



TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Vice Mayor Edward P. MacDougall
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Councilmember Peggy R. Bell

Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Santamaria
Town Manager Steven Alexander

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Wednesday, May 20, 2009, 7:00 PM
South Dade Regional Library
10750 SW 211th Street, 1st Floor
Cutler Bay, Florida 33189

1. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE**
2. **PROCLAMATIONS, AWARDS, PRESENTATIONS**
 - A. Proclamation Presentation – Mike Vaughn, Parks Committee Member
 - B. Proclamation Presentation – Code Enforcement Week
 - C. Recognition of Geography and History Bee Students from Cutler Ridge Elementary School

3. **APPROVAL OF MINUTES**

- A. Council Meeting – April 15, 2009

TAB 1

4. **REPORTS**

- A. TOWN MANAGER'S REPORT
 1. Update on Traffic Circle - Caribbean Boulevard and SW 192 Drive
 - B. TOWN ATTORNEY'S REPORT
 - C. BOARD/COMMITTEE REPORTS AND COUNCIL ANNOUNCEMENTS

5. **CONSENT AGENDA**

ANY ITEMS SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED OR PULLED BY A COUNCILMEMBER OR THE TOWN MANAGER.

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AWARDED CONTRACT FOR VEHICLE REPAIR AND MAINTENANCE TO AUTO ELECTRIC SERVICE; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED COMPANY AUTO ELECTRIC SERVICE; PROVIDING FOR AN EFFECTIVE DATE. TAB 2

- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT TO PROVIDE FOR PAVING & DRAINAGE IMPROVEMENTS IN THE SAGA BAY AREA; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED CONTRACTOR TASCO PLUMBING; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 3

- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE CUTLER RIDGE ELEMENTARY SCHOOL AREA PAVING AND DRAINAGE IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE. TAB 4

- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO ROADWAY RESURFACING IN THE TOWN, AUTHORIZING THE ISSUANCE OF FIVE SEPARATE INVITATIONS TO BID (ITB) FOR ROADWAY RESURFACING IMPROVEMENTS; PROVIDING FOR FUNDING BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 5

- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE TOWN AND MIAMI-DADE TRANSIT AGENCY FOR FEDERAL FUNDING FOR THE INSTALLATION OF BUS SHELTERS AND ADDITIONAL ASSOCIATED ADA COMPLIANCE WORK, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND ALL FUTURE FORMS AND AGREEMENTS REQUIRED FOR THE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 6

6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)

ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL BE SWORN-IN PRIOR TO GIVING TESTIMONY AND MAY BE SUBJECT TO CROSS EXAMINATION. ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD.

7. ORDINANCES FOR FIRST READING (PUBLIC HEARING NOT REQUIRED)

A. AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-124 "STANDARDS" RELATING TO OFF STREET PARKING REQUIREMENTS FOR FURNITURE STORES; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

TAB 7

B. AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATED TO LOCAL BUSINESS TELEPHONE DIRECTORIES; ALLOWING RESIDENTS TO OPT OUT OF THE RECEIPT OF LOCAL BUSINESS TELEPHONE DIRECTORIES; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES SECTION OF THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THESE SECTIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

TAB 8

8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)

9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED)

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-22 ENTITLED, "PURCHASING"; REVISING CONTACTS CONSIDERED PERMISSIBLE UNDER THE TOWN CONE OF SILENCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 9

10. PUBLIC COMMENTS

THE PRESIDING OFFICER SHALL HAVE THE DISCRETION TO LIMIT THE LENGTH OF PUBLIC COMMENTS IN THE INTEREST OF TIME IN ORDER TO ALLOW ALL PERSONS WHO WISH TO SPEAK AN OPPORTUNITY TO DO SO.

11. MAYOR AND COUNCIL COMMENTS

12. OTHER BUSINESS

- A.** June 25, 2009 Special Elections – Mail-In Ballots
- B.** Discussion on Military Leave

13. ADJOURNMENT

- A. Code Compliance Hearing**
Wednesday, May 27th at 10:00 a.m.
Town Hall, 10720 Caribbean Blvd., Suite 105

B. Regular Council Meeting

Wednesday, June 17th at 7:00 p.m.

