, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean _____ and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the City's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the City's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the City's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the City.
- i) The words "Project Cost" means the sum of the construction costs, allowances for contingencies, the total cost of design professional and related services provided by consultant, and allowances for such other items as charges of all other professionals and consultants.
- j) The words "Project Manager" to mean the City Manager or the duly authorized representative designated to manage the Project.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the City of North Miami Beach's ITB No. _____ and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to

that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the City's Project Manager.
- e) The Contractor acknowledges that the City shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the City. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the City with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM AND TIME FOR COMPLETION

The Contract shall become effective on _____ and shall be for the duration of ____ () years. The City, at its sole discretion, reserves the right to exercise the option to renew this

Contract for a period for ____ () additional years on a year-to-year basis. The City reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the City and the Contractor.

OR

The work is to be Substantially Complete within _____ weeks (____ calendar days) when:

- a) All materials and labor have been furnished to complete the _____.
- b) Work shall commence immediately upon Notice to Proceed, which may be in the form of a signed Purchase Order, as time is of the essence for completion.
- c) The Work will be complete as follows: The project shall be complete and ready for Final Payment in accordance with Paragraph ____ of the General Conditions within _____ calendar days of the date of Substantial Completion.
- d) Liquidated Damages. City and Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the General Conditions. Both parties recognize the delays, expense and difficulties involved in proving in an arbitration proceeding, the actual loss suffered by the City is the Work is not completed on time. Accordingly instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ (\$____) for each day that expires after the time specified above for Substantial Completion and _____ (\$____) for each day that expires after the time specified for Completion and ready for final payment until the Work is complete.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(I) to the City

- a) to the Project Manager:
City of North Miami Beach
Attention:
Phone:
Fax:

and,

- b) to the Contract Manager:
Brian K. O'Connor, C.P.M. A.P.P
Chief Procurement Officer
Procurement Management Division
17011 NE 19 Avenue, Suite 315
North Miami Beach, FL 33162

Phone: (305) 948-2946
Fax: (305) 957-3522

(2) To the Contractor

Attention:
Phone:
Fax:
E-mail:

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. BASIS OF COMPENSATION

The Contractor agrees to perform the work defined in Exhibit A for either:

- a) The Hourly Rates as set forth in Exhibit B, with a negotiated upset limit, not to exceed a percentage of estimated construction cost based on the Department of General Services Fee Curve attached hereto as Exhibit C. The Contractor shall be entitled to receive reimbursement for expenses at the Contractor's exact cost, which costs have been included in Contractor's fee proposal for project and approved by the CITY; or,
- b) A negotiated lump sum fee based on the rates set forth in Exhibit B, aforementioned, not to exceed a percentage of estimated construction cost attached hereto as Exhibit C, plus approved Reimbursable Expenses.
- c) Approved Reimbursable Expenses shall be paid to the Contractor at exact cost, and upon proof of payment by Contractor. Anticipated Reimbursable Expenses shall be included with Contractor's original fee proposal.
- d) Contractor agrees to keep, furnish, and support statements with copies of invoices, statements of times expended, and other supporting documentation as the City may require. Statements for fees based on Hourly Rates will be rendered monthly as the work progresses or as otherwise agreed upon. Reimbursable expenses will be invoiced monthly at cost, as the work progresses, or as otherwise agreed upon. Such documentation and records will be available at all reasonable times for examination and audit by the City. Incomplete or incorrect entries in such books and records shall be immediately corrected or completed upon being called to the attention of the Contractor. Any loss caused to the City by such incorrect or incomplete entries will be grounds for disallowance by the City of any fees or expenses based upon such entries. Said books and records for each project shall be kept for a period of five years after the completion of all work to be performed on such project, pursuant to this agreement.
- e) Compensation to the Contractor shall include the following. No claim for reimbursement for these expenses shall be made to the CITY.
 - i. All travel and vehicle expenses within South Florida.
 - ii. Three sets of signed and sealed permitting plans.
 - iii. Computer usage, telephone expenses, postage.

- f) A copy of the invoice for each reimbursable expense shall be attached to Contractor's invoice.

ARTICLE 8. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the City's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of _____ (\$_____). The City shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the City and the Contractor.

All Services undertaken by the Contractor before City's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The City shall not be liable for any such expenses that have not been approved in advance, in writing, by the City.

ARTICLE 9. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentive discounts to the City at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 10. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the City periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the City, shall show the City's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of the City of North Miami Beach that payment for all purchases by City shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the City shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the City, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the City Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the City.

OR

Insert language in accordance with the Specifications detailing progress payments or payments based on a deliverable schedule.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the City as follows:

City of North Miami Beach

Attention: _____

The City may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE II. INDEMNIFICATION AND INSURANCE

In accordance with Chapter 725, Florida Statutes, the Contractor shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, in an amount not less than \$1,000,000 per occurrence which shall include attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Furthermore, the Contractor shall pay all claims and losses in an amount not less than \$1,000,000 per occurrence in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall cover the City, its officers, employees, agents and instrumentalities and shall include claims, or damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying party and persons employed by or utilized by the indemnifying party in the performance of the contract.

Upon City's notification, the Contractor shall furnish to the Procurement Management Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440. Should the Contractor be exempt from this Statute, the Contractor and each employee shall hold the City harmless from any injury incurred during performance of the Contract. The exempt contractor shall also submit a written statement detailing the number of employees and that they are not required to carry Worker's Compensation insurance, and do not anticipate hiring any additional employees during the term of this contract or a copy of a Certificate of Exemption.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **The City of North Miami Beach must be shown as an additional insured with respect**

to this coverage. The mailing address of City of North Miami Beach 17011 NE 19 Avenue, Suite 315, North Miami Beach, Florida 33162, as the certificate holder, must appear on the certificate of insurance.

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 per person and \$500,000 per occurrence and property damage limits of \$300,000; or a comprehensive single limit of liability for bodily injury and property damage combined, with minimum limits of \$500,000 per occurrence, covering all owned, non-owned, and hired vehicles used by the contractor while performing operations in connection with this contract.
4. Professional Liability Insurance in an amount not less than \$300,000 with a deductible per claim not to exceed ten percent (10%) of the limit of liability. Professional liability insurance coverage must be maintained for _____ (5 or 10) years after the completion of the contract if the policy is based on "claims made".
5. Builders Risk Complete Value Form. Fire, extended coverage, vandalism, and malicious mischief for the full value of the contract amount. The contractor, all subcontractors, and the City are to be names insured, as their interests may appear. This insurance is to be kept in force until the property has final acceptance by the City. This policy shall include a provision that the premises may be occupied and used by the City. Material and equipment theft is included in this coverage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the City.

NOTE: CITY OF NORTH MIAMI BEACH CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after City notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the City. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after City notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the City.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the City. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the City shall suspend the Contract until such time as the new or renewed certificates are received by the City in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the City may, at its sole discretion, terminate this contract.

ARTICLE 12. GUARANTEE

The Contractor shall be responsible for technically deficient designs, reports, or studies due to his errors and omissions, and shall promptly correct or replace all such deficient work due to his errors and omissions without cost to City upon the request of the City for five years after the date of acceptance of the project by the City, which judged to have been in error by a court of competent jurisdiction. Contractor shall also be responsible for the cost of correcting deficient construction which was built from technically deficient designs. Payment in full by the City for work performed does not constitute a waiver of this guarantee.

ARTICLE 13. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the City in accordance with the terms and conditions of this Agreement. The City shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the City, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the City and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the City, occurring on account of, arising

from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the City. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the City, should the City make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the City and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 14. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the City. The Contractor shall supply competent employees. The City of North Miami Beach may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on City property is not in the best interest of the City. Each employee shall have and wear proper identification.

ARTICLE 15. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the City. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees and agents of the City.

The Contractor does not have the power or authority to bind the City in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 16. AUTHORITY OF THE CITY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the City's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in

connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the City Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the City Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the City Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The City Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the City Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the City Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the City Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The City Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 17. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall

constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the City may, at its expense, elect to participate in the defense if the City should so choose. Furthermore, the City may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 18. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 19. AUDITS

The City, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the City. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

The Contractor agrees to grant access to the City's Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 20. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the City in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 21. CONSENT OF THE CITY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the City.

ARTICLE 22. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a

Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the City the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the City may require. The City will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the City.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the City, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the City that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the City that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The City shall have the right to withdraw its consent to a subcontract if it appears to the City that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the City's and City's proprietary and confidential information. Contractor shall furnish to the City copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the City permitting the City to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the City finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the City to any subcontractor hereunder as more fully described herein.

ARTICLE 23. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the City were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the City makes no representations or guarantees; and the City shall not be responsible for the accuracy of the assumptions presented; and the City shall not be responsible for conclusions to be drawn there from; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 24. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 25. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The City may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the City through fraud, misrepresentation or material misstatement.
- b) The City may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the City and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement may be debarred from City contracting in accordance with the City debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Chapter 3 of the City's Purchasing Policies and Procedures Manual.