South Dade Regional Library, 10750 SW 211th ST, 1st Floor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 1

**TOWN OF CUTLER BAY
TOWN COUNCIL MEETING
MINUTES**

Wednesday, April 15, 2009, 7:00 PM
South Dade Regional Library
10710 SW 211th Street, 2nd Floor
Cutler Bay, Florida 33189

1. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:00 PM. Present were the following:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Santamaria
Town Manager Steven J. Alexander

2. PROCLAMATIONS, AWARDS, PRESENTATIONS:

- A.** Nestor Caballero of Alberni, Caballero & Castellanos, LLP briefly discussed and presented to Town Council a description of fiscal year 2008 audit results.
- B.** Mayor Vrooman presented a proclamation to Ed Hernandez of the South Florida Water Management District for Water Conservation Month.

3. APPROVAL OF MINUTES:

A. Councilmember Sochin made a motion approving the minutes of the meeting on March 18, 2009. The motion was seconded by Vice Mayor MacDougall and adopted by a unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

B. Councilmember Sochin made a motion approving the minutes of the special meeting on March 30, 2009. The motion was seconded by Councilmember Meerbott and adopted by a unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

4. REPORTS

A. TOWN MANAGER'S REPORT

The town manager reported on the progress of the federal stimulus grants. He reported that recently Senator Bullard called to inquire how much funding we will need for stormwater projects. He mentioned that the ERP software contract was not negotiated and needed to withdraw Item B from the Consent Agenda. The manager spoke of the newly appointed federal lobbyist that has informed Town staff of potential grants. He also stated that he was not able to go to Washington, DC to meet with the federal lobbyist, but a trip is planned in the near future. He stated that the South Florida Water Management District has issued the Town a \$225,000.00 grant due to a funding surplus.

B. TOWN ATTORNEY'S REPORT

The town attorney reported that he has provided the council a new format for invoicing attorney's fees.

C. BOARD AND COMMITTEE REPORTS, COUNCIL ANNOUNCEMENTS

Councilmember Bell announced that Mike Vaughn, a Parks Committee member, has submitted his resignation from the committee. Member Bell stated that she will look for a replacement soon since she appointed Mr. Vaughn. She also announced that the Earth Day/Arbor Day event will take place on April 25th at Saga Bay Park. Councilmember Bell thanked the town attorney for his efforts to facilitating the Council with a better invoicing system. She also thanked them for making an effort to reduce the cost.

Councilmember Meerbott discussed that the South Dade Transportation Coalition has been meeting on a regular basis. He mentioned that recently there was a letter of opposition circulating among the municipalities that will be most affected by the proposed Florida Power and Light transmission lines. He announced that the next meeting will be held at Chamber South on April 17th.

Mayor Vrooman announced that on Saturday, April 18th there will be a US1 Charrette workshop for the community at the South Dade Regional Library.

Councilmember Sochin discussed his recent trip to Tallahassee for Dade Days. He mentioned that the most important item of discussion was the economic stimulus funds from the federal government.

5. CONSENT AGENDA:

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ACCEPTING A GRANT FROM THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT OFFICE OF CRIMINAL JUSTICE GRANTS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME; AND PROVIDING FOR EFFECTIVE DATE.**

- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A CONTRACT AND OPTIONS WITH ALCALDE AND FAY, THE APPROPRIATIONS AND INTERGOVERNMENTAL CONSULTING SERVICE SELECTED TO REPRESENT THE TOWN BEFORE THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE FEDERAL GOVERNMENT; AND PROVIDING FOR AN EFFECTIVE DATE.
- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT TO PROVIDE FOR REPLACEMENT AND INSTALLATION OF SIDEWALKS; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED CONTRACTOR J A & M DEVELOPING CORPORATION; AND PROVIDING FOR AN EFFECTIVE DATE.
- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT WITH ENVIROMENTAL PERFORMANCE SYSTEM (EPS) INC FOR STREET SWEEPER SERVICES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.
- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT WITH ENVIROWASTE SERVICES GROUP INC. FOR ROADWAY RESURFACING & MISCELLANEOUS DRAINAGE IMPROVEMENTS; AUTHORIZING THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.
- G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT TO PROVIDE FOR ROADWAY & DRAINAGE IMPROVEMENTS IN THE CUTLER RIDGE ELEMENTARY SCHOOL AREA; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED CONTRACTOR WILLIAMS PAVING COMPANY, INC.; AND PROVIDING FOR AN EFFECTIVE DATE. **(RESOLUTION TITLE WAS REVISED)**
- H. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND ENTER INTO VEHICLE LEASE-PURCHASE AGREEMENT AND OBTAIN FINANCING FOR A MOTOR VEHICLE AND RELATED EQUIPMENT WITH DUVAL FORD IN THE AMOUNT OF \$29,383 BASED ON COMPETITIVE QUOTES OBTAINED BY OTHER GOVERNMENT AGENCIES; AND PROVIDING FOR AN EFFECTIVE DATE.
- I. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND ENTER INTO VEHICLE LEASE-PURCHASE AGREEMENT AND

OBTAIN FINANCING FOR MOTOR VEHICLES AND RELATED EQUIPMENT WITH SATURN OF SEBRING IN THE AMOUNT OF \$ 51,734 BASED ON COMPETITIVE QUOTES OBTAINED BY OTHER GOVERNMENT AGENCIES; AND PROVIDING FOR AN EFFECTIVE DATE.

- J. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH GROUNDKEEPERS, INC. FOR THE PURCHASE AND INSTALLATION OF LIVE OAK TREES WITHIN THE TOWN'S DESIGNATED RIGHT-OF-WAYS FOR AN AMOUNT NOT TO EXCEED \$150,000.00 PURSUANT TO TERMS OBTAINED THROUGH COMPETITIVE SELECTION BY ANOTHER GOVERNMENT AGENCY; AND PROVIDING FOR AN EFFECTIVE DATE.
- K. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, FORMALLY OPTING OUT OF THE CONE OF SILENCE OF MIAMI-DADE COUNTY; PROVIDING THAT THE TOWN SHALL BE GOVERNED SOLELY BY THE REQUIREMENTS OF THE CONE OF SILENCE ENACTED BY THE TOWN COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Meerbott made a motion to approve the Consent Agenda as amended with Item B withdrawn by the manager. The motion was seconded by Councilmember Bell and Resolutions 09-27 through 09-36 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)

ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL BE SWORN-IN PRIOR TO GIVING TESTIMONY AND MAY BE SUBJECT TO CROSS EXAMINATION. ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD.

7. ORDINANCES FOR FIRST READING (PUBLIC HEARING NOT REQUIRED)

The town clerk read the ordinance by title:

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-22 ENTITLED, "PURCHASING"; REVISING CONTACTS CONSIDERED PERMISSIBLE UNDER THE TOWN CONE OF SILENCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

The town attorney provided an oral report on the ordinance.

Vice Mayor MacDougall made a motion to approve the ordinance on first reading. The motion was seconded by Councilmember Sochin and was approved by unanimous roll call vote. The vote

was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)

9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED):

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA REPEALING AND REPLACING CHAPTER 8AA, ARTICLE I, II AND III OF THE TOWN CODE OF ORDINANCES TO PROVIDE TERMS AND CONDITIONS FOR THE PLACEMENT AND MAINTENANCE OF COMMUNICATIONS FACILITIES OR SYSTEMS, ANTENNAS, EQUIPMENT FACILITIES, AND OTHER VERTICAL STRUCTURES IN THE TOWNS PUBLIC RIGHTS-OF-WAY FOR THE PROVISION OF COMMUNICATIONS, CABLE AND VIDEO SERVICES; PROVIDING FOR ENFORCEMENT AND ADMINISTRATION; PROVIDING FOR RESERVATION OF RIGHTS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SAVINGS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The town attorney provided a brief explanation on the ordinance.