In addition to cancellation or termination as otherwise provided in this Agreement, the City may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the City:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the City's materials and property;
 - iii. cancel orders;
 - iv. assign to the City and deliver to any location designated by the City any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the City under this Agreement; and
- e) In the event that the City exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles,

herein,

for

the:

- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 26. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the City where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the City may request that the Contractor, within the time frame set forth in the City's request, provide adequate assurances to the City, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the City receives such assurances the City may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the City the requested assurances within the prescribed time frame, the City may:
 - i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the City shall terminate this Agreement for default, the City or its

designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

**ARTICLE 27. NOTICE OF DEFAULT - OPPORTUNITY TO CURE
/TERMINATION**

If an Event of Default occurs, in the determination of the City, the City may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the City may be terminated. Notwithstanding, the City may, in its sole discretion, allow the Contractor to rectify the default to the City's reasonable satisfaction within a thirty (30) day period. The City may grant an additional period of such duration as the City shall deem appropriate without waiver of any of the City's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the City prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 28. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the City for reprourement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The City may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 29. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the City for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the City's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the City and defend any action brought against the City with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the City hereunder, or portion

thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the City's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the City, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

- d) The Contractor shall be solely responsible for determining and informing the City whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The City may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the City's judgment, use thereof would delay the Work or be unlawful.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 30. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the City in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the City holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the City, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the City, unless required by law. In addition to the foregoing, all City employee information and City financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the City. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the City, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the City in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the City shall be entitled to injunctive relief to restrain

any such breach or threatened breach. Unless otherwise requested by the City, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the City all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the City. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 31. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, the City of North Miami Beach is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the City's possession may constitute or contain information or materials which the City has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the City has developed at its own expense, the disclosure of which could harm the City's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the City's property, any computer programs, data compilations, or other software which the City has developed, has used or is using, is holding for use, or which are otherwise in the possession of the City (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the City and, if the Computer Software has been leased or purchased by the City, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the City any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the City's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 32. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the City retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the City to the Contractor hereunder or furnished by the Contractor to the City and/or created by the Contractor for delivery to the City, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the City, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official

regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the City's copyrights or other proprietary rights.

- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the City, hereinafter referred to as "Developed Works" shall become the property of the City.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the City, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the City so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. Such license specifically includes, but is not limited to, the right of the City to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 33. BUSINESS APPLICATION AND FORMS

Vendor Application The Contractor shall be a registered vendor with the City – Procurement Management Division, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any City employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with the City or any person or agency acting for the City from competing or applying for any such contract as it pertains to this solicitation, must first

request a conflict of interest opinion from the County's Ethic Commission prior to their or

their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with the City of North Miami Beach or any person or agency acting for the City and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 34. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State, County and City orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) North Miami Beach Purchasing Policies and Procedures Manual Policy 3.6 "Debarment and Suspension".

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 35. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on

By entering into this Contract with the City, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts). If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the City to be in violation of the Act, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit or the Contractor violates the Act during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 36. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the City or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the City, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the City, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the City's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the City's Project Manager. Contractor shall thereafter cooperate with the City's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 37. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the City:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the City, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the City. Such approval may be withheld if for any reason the City believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, council or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the City; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the City.

ARTICLE 38. BANKRUPTCY

The City reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the City, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the

Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 39. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

ARTICLE 40. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists the City of North Miami Beach with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, including but not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;

6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to the City of North Miami Beach for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to the City of North Miami Beach for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 4I. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the City under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

City of North Miami Beach

By: _____

By: _____

Kelvin L. Baker
Title: City Manager

Name: _____

Date: _____

Title: _____

Attest: _____

Susan A. Owens, City Clerk

Date: _____

Attest: _____
Corporate Secretary/Notary Public

Approved as to form
and legal sufficiency

Corporate Seal/Notary Seal

Darcee S. Siegel, City Attorney

SIDEWALK LOCATION NE 19 AVENUE							
From: NE 163 ST		To: NE 188 ST		City: North Miami Beach			
Item	Location			Quantity			
	Address	Description	Location Section	Length (feet)	Width (feet)	Thickness (inches)	Area (SF)
1	Intersection of NE19 & SR 826	Damaged Sidewalk	NE	10	6	4	60
2	East of NE 19 Ave between NE 163 & NE 164 St	Damaged Sidewalk	E	230	6	4	1380
3	17051 NE 19 Ave	Damaged Sidewalk	E	10	12	4	120
4	17251 NE 19 Ave	Lifted Sidewalk	E	15	8	4	120
5	17291 NE 19 Ave	Lifted Sidewalk	E	30	8	4	240
6	17331 NE 19 Ave	Damaged Sidewalk	E	5	6	6	30
7	17391 NE 19 Ave	Damaged Sidewalk	E	10	6	4	60
8	17491 NE 19 Ave	Damaged Sidewalk	E	5	6	6	30
9	17671 NE 19 Ave	Damaged Sidewalk	E	5	6	6	30
10	17725 NE 19 Ave	Lifted Sidewalk	E	5	8	4	40
11	17775 NE 19 Ave	Damaged Sidewalk	E	5	8	6	40
12	17799 NE 19 Ave	Damaged Sidewalk	E	10	8	4	80
13	17801 NE 19 Ave	Damaged Sidewalk	E	10	8	4	80
14	17891 NE 19 Ave	Lifted Sidewalk	E	10	8	6	80
15	1900 NE 180 St	Lifted Sidewalk	E	5	4	4	20
16	18025 NE 19 Ave	Lifted Sidewalk	E	15	8	6	120
17	18105 NE 19 Ave	Damaged Sidewalk	E	5	12	5	60
18	18145 NE 19 Ave	Damaged Sidewalk	E	5	15	4	75
19	18201 NE 19 Ave	Damaged Sidewalk	NE	20	8	4	160
20	18499 NE 19 Ave	Damaged Sidewalk	E	10	8	6	80
21	18730 NE 19 Ave	Damaged Sidewalk	E	10	5	6	50
22	18720 NE 19 Ave	Lifted Sidewalk	E	20	5	4	100
23	Intersection of NE 183 & 18 Rd	Damaged Sidewalk	NW	15	6	4	90
24	18148-98 NE 19 Avenue	Lifted Sidewalk	W	10	5	4	50
25	17970 NE 19 Avenue	Lifted Sidewalk	W	10	6	4	60
26	17610 NE 19 Avenue	Damaged Sidewalk	W	5	6	4	30
27	17690 NE 19 Avenue	Lifted Sidewalk	W	5	6	4	30
28	17390 NE 19 Avenue	Damaged Sidewalk	W	5	6	4	30
29	17470 NE 19 Ave	Damaged Sidewalk	W	5	6	6	30
30	17250 NE 19 Ave	Damaged Sidewalk	W	5	12	4	60

SIDEWALK LOCATION NE 19 AVENUE							
From: NE 163 ST		To: NE 188 ST		City: North Miami Beach			
Item	Location			Quantity			
	Address	Description	Location Section	Length (feet)	Width (feet)	Thickness (inches)	Area (SF)
31	17240 NE 19 Ave	Damaged Sidewalk	W	5	12	6	60
32	17050 NE 19 Ave	Damaged Sidewalk	W	5	8	4	40
33	17150 NE 19 Avenue	Damaged Sidewalk	W	5	12	4	60
34	16666 NE 19 Ave	Damaged Sidewalk	W	5	8	4	40
35	16480 NE 19 Ave	Damaged Sidewalk	W	25	6	6	150
36	16480 NE 19 Ave	Damaged Sidewalk	W	5	6	4	30
37	16480 NE 19 Ave	Damaged Sidewalk	W	25	6	6	150
38	16480 NE 19 Ave	Damaged Sidewalk	W	25	6	6	150
39	16410 NE 19 Ave	Lifted Sidewalk	W	5	6	4	30
40	16400 NE 19 Ave	Lifted Sidewalk	W	5	6	4	30
41	16300 NE 19 Ave	Damaged Sidewalk	W	5	6	4	30
42	16499 NE 19 Ave	Bus stop ADA connector	E	10	5	4	50
43	16699 NE 19 Ave	Bus stop ADA connector	E	10	5	4	50
44	17101 NE 19 Ave	Bus stop ADA connector	E	10	5	4	50
45	17491 NE 19 Ave	Bus stop ADA connector	E	10	5	4	50
46	17691 NE 19 Ave	Bus stop ADA connector	E	10	5	4	50
47	17891 NE 19 Ave	Bus stop ADA connector	E	10	5	4	50
48	18095 NE 19 Ave	Bus stop ADA connector	E	10	5	4	50
49	18098 NE 19 Ave	Bus stop ADA connector	W	10	5	4	50
50	17910 NE 19 Ave	Bus stop ADA connector	W	10	5	4	50
51	17690 NE 19 Ave	Bus stop ADA connector	W	10	5	4	50
52	17500 NE 19 Ave	Bus stop ADA connector	W	10	5	4	50
53	17270 NE 19 Ave	Bus stop ADA connector	W	10	5	4	50
54	17150 NE 19 Ave	Bus stop ADA connector	W	10	5	4	50
55	16870 NE 19 Ave	Bus stop ADA connector	W	10	5	4	50
56	16666 NE 19 Ave	Bus stop ADA connector	W	10	5	4	50
SF							4955