The mayor opened the public hearing. Henry Wulf, 1180 Finnely Lane, addressed the Council. The mayor closed the public hearing.

The town attorney requested that the ordinance be amended to remove the word “major” from Section 4(8)(f) from the first sentence.

Councilmember Sochin made a motion to approve the ordinance as amended by the town attorney. The motion was seconded by Vice Mayor MacDougall and the ordinance was adopted by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

10. PUBLIC COMMENTS

THE PRESIDING OFFICER SHALL HAVE THE DISCRETION TO LIMIT THE LENGTH OF PUBLIC COMMENTS IN THE INTEREST OF TIME IN ORDER TO ALLOW ALL PERSONS WHO WISH TO SPEAK AN OPPORTUNITY TO DO SO.

There were no speakers at this time.

11. MAYOR AND COUNCIL COMMENTS

Councilmember Meerbott discussed that there were a number of complaints on sheds within the Town that were filed within a matter of days. He mentioned that there are laws provided by the County Code that currently govern the placing of sheds on a property. He requested that code enforcement provide an additional extension for residents to comply with the Town Code.

Councilmember Meerbott made a motion to allow Town staff to give reasonable time to comply with shed codes and permitting. The motion was seconded by Councilmember Bell and all members were in favor.

12. OTHER BUSINESS: None at this time.

13. ADJOURNMENT

The next council meeting will be held on May 20, 2009 at South Dade Regional Library.

The meeting was officially adjourned at 8:40 P.M.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 20th day of May, 2009.*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 2



MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: May 20, 2009

Re: **AWARD OF RFP # 09-03: VEHICLE REPAIR AND MAINTENANCE SERVICES**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AWARDING CONTRACT FOR VEHICLE REPAIR AND MAINTENANCE TO AUTO ELECTRIC SERVICE; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED COMPANY; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

The Town Council on January 21, 2009 via Resolution# 09-07, authorized staff to issue a Request for Proposals (RFP) # 09-03: Vehicle Repair and Maintenance Services. The RFP was advertised in a newspaper of general circulation which, complies with the Town's Purchasing Ordinance. Additionally, Town staff distributed the RFP package to all of the vehicle repair facilities, located within the Town and adjacent locations. The RFP had a due date and time of February 20, 2009 @ 10:00a.m. The Town received two (2) bid packages from potential contractors (see attached bid tabulation).

A complete review was performed on the "Lowest & Responsive" bidder: Auto Electric Service which, included:

- Contacting all of the provided references, as per RFP # 09-03; and
- Town staff's facilities inspections, as per RFP # 09-03; and
- Confirmation of "good standing" with the State of Florida Department of Business and Professional Regulations which, included any registered complaints.

RECOMMENDATION

Based on Town staff's evaluation of the "lowest & responsive" bidder: Auto Electric Service, it is recommended that the Town Council approve the attached Resolution.



Town of Cutler Bay
Office of the Town Clerk
Ranking Sheet
RFP #09-03 Vehicle Repair and Maintenance Services
Bid Submission Date: February 20, 2009 at 10:00 a.m.