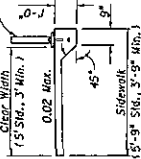
SIDEWALK LOCATION NE 35 AVENUE							
From: NE 163 ST		To: NE 171 ST		City: North Miami Beach			
Item	Location			Quantity			
	Address	Description	Location Section	Length (feet)	Width (feet)	Thickness (inches)	Area (SF)
1	127' north of SR 826 & 35 Ave	Damaged Sidewalk	E	5	6	4	30
2	152' north of SR 826 & 35 Ave	Damaged Sidewalk	E	5	6	4	30
3	247' north of SR 826 & 35 Ave	Damaged Sidewalk	E	5	6	4	30
4	498' north of SR 826 & 35 Ave	Damaged Sidewalk	E	5	6	4	30
5	16531 NE 35 Ave	Lifted Sidewalk	E	5	5	4	25
6	16667 NE 35 Ave	Lifted Sidewalk	E	5	6	6	30
7	16673 NE 35 Ave	Lifted Sidewalk	E	5	6	4	30
8	16737 NE 35 Ave	Damaged Sidewalk	E	10	6	6	60
9	16975 NE 35 Ave	Lifted Sidewalk	E	15	6	4	90
10	17051 NE 35 Ave	Damaged Sidewalk	E	5	6	4	30
11	17051 NE 35 Ave	Lifted Sidewalk	E	20	6	4	120
12	17051 NE 35 Ave	Lifted Sidewalk	E	5	6	4	30
13	3460 NE 170 St	Lifted Sidewalk	W	5	6	4	30
14	16850 NE 35 Ave	Lifted Sidewalk	W	10	6	4	60
15	3464 NE 167 St	Lifted Sidewalk	W	5	6	4	30
16	16670 NE 35 Ave	Lifted Sidewalk	W	57	16	6	912
17	16650 NE 35 Ave	Lifted Sidewalk	W	5	6	6	30
18	NE 166 St & 35 Ave	Damaged Sidewalk	W	5	8	4	40
19	30' north of NE 164 St & NE 35 Ave Intersection	Damaged Sidewalk	W	10	8	4	80
20	3495 NE 163 St (north driveway)	Damaged Sidewalk	W	24	20	6	480
21	3495 NE 163 St (valley gutter)	Restoration	W	24	2	4	48
22	3495 NE 163 St (south driveway)	Lifted Sidewalk	W	24	20	6	480
23	3495 NE 163 St (valley gutter)	Restoration	W	24	2	4	48
24	11' north of SR 826 & 35 Ave	Damaged Sidewalk	E	12	6	4	72
25	65' north of SR 826 & 35 Ave	Damaged Sidewalk	E	7	6	4	42
26	83' north of SR 826 & 35 Ave	Damaged Sidewalk	E	5	6	4	30
27	140' north of SR 826 & 35 Ave	Damaged Sidewalk	E	5	6	4	30
28	163' north of SR 826 & 35 Ave	Damaged Sidewalk	E	5	6	4	30
29	185' north of SR 826 & 35 Ave	Damaged Sidewalk	E	10	6	4	60
30	516' north of SR 826 & 35 Ave	Damaged Sidewalk	E	5	6	4	30
31	3495 NE 163 St (sidewalk)	Damaged Sidewalk	W	10	8	4	80
32	16670 NE 35 Ave (north driveway valley gutter)	Restoration	W	24	2	4	48
33	16670 NE 35 Ave (south driveway valley gutter)	Restoration	W	24	2	4	48
33	16581 NE 35 Avenue	Bus stop ADA connector	W	11	5	4	55

SF 3,298

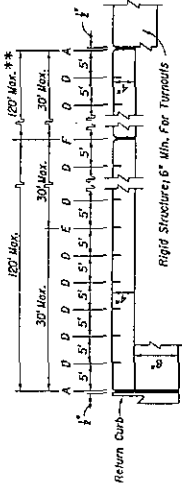
SIDEWALK LOCATION NE 171 STREET & NE 172 STREET							
From: NE 15 Avenue		To: West Dixie Highway			City: North Miami Beach		
Item	Location			Quantity			
	Address	Description	Location Section	Length (feet)	Width (feet)	Thickness (inches)	Area (SF)
1	2253 NE 172 St	Lifted Sidewalk	N	5	12	4	60
2	2233 NE 172 St	Lifted Sidewalk	N	5	12	4	60
3	South west corner of NE 22 Ave & NE 172 St	Lifted Sidewalk	S	5	8	4	40
4	North west corner of NE 22 Ave & NE 171 St	Lifted Sidewalk	N	5	8	4	40
5	South side of 17100 NE 22 Ave	Lifted Sidewalk	N	10	12	4	120
6	South side of 17100 NE 22 Ave	Lifted Sidewalk	N	10	12	4	120
7	West property line of 17100 NE 22 Ave	Lifted Sidewalk	N	10	12	4	120
8	2161 NE 171 St	Lifted Sidewalk	N	10	12	4	120
9	2161 NE 171 St	Damaged Sidewalk	N	10	12	4	120
10	2155 NE 171 St	Damaged Sidewalk	N	5	12	4	60
11	2155 NE 171 St	Damaged Sidewalk	N	5	12	4	60
12	2155 NE 171 St	Damaged Sidewalk	N	10	12	4	120
13	2131 NE 171 St	Lifted Sidewalk	N	5	12	4	60
14	2131 NE 171 St	Damaged Sidewalk	N	5	12	4	60
15	1955 NE 171 St	Lifted Sidewalk	N	5	8	4	40
16	East of 2080 NE 171 St	Damaged Sidewalk	N	5	12	6	60
17	2324 NE 172 St	Lifted Sidewalk	S	5	6	4	30
18	2338 NE 172 St	Lifted Sidewalk	S	5	6	4	30
19	2362 NE 172 St	Lifted Sidewalk	S	5	6	4	30
20	17184 West Dixie Hwy	Lifted Sidewalk	W	15	12	4	180
21	17184 West Dixie Hwy	Damaged Sidewalk	W	15	12	4	180
22	2077 NE 171 St	Damaged Sidewalk	N	10	12	4	120
23	1699 NE 171 St	Damaged Sidewalk	N	5	6	4	30
24	1801 NE 171 St	Damaged Sidewalk	N	5	6	4	30
25	1769 NE 171 St	Lifted Sidewalk	N	5	12	4	60
26	1520 NE 171 St	Bus stop ADA connector	S	12	5	4	60

SIDEWALK LOCATION NE 171 STREET & NE 172 STREET							
From: NE 15 Avenue			To: West Dixie Highway		City: North Miami Beach		
Item	Location			Quantity			
	Address	Description	Location Section	Length (feet)	Width (feet)	Thickness (inches)	Area (SF)
27	17070 NE 17 Ave	Bus stop ADA connector	S	12	5	4	60
28	1800 NE 171 St	Bus stop ADA connector	S	12	5	4	60
29	17051 NE 19 Ave	Bus stop ADA connector	N	12	5	4	60
30	2182 NE 171 St	Bus stop ADA connector	S	12	5	4	60
31	2280 NE 171 St	Bus stop ADA connector	S	12	5	4	60
32	17181 West Dixie Hwy	Bus stop ADA connector	N	12	5	4	60
33	17201 NE 23 Ave	Bus stop ADA connector	N	12	5	4	60
34	22 & 171 St Median	Bus stop ADA connector		12	5	4	60
35	17115 NE 21 Ave	Bus stop ADA connector	N	12	5	4	60
36	17101 NE 19 Ave	Bus stop ADA connector	N	12	5	4	60
37	1801 NE 171 St	Bus stop ADA connector	N	12	5	4	60
38	1701 NE 171 St	Bus stop ADA connector	N	12	5	4	60
39	1605 NE 171 St	Bus stop ADA connector	N	12	5	4	60
40	1545 NE 171 St	Bus stop ADA connector	N	12	5	4	60
						SF	2850

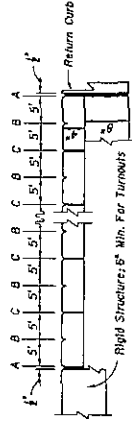
Aluminum Pedestrian/Bicycle Placet
Railings Or Aluminum Pipe Guidrail
See Structures Index Nos. 860 & 870



**SIDEWALK WITH EDGE BEAM FOR
SURFACE MOUNTED RAILINGS**
(Cost Of Edge Beam To Be Included In Price Of Sidewalk)



SAWED JOINTS
***E* Joints Required When Length Exceeds 30'



OPEN JOINTS

**EXAGGERATED SCALE
LONGITUDINAL SECTION**

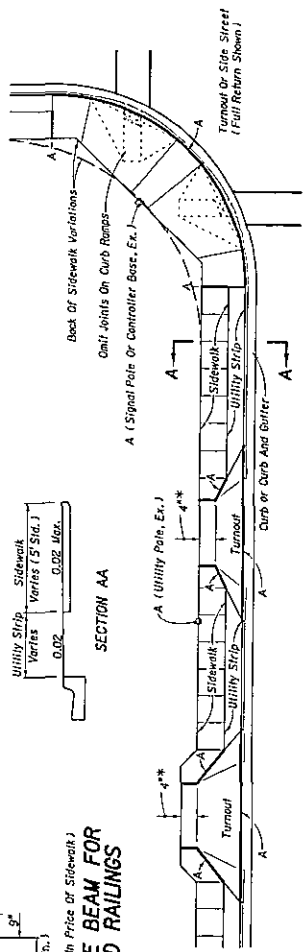
SIDEWALK JOINTS

JOINT LEGEND

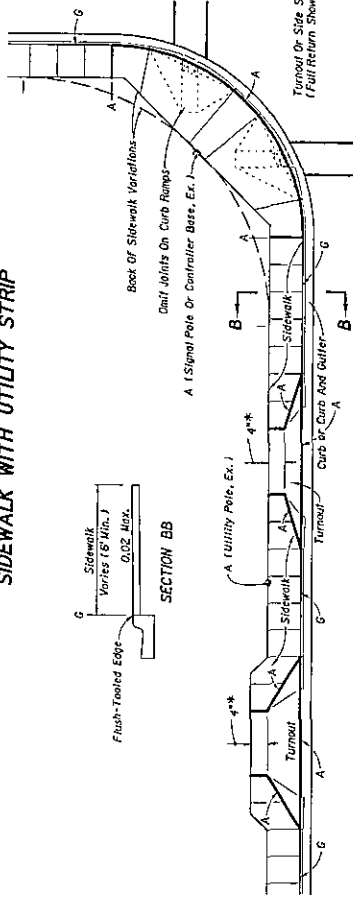
- A- Expansion Joints (Performed Joint Filler)
- B- Pumping Joints, Tied
- C- Formed Open Joints
- D- Saw Cut Joints, 1" Deep (See Note 1) Max. 5' Centers
- E- Saw Cut Joints, 1" Deep (See Note 2) Max. 30' Centers
- F- Cold Joint With Bond Breaker, Tied
- G- Cold Joint With Bond Breaker, Tied

NOTES FOR CONCRETE SIDEWALK ON CURBED ROADWAYS

1. Sidewalks shall be constructed in accordance with Section 522 of the FDOT Standard Specifications except for public sidewalk curb ramp runs which shall be finished in accordance with index No. 304.
2. Bond breaker material can be any impermeable coated or sheet membrane or preformed material having a thickness of not less than 6 mils nor more than 1/8".
3. For public sidewalk curb ramps see index No. 304.
4. For turnouts see index No. 305.
5. Constructed sidewalks with 1" thick Edge Beam through the limits of any surface mounted Aluminum Pedestrian/Bicycle Placet Railing or Pipe Guidrail shown in the plans.
6. Sidewalk shall be paid for under the contract unit price for Sidewalk Concrete (--- Thick), S.Y.



SIDEWALK WITH UTILITY STRIP



SIDEWALK WITHOUT UTILITY STRIP

* A*, May Be Reduced To 3' In Restricted
Conditions When Approved By The Engineer

CONCRETE SIDEWALK FOR CURBED ROADWAYS

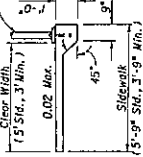


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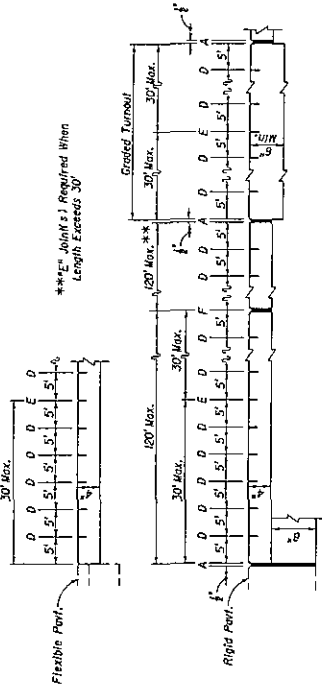
CONCRETE SIDEWALK

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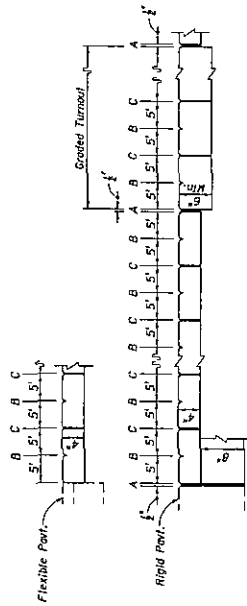
Aluminum Pedestrian/Bicycle Railing Or Aluminum Pipe Curb
See Structures Index Nos. 860 & 870



(Cost Of Edge Beam To Be Included In Price Of Sidewalk)
SIDEWALK WITH EDGE BEAM FOR SURFACE MOUNTED RAILINGS



SAWED JOINTS



OPEN JOINTS
EXAGGERATED SCALE
LONGITUDINAL SECTIONS
SIDEWALK JOINTS

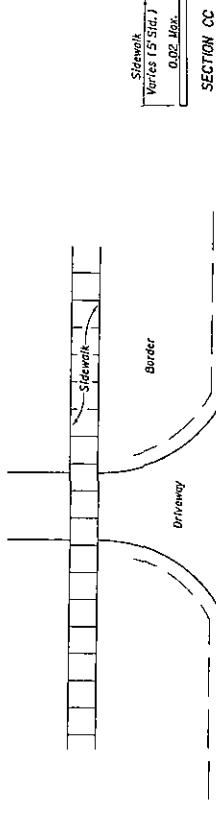
JOINT LEGEND

- A - Expansion Joints (Performed Joint Filler)
- B - Dummy Joints, Tied
- C - Formed Open Joints
- D - Saw Cut Joints (1/2" Deep (1/2" Hour) Max. 5' Centers)
- E - Saw Cut Joints (1/2" Deep (1/2" Hour) Max. 30' Centers)
- F - Expansion Joint When Run Or Sidewalk Exceeds 120'

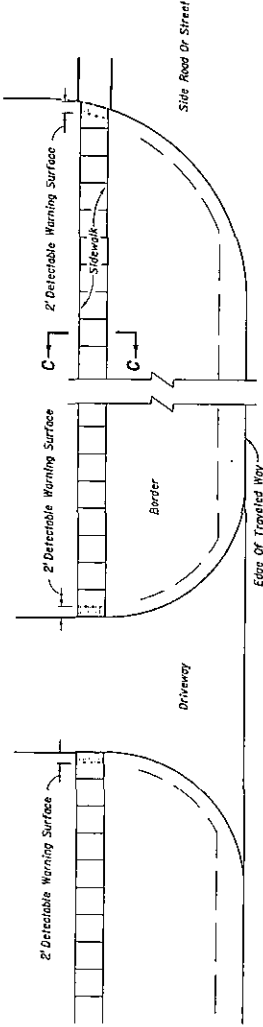
as directed by the Engineer.

NOTES FOR CONCRETE SIDEWALKS ON UNCURBED ROADWAYS

1. Sidewalks shall be constructed in accordance with Section 522 of the FDOT Standard Specifications.
2. Sidewalks adjoining driveways 24' and wider, right in-right out composite driveways and side roads are streets shall have a detectable warning surface that extends the full width of the sidewalk and extends 10' beyond the edge of the driveway and edge of side roads and streets. Detectable warning surfaces shall conform to the requirements described in the General Notes on Index No. 304.
3. For sidewalks continuous through driveways, detectable warning surfaces are not required.
4. For turnouts see Index No. 55.
5. Constructed sidewalks with 1" thick Edge Beam through the trails of any surface mounted Aluminum Pedestrian/Bicycle Railing or Pipe Curb shall be shown in the plans.
6. Sidewalk shall be paid for under the contract unit price for Sidewalk Concrete (— Thick), \$Y.



CONTINUOUS SIDEWALK



DISCONTINUOUS SIDEWALK

PLAN

CONCRETE SIDEWALK FOR UNCURBED ROADWAYS



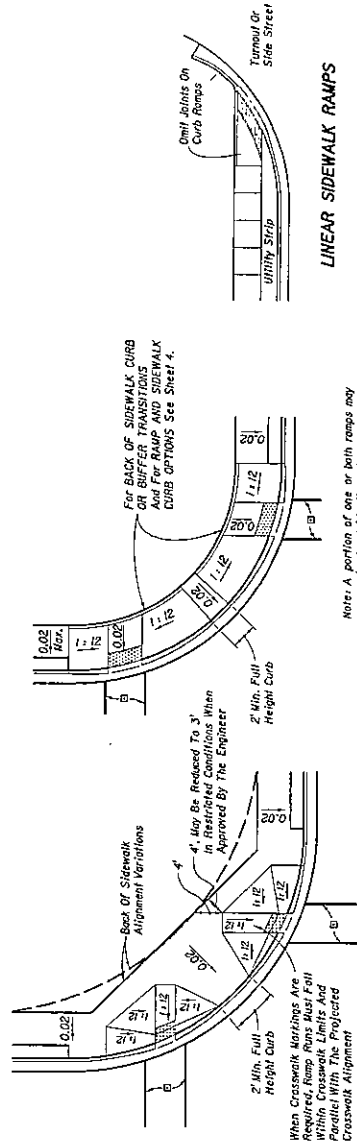
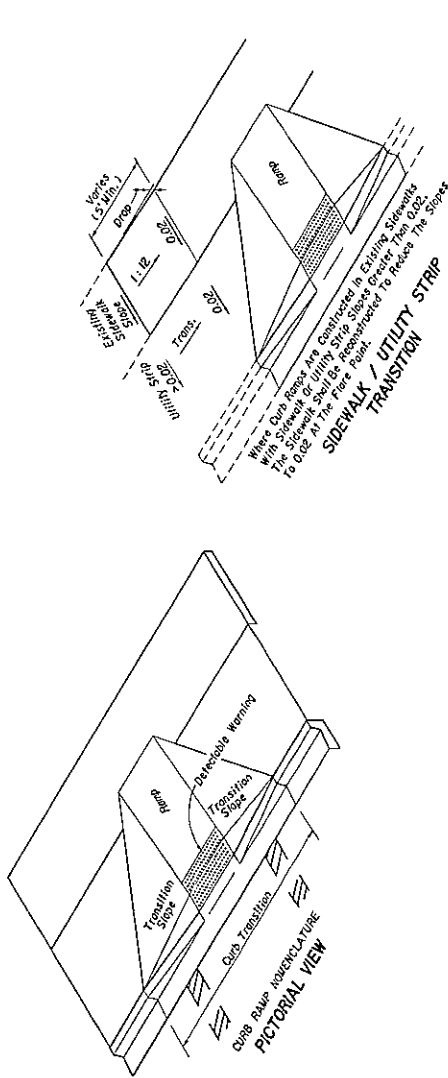
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CONCRETE SIDEWALK

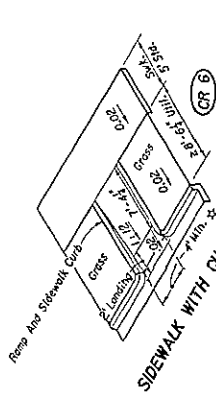
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GENERAL NOTES

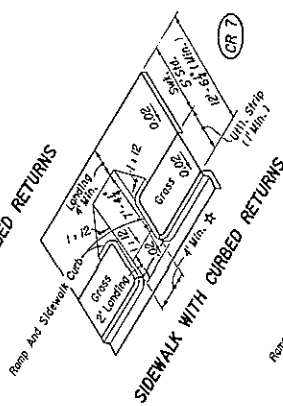
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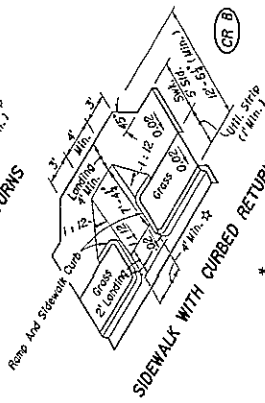
TYPICAL PLACEMENT OF PUBLIC SIDEWALK CURB RAMPS AT CURBED RETURNS



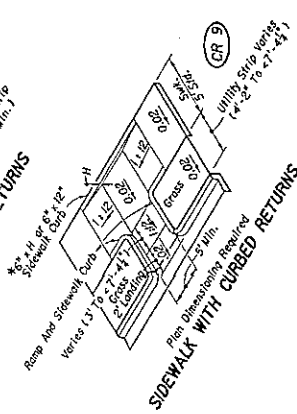
SIDEWALK WITH CURBED RETURNS



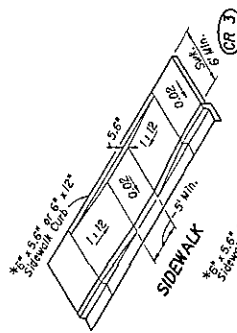
SIDEWALK WITH CURBED RETURNS



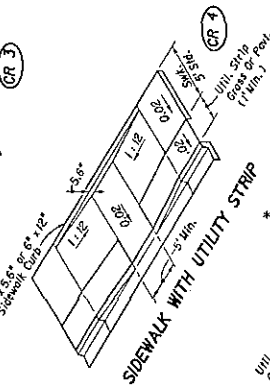
SIDEWALK WITH CURBED RETURNS



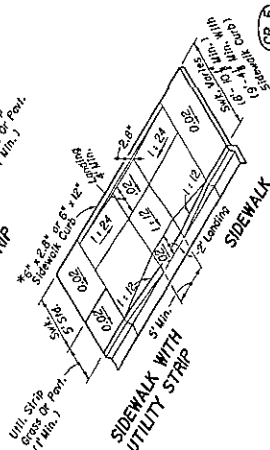
SIDEWALK WITH CURBED RETURNS



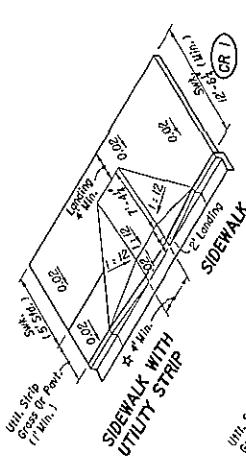
SIDEWALK



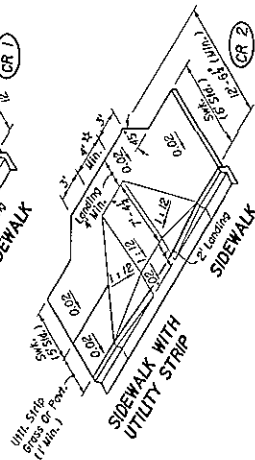
SIDEWALK WITH UTILITY STRIP



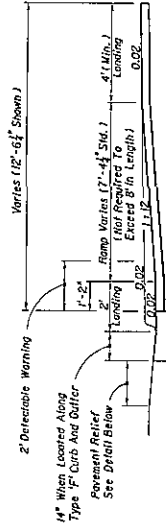
SIDEWALK WITH UTILITY STRIP



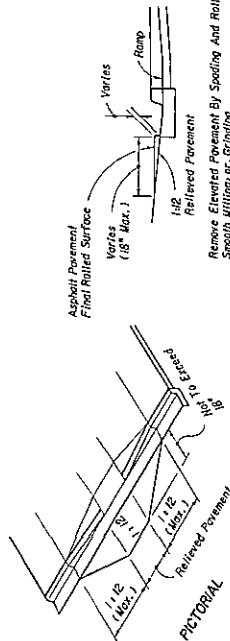
SIDEWALK WITH UTILITY STRIP



SIDEWALK WITH UTILITY STRIP



SECTION THROUGH RAMP RUN AND LANDINGS WITH UPPER LANDING AT NORMAL SIDEWALK ELEVATION



SECTION

PAVEMENT RELIEF AT LIP OF CURB

* For BACK OF SIDEWALK CURB OR BUFFER TRANSITION AND FOR RAMP AND SIDEWALK CURB OPTIONS See Sheet 4.

* Ramp Widths For Curb Ramps CR 1, CR 2, CR 6, CR 7, And CR 8 May Be Reduced To 3' Min. In Restricted Conditions When Approved By The Engineer.

DIMENSIONAL FEATURES FOR PUBLIC SIDEWALK CURB RAMPS WHERE RAMP AND LANDING DEPTH ARE NOT RESTRICTED BY RIGHT OF WAY

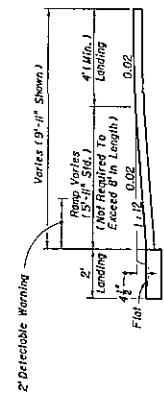
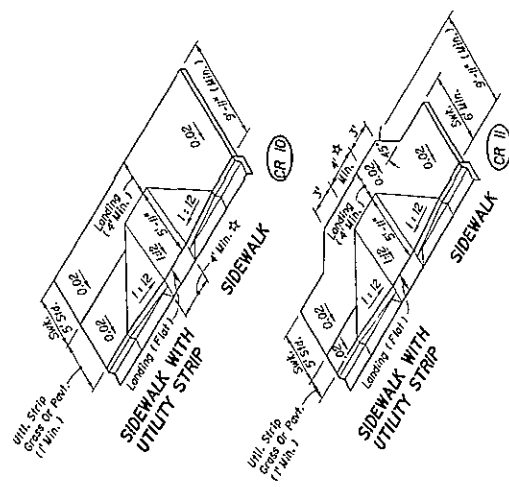
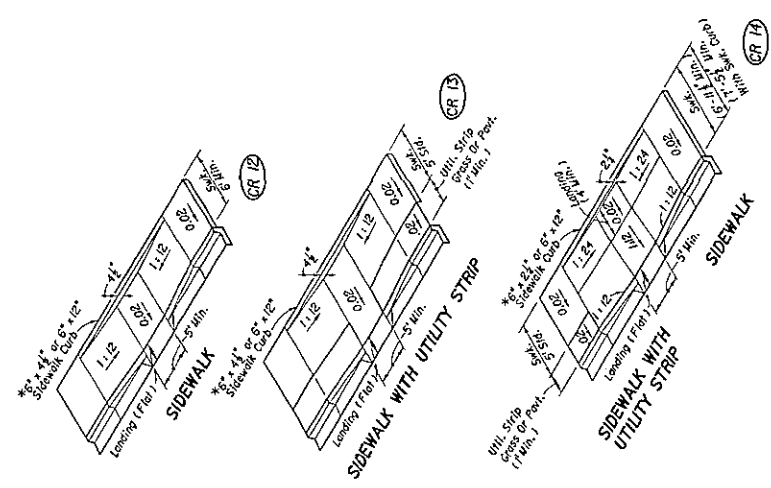
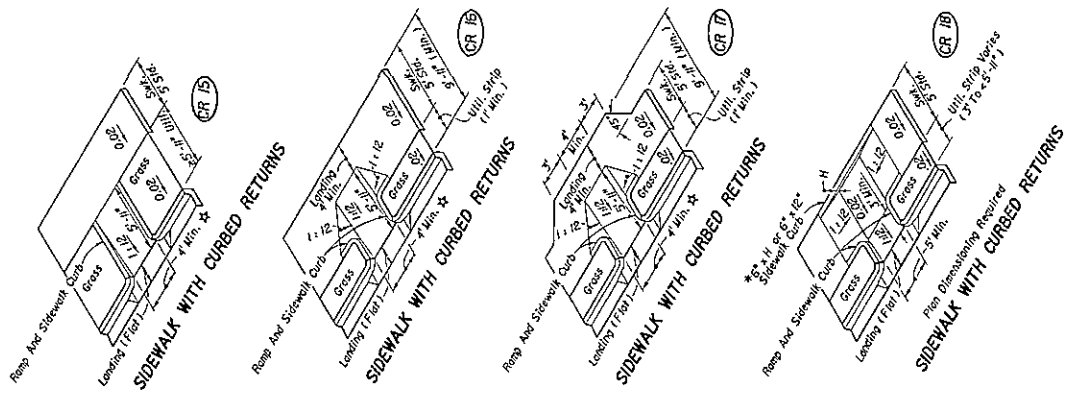


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PUBLIC SIDEWALK CURB RAMPS

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* Ramp Widths For Curb Ramps CR 10, CR 11, CR 15, CR 16, And CR 17 May Be Reduced To 3 Min. In Restricted Conditions When Approved By The Engineer.

* For BACK OF SIDEWALK CURB OR BUFFER TRANSITION And For RAMP AND SIDEWALK CURB OPTIONS See Sheet 4.

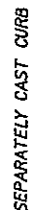
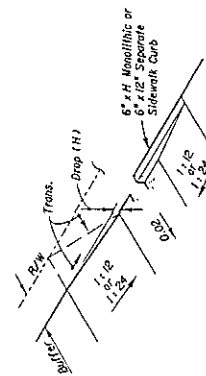
DIMENSIONAL FEATURES FOR PUBLIC SIDEWALK CURB RAMP WHERE RAMP AND LANDING DEPTH ARE RESTRICTED BY RIGHT OF WAY



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RAMP AND SIDEWALK CURB OPTIONS

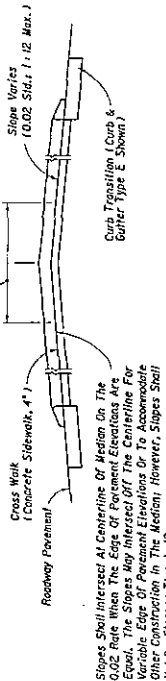


☆ Ramp Widths For Curb Ramps CR 20, CR 21, CR 22, CR 24, and CR 25 May Be Reduced To 3' Min. In Restricted Conditions When Approved By The Engineer.

Construct Sidewalk Curb In Absence Of Adequate Buffer, Maintainable Surface Contour, Abutting Structure, Or When Called For In The Plans Or Standards

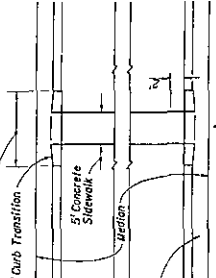
**BACK OF SIDEWALK CURB
OR BUFFER TRANSITION**

5' x 5' Slope With Maximum Slope Of 0.02 Must Be Provided For All Ramps. The Ramps Must Be Constructed At A 5' x 5' Concrete Landing With Maximum Slope Of 0.02. The Ramps Can Be Constructed At Any Location Within The Crosswalk Or A 5' x 5' Concrete Landing With Maximum Slope Of 0.02 Can Be Constructed Adjacent To The Crosswalk.



Slopes Shall Intersect At Centerline Of Median On The 0.02. The Slopes Shall Be Constructed At A 5' x 5' Concrete Landing With Maximum Slope Of 0.02. The Slopes Shall Be Constructed At Any Location Within The Crosswalk Or A 5' x 5' Concrete Landing With Maximum Slope Of 0.02 Can Be Constructed Adjacent To The Crosswalk.

Curb Transition (On Existing Facilities Remove And Reinstall Curb Or Curb And Gutter) For Figure See General Note D.

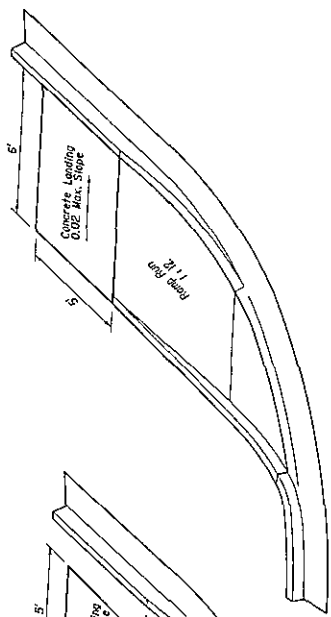
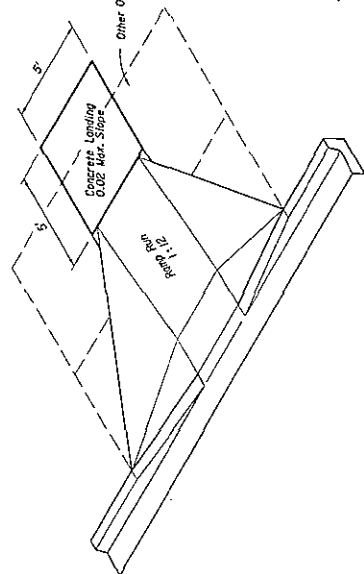


Curb Types A, B, C, D, E (Curb And Gutter Type E Shown)

SECTION CC

MEDIAN CROSSWALKS

PLAN



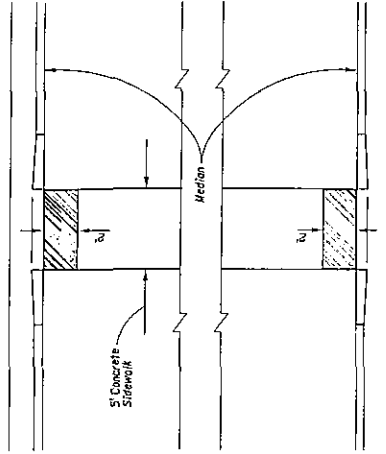
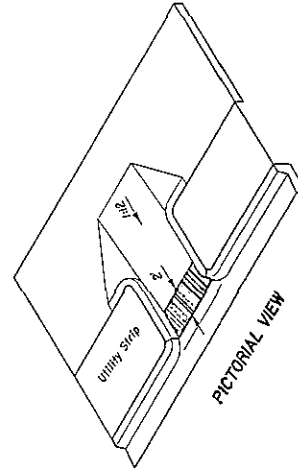
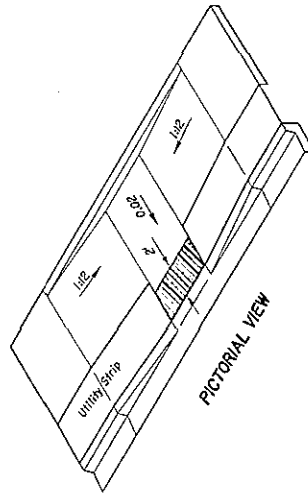
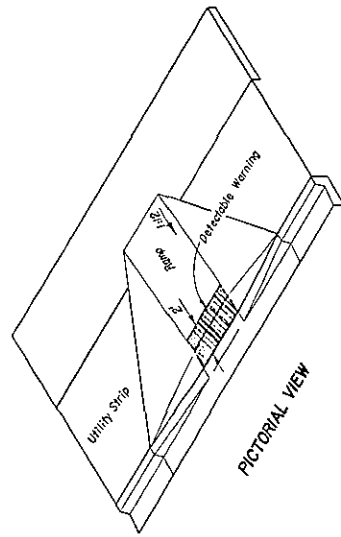
LANDINGS FOR RAMPS WITHIN PUBLIC RIGHT OF WAY CONSTRUCTED AT LOCATIONS WHERE FUTURE SIDEWALKS ARE PROPOSED, WHERE STABLE SURFACES OTHER THAN SIDEWALKS ARE PART OF A CONTINUOUS PASSAGE OR WHERE A CURB FALLS ALONG THE CIRCULATION PATH TO PEDESTRIAN ROUTES ON ADJACENT SITES



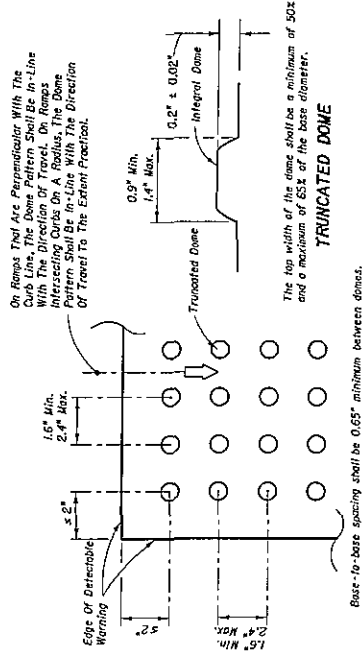
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PUBLIC SIDEWALK CURB RAMPS

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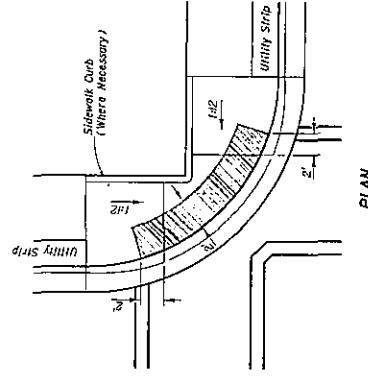
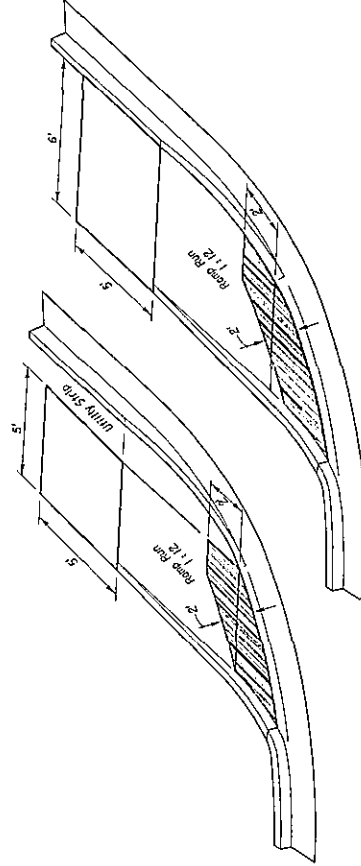
PLAN



PLAN VIEW

All Sidewalk Curb Ramps Shall Have Detectable Warning Surfaces That Extend The Full Width Of The Ramp And In The Direction Of Travel 24 inches (600 mm) From The Back Of Curb.

CURB RAMP DETECTABLE WARNING DETAIL



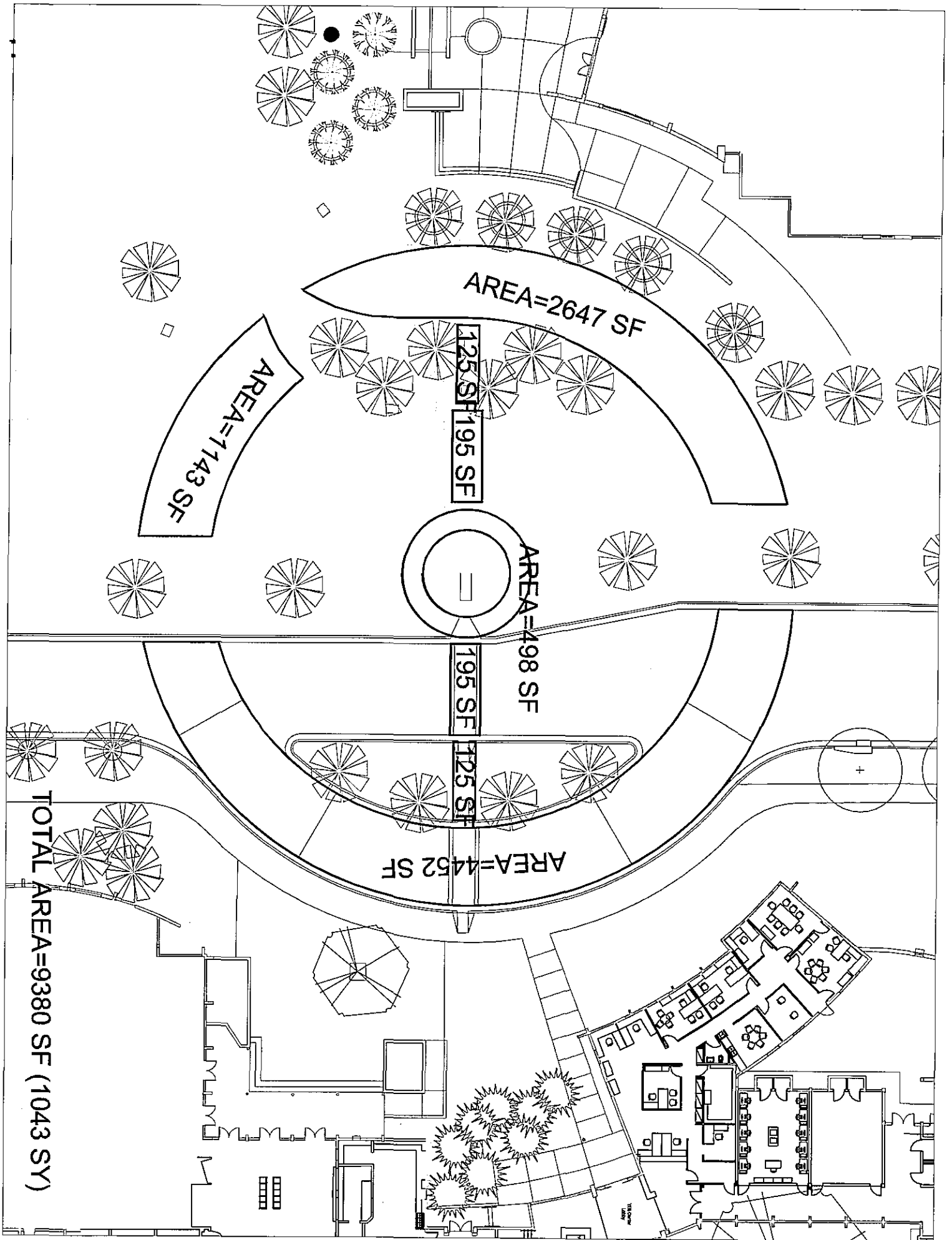
TYPICAL PLACEMENT OF DETECTABLE WARNING ON CURB RAMPS



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SIDEWALK REPLACEMENT ENVIRONMENTAL REVIEW REQUIREMENTS

(City of North Miami Beach Sidewalk Replacement at Various Locations along NE 171st Street, NE 172nd Street, NE 35th Avenue and NE 19th Avenue)

1. Please keep new and existing inlets clean of milling material and debris
2. Any material to be stockpiled for periods greater than 24 hours shall be protected by appropriate erosion control devices.
3. A DERM Tree Removal Permit may be required for trees in conflict with the proposed sidewalk.
4. No staging or other activities for this project should occur within the drip line of existing trees.
5. Prevent damaging trees and planters within or immediately adjacent to the project right-of-way.
6. A Certified Arborist certified by the International Society of Arboriculture shall be present on site to direct all root pruning and/or canopy trimming activities.
7. Appropriate tree protection measures should be installed around all trees to remain located adjacent to construction activities.
8. Appropriate erosion control devices should protect inlets located near construction activities.
9. No staging or construction activities should occur within parks, schools or community services properties.
10. No staging or other activities for this project should occur within erosion-prone areas located adjacent to existing water bodies (e.g. SFWMDD C-9 Canal And Intracoastal Waterway).

Audits

Recipients of Federal and State funds are to have audits done annually using the following criteria:

Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency. State awards will be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the awarding State Agency.

In the event that a recipient expends \$500,000 or more in federal awards in its fiscal year, the recipient must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.

If a recipient expends less than \$500,000 in federal awards during its fiscal year, an audit conducted in accordance with the **OMB Circular A-133** is not required. If a recipient expends less than \$500,000 in federal awards during its fiscal year and elects to have an audit conducted in accordance with **OMB Circular A-133**, the cost of the audit must be paid from non-federal funds.

Reporting Packages and management letters generated from audits conducted in accordance with **OMB Circular A-133** shall be submitted to the awarding FDOT office, by the recipient, within 30 days of receiving it. The aforementioned items are to be received by the appropriate FDOT office no later than 9 months after the end of the recipient's fiscal year.

Bonding and Prequalification

A contractor desiring to bid for the performance of any construction contract located on the National Highway System (NHS) or the State Highway System (SHS) in excess of \$250,000 must be certified by the Department of Transportation as qualified in accordance with Section 337.14(1), Florida Statutes and Rule 14-22, Florida Administrative Code. Any bid for the performance of any construction contract in excess of \$250,000 submitted by a contractor not certified by the Department of Transportation as qualified shall be declared "IRREGULAR" and will be REJECTED.

Buy America and Foreign Contractor and Supplier Restriction

6-12.2 Source of Supply - Steel (Federal-Aid Contracts Only): For Federal-aid Contracts, only use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, pres-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished

work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended. Such certification shall also include (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$(actual value). Furnish each such certification to the Engineer prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, furnish invoices to document the cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project.

Change Orders

See section 2.26 of the bid documents.

Claims

See section 1.44 of the bid documents

Contractor Purchased Equipment for State or Local Ownership

The OWNER does not allow.

Disadvantage Business Enterprise (DBE)

General: Take all necessary and reasonable steps to ensure that FDOT Certified Disadvantaged Business Enterprises, as defined in 49 CFR Part 26 and DOT Rule Chapter 14-78, have the opportunity to participate in, compete for and perform subcontracts. Do not discriminate on the basis of age, race, color, religion, national origin, sex or disability in the award and performance of FDOT assisted Contracts.

Plan Requirements: Include the following in the DBE Affirmative Action Program Plan:

(a) A policy statement, expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible. The policy making body must issue a policy statement signed by the chairperson, which expresses its commitment to utilize DBEs, outlines the various levels of responsibility, and states the objectives of the program. Circulate the policy statement throughout the Contractor's organization.

(b) The designation of a Liaison Officer within the Contractor's organization, as well as support staff, necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the program on a day-to-day basis for carrying out technical assistance activities for DBEs and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Contracts let by the FDOT.

Use techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

2. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

4. Encouraging eligible DBEs to apply for certification with the FDOT.

5. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the FDOT.

DBE Records and Reports: Submit the attached Anticipated DBE Participation Statement at or before the Pre-Construction Conference. Report monthly, through the Equal Opportunity Reporting System on the FDOT's Website (www.bipincwebapps.com/bizwebflorida/), actual payments, retainage, minority status, and work type of all subcontractors and major suppliers. The FDOT Equal Opportunity Office will provide instructions on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:

(a) the procedures adopted to comply with these Specifications;

(b) the number of subordinated Contracts on FDOT projects awarded to DBEs;

(c) the dollar value of the Contracts awarded to DBEs;

(d) the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;

(e) a description of the general categories of Contracts awarded to DBEs; and

(f) the specific efforts employed to identify and award Contracts to DBEs.

Upon request, provide the records to the FDOT for review.

All such records are required to be maintained for a period of five years following acceptance of final payment and have them available for inspection by the FDOT and the Federal Highway Administration.

Equal Employment Opportunity

Equal Employment Opportunity Policy: Accept as the operating policy, the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their age, race, color, religion, national origin, sex, or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

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

Equal Employment Opportunity Officer: Designate and make known to the Department's contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active Contractor

program employment opportunity and who must be assigned adequate authority and responsibility to do so.

Dissemination of Policy: All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's equal employment opportunity policy and contractual responsibilities.

Recruitment: When advertising for employees, include in all advertisements for employees the notation "An Equal Opportunity Employer".

Personnel Actions: Establish and administer wages, working conditions, employee benefits, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff and termination without regard to age, race, color, religion, national origin, sex, or disability.

Follow the following procedures:

(1) Conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(2) Periodically evaluate the spread of wages paid with each classification to determine any evidence of discriminatory wage practices.

(3) Periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action must include all affected persons.

(4) Investigate all complaints of alleged discrimination made in connection with obligations under this Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action must include such other persons. Upon completion of each investigation inform every complainant of all of the avenues of appeal.

Subcontracting: Use the best efforts to ensure subcontractor compliance with their equal employment opportunity policy.

Records and Reports: keep such records as are necessary to determine compliance with the equal employment opportunity obligations. The records kept will be designed to indicate the following:

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

(2) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to Contractors who rely in whole or in part on unions as a source of their work force).

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees as deemed appropriate to comply with their Equal Employment Opportunity Policy.

(4) The progress and efforts being made in securing the services of minority

group subcontractors or subcontractors with meaningful minority group representation among their employees as deemed appropriate to comply with their Equal Employment Opportunity Policy.

All such records must be retained for a period of three years following completion of the contract work and be available at reasonable times and places for inspection by authorized representatives to the Department and the Federal Highway Administration.

Upon request, submit to the Department a report of the number of minority and non-minority group employees currently engaged in each work classification required by this Contract work.

Equipment Rental Rates

For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

- (1) Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 100%.
- (2) Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.
- (3) Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.
- (4) Standby Rate = Allowable Hourly Equipment Rate x 50%.

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the Engineer to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight hours. Standby payment will not be made on days that are not normally considered work days on the project.

The Owner will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Owner will pay for the time to perform this work at the rate for standby equipment.

Equipment may include vehicles utilized only by Labor, as defined above.

Incentive/Disincentive Clauses

Not applicable to this contract.

Indian Preference On Federal-Aid Projects (Labor & Employment)

Not applicable to this contract.

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Required Contract Provisions Federal-Aid Construction Contracts

- I. [General](#)
- II. [Nondiscrimination](#)
- III. [Nonsegregated Facilities](#)
- IV. [Payment of Predetermined Minimum Wage](#)
- V. [Statements and Payrolls](#)
- VI. [Record of Materials, Supplies, and Labor](#)
- VII. [Subletting or Assigning the Contract](#)
- VIII. [Safety: Accident Prevention](#)
- IX. [False Statements Concerning Highway Projects](#)
- X. [Implementation of Clean Air Act and Federal Water Pollution Control Act](#)
- XI. [Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion](#)
- XII. [Certification Regarding Use of Contract Funds for Lobbying](#)

Attachments

- A. [Employment Preference for Appalachian Contracts \(included in Appalachian contracts only\)](#)

I. GENERAL

- 1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
- 2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
- 3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
- 4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
 - Section I, paragraph 2;
 - Section IV, paragraphs 1, 2, 3, 4, and 7;
 - Section V, paragraphs 1 and 2a through 2g.
- 5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
- 6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
 - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - . The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - a. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - . Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - a. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - b. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - c. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - d. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
 - . The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
 - a. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - b. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
 - . The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

- a. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - b. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - c. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. **Training and Promotion:**
- . The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - a. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - b. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - c. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- . The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
 - a. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - b. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
 - c. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- . The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - a. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
 - b. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- . The records kept by the contractor shall document the following:
 1. The number of minority and non-minority group members and women employed in each work classification on the project;

2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- a. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. **NONSEGREGATED FACILITIES**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. **PAYMENT OF PREDETERMINED MINIMUM WAGE**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

0. **General:**

All mechanics and laborers employed or working upon the site of the work 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 (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) 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. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, 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 paragraphs 4 and 5 of this Section IV.

- a. 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.
- b. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

1. **Classification:**

- . The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- a. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 1. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 2. the additional classification is utilized in the area by the construction industry;
 3. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 4. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- b. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.
- 2. **Payment of Fringe Benefits:**
 - . 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 or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
 - a. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a 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.
- 3. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**
 - . Apprentices:
 1. 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 DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
 2. The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in 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 or subcontractor 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-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
 3. 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 journeyman-level 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 for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

a. Trainees:

1. 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 DOL, Employment and Training Administration.
2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level 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-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor 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.

b. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

4. **Apprentices and Trainees (Programs of the U.S. DOT):**

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

5. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor 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, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

6. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

7. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

8. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

0. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

1. Payrolls and Payroll Records:

- Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- a. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found 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 and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- b. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to

be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- c. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - 1. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
 - 2. that such 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 the Regulations, 29 CFR 3;
 - 3. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- d. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- e. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- f. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, 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 SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. **RECORD OF MATERIALS, SUPPLIES, AND LABOR**

- 0. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
 - . Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
- a. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
- b. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
- 1. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. **SUBLETTING OR ASSIGNING THE CONTRACT**

- 0. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
 - . "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
- a. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
- 1. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
- 2. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all

construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

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

VIII. **SAFETY: ACCIDENT PREVENTION**

0. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
1. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
2. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. **FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

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

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

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

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. **IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

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

0. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

1. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
2. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
3. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

0. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

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

- a. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- c. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- f. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or

voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

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

10. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. 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 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
11. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

1. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- a. 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.
 - b. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
 - c. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
 - d. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
 - e. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - f. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
 - g. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - h. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal

Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

9. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
10. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - . No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - a. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - . To the extent that qualified persons regularly residing in the area are not available.
 - a. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
 - b. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph

1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.
5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Liquidated Damages

Applicable liquidated damages are the amounts established in the following schedule:

Contract Amount	Daily Charge Per Calendar Day
\$50,000 and under	\$313
Over \$50,000 but less than \$250,000	\$580
\$250,000 but less than \$500,000	\$715
\$500,000 but less than \$2,500,000	\$1423
\$2,500,000 but less than \$5,000,000	\$2121
\$5,000,000 but less than \$10,000,000	\$3057
\$10,000,000 but less than \$15,000,000	\$3598
\$15,000,000 but less than \$20,000,000	\$4544
\$20,000,000 and over	\$8537 plus 0.00027
of any amount over \$20 million	

For all contracts, regardless of whether the contract time is stipulated in calendar days, the Engineer will count days in calendar days. If the Contractor or, in case of his default, the surety fails to complete the work with the time stipulated in the contract, or within such extra time that the Owner may have granted the Contractor or, in case of his default, the surety shall pay to the Owner, liquidated damages, in the amount of \$_____ per calendar in which work is not completed. The Owner has the right to apply, as payment on such liquidated damages, any money the Owner owes the Contractor. The Owner does not waive its right to liquidated damages due under the Contract by allowing the Contractor to continue and finish the work, or any part of it, after the expiration of the Contract Time including granted time extensions.

Local Hiring Preference

The Owner certifies that this contract does not include local hiring preferences.

Method of Bidding

The OWNER certifies that this project shall be awarded to the of the lowest responsive and responsible bidder.

Owner Force Account/Cost Effective Justification

Not applicable to this contract the Owner will be utilizing an independent contractor to perform the scope of work.

Patented/Proprietary Materials

The Owner certifies that neither patented or proprietary materials are required or specifically named in the specifications to be used for this project.

Prevailing Minimum Wage

For this contract, payment of predetermined minimum wages applies. The U.S. Department of Labor Wage Rates applicable to this Contract are listed in Wage Rate Decision Number(s) FL _____, as modified up through ten days prior to the opening of bids.

Obtain the applicable General Decision(s) (Wage Tables) through the United States Department of Labor website(www.wdol.gov) and ensure that employees receive the minimum wages applicable. Review the General Decisions for all classifications necessary to complete the project.

Progress Payments

See section 2.12 of the bid documents.

Prohibition Against Convict Produced Materials

6-12.1 Source of Supply — Convict Labor (Federal-Aid Contracts Only): Do not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway construction projects unless the prison facility has been producing convict-made materials for Federal-aid highway construction projects before July 1, 1987.

Use materials that were produced prior to July 2, 1991, by convicts on Federal-aid highway construction projects free from the restrictions placed on the use of these materials by 23 U.S.C. 114. The Department will limit the use of materials produced by convict labor for use in Federal-aid highway construction projects to:

1. materials produced by convicts on parole, supervised release, or probation from a prison or,
2. materials produced in a qualified prison facility.

The amount of such materials produced for Federal-aid highway construction during any 12-month period shall not exceed the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

Public Agencies in Competition With the Private Sector

The OWNER does not allow other Public Agencies to compete with or bid on construction projects against the private sector.

Publicly-Owned Equipment

The OWNER does not allow Contractors the use of publicly owned equipment.

Records Retention

The OWNER will maintain/store the records of all federally funded construction projects for a minimum of 5 years. Bridge construction records will be maintain/stored indefinitely.

Salvage Credits

The OWNER does not allow the contractor to get credits for salvageable materials.

Standardized Changes Conditions Contract Clauses

Differing site conditions. (i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

Suspensions of work ordered by the engineer. (i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

Significant changes in the character of work. (i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

State Preference

The OWNER certifies that preference is not given to contractors who purchases materials from and specifically designated state.

State/local Owned/Furnished/Designated Materials

All materials required for this project shall be furnished by the contractor. Projects located on the National Highway System shall require FHWA approval for direct purchase of materials by the Owner.

Subcontracting

It is a requirement of FHWA that a minimum of 30% of the scope of work must be performed by the Prime Contractor. See section 2.15 of the bid documents for additional informations

Termination of Contract

See section 2.21 of the bid documents.

Time Extensions

The written request to the owner with the justification is required for Time Extensions.

TITLE VI Requirements

The Sub-recipient or Contractor, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 200d to 200d-7 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability in consideration for an award.

While performing this contract, the contractor - for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") - agrees to the following:

1. Compliance with Regulations: The contractor will comply with the Regulations on nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation ("USDOT") Title 49, Code of Federal Regulations, Part 21. The recommendations may be amended from time to time, (from here on referred to as the Regulations). They are incorporated here by reference and made a part of this contract.

2. Nondiscrimination: In work performed during the contract, the Contractor will not discriminate on the grounds of race, color, or national origin in the selection and holding of subcontractors. This includes obtaining materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations. This includes employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, the contractor will inform each potential subcontractor or supplier of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin. The solicitations includes obtaining materials or leases of equipment,

4. Information and Reports: The contractor will provide all information and reports required by the Regulations or directives. It will also permit access to its books, records, accounts, other sources of information, and its facilities that are determined by the (Recipient) or the (Name of Appropriate Administration) to be important to ensure compliance with such Regulations, orders and instructions. In some cases, another entity possesses the information required of a contractor and refuses to give the information. Here, the contractor will confirm the lack of information with the (Recipient), or the (Name of the Administration) as appropriate, and will explain its efforts to obtain the information.

5. Sanctions for Noncompliance: In the event that the contractor does not comply with the nondiscrimination provisions of this contract, the (Recipient) should enforce contract sanctions as it or the (Name of Appropriate Administration) may determine to be appropriate. Sanctions may include, but are not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The contractor should include the terms of paragraphs

(1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued modifying the Provisions. The contractor will take action with on any subcontract or procurement that the (Recipient) or the (Name of Appropriate Administration) directs in order to enforce provisions including sanctions for non-compliance. However, if a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the contractor may ask the (Recipient) to enter into such litigation to protect the interests of the (Recipient). Also, the contractor may ask the United States to enter into such litigation to protect the interests of the United States.

THE CONTRACTOR CERTIFIES THE FOLLOWING STATEMENTS:

Non-Collusion Provision

The undersigned hereby certifies, to the best of his or her knowledge and belief, that on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.

Lobbying Certification

“The undersigned hereby certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence either directly or indirectly an officer or employee of any state or federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-L “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, US Code. Any persons who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.”

CERTIFICATION OF NONSEGREGATED FACILITIES - 41 CFR PART 60-1.8

Notice to Prospective Federally Assisted Construction Contractors

- 1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.
- 2. Contractors receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false

statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective Subcontractors of Requirements for Certification of Non-Segregated Facilities

1 A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

2 Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATION OF NONSEGREGATED FACILITIES

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where she or he has obtained identical certifications from proposed subcontractors for specific time periods) she or he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

Suspension and Debarment

"The Bidder certifies that, neither the firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR s29.110(a), by any federal department or agency;

(b) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) is presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph 9(b) of this certification; and

(d) has within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause or default.

The Bidder certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this project by any federal agency unless authorized by the Florida Department of Transportation.”

Signature

Printed Name

Firm Name