	Auto Electric Services	Rejected (Bid Submitted after Submission Deadline Time) Meineke Car Care Center (excl. diesel)
OIL CHANGE	\$ 14.95	24.95
Replacement of PVC Valve	\$ 3.85	\$ 14.99
Replacement of Fuel Filter	\$ 7.42	\$ 34.99
Replacement of brakes/brake parts		
Front slotted disc brakes (full:-all parts and labor)	\$ 69.95	\$ 149.00
Rear disc brakes (full: - all parts and labor)	\$ 69.95	\$ 149.00
Rear drum brakes (full: - all parts and labor)	\$ 100.00	\$ 149.00
Turn brake drums (per pair)	\$ 8.00	\$ 30.00
Turn/cut rotors (per pair)	\$ 8.00	\$ 30.00
Replace rotors (per pair; full: - all parts and labor)	\$ 80.00	\$ 130.00
Rebuild wheel cylinders (each)	\$ 25.50	\$ 24.95
Rebuild master cylinder	\$ 89.00	\$ 69.95
Flush brake fluid	\$ 19.95	\$ 19.95
Replacement of air filter	\$ 10.00	\$ 18.99
Radiator flush (include fluid)	\$ 19.95	\$ 49.99
Air conditioning service (include 1 lb of freon)	\$ 15.00	\$ 49.99
Serpentine belt replacement	\$ 29.95	\$ 99.99
Transmission (drain/replace fluid/replace filter)	\$ 24.95	\$ 69.99
Tune-up (including plugs) any & all shop fees & labor costs)		
Four (4) cylinder	\$ 39.95	\$ 99.00
Six (6) cylinder	\$ 49.95	\$ 119.00
Eight (8) cylinder	\$ 59.95	\$ 139.00
Diesel motors (international engines)	\$ 230.00	n/a
Battery (HD) - Heavy Duty		
Replacement (must meet manufacturer AMP specifications for vehicle)	\$ 59.75	\$ 79.99
On-board diagnostic inspections	\$ 19.95	\$ 49.99
		price varies in labor between 1.0-
Alternator Replacement	\$ 150.00	3.0 hrs
Alignments		
Front pair (2 wheel)	\$ 35.00	\$ 49.99
Rear pair (2 wheel)	\$ 39.95	n/a
Front and rear (4 wheel)	\$ 49.95	\$ 59.99
Shocks		
Front	\$ 92.80	\$ 189.00
Rear	\$ 92.80	\$ 189.00
Tires		
Repair (specify type of repair: interior patch or equivalent)	\$ 9.95	\$ 14.95
Remove and replace	\$ 5.00	n/a
Balance	\$ 5.00	\$ 9.95
Rotate (with inspection of brakes)	\$ 9.95	-
Road repair service for tire repairs/replacement	\$ 5.00	n/a
Computer diagnostic assessment	\$ 19.95	\$ 49.99
Labor rate/hour for non-listed repairs	\$ 67.50	\$ 80.00
Emergency road service-during normal business hour	\$ 25.00	\$ 80.00
Emergency towing charge (flat rate)	\$ 60.00	n/c
Percentage discount off list price of parts	10%	15%

Bid's were opened at 10:00 a.m.
The following staff were witnesses to the bid opening:
Yani Ramos, Administrative Services Director
Erin O'Donnell, Assistant to the Town Clerk

Respectfully Submitted By:

Erika Santamaria, CMC, Town Clerk

RESOLUTION NO. 09-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AWARDED CONTRACT FOR VEHICLE REPAIR AND MAINTENANCE TO AUTO ELECTRIC SERVICE; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED COMPANY AUTO ELECTRIC SERVICE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Cutler Bay (“Town”) finds that it is both necessary and appropriate to retain a contractor to provide vehicle repair and maintenance services to the Town; and

WHEREAS, the Town Council acknowledges the importance of ensuring that all of its vehicles operate smoothly and efficiently at the lowest possible cost to, and highest possible quality for, the Town; and

WHEREAS, the Town Council authorized the issuance of a Request for Proposals (RFP) for Vehicle Repair and Maintenance Service; and

WHEREAS, sealed proposals were received by the published deadline; and

WHEREAS, pursuant to the RFP competitive selection process utilized by the Town and the recommendation of the Town Manager, the Town Council desires to utilize the services of first ranked firm, Auto Electric Service (the “Contractor”), to provide vehicle repair and maintenance service; and

WHEREAS, the Town Attorney’s Office has reviewed the terms of the agreement with Contractor, attached as Exhibit “A”, and has determined that it is legally sufficient; and

WHEREAS, the Town Manager has determined in accordance with Section 3.10 of the Town Charter and the Town purchasing ordinance that there is a sufficient unencumbered budget appropriation within the department to pay for this agreement, and the Town Manager has made a written recommendation to the Council for its approval; and

WHEREAS, the Town finds that this Resolution will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, THAT:

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of the Agreement. The Town Council hereby approves the contract with the first ranked contractor, Auto Electric Service, for vehicle repair and maintenance services, in substantially the form attached hereto as Exhibit "A" (the "Agreement").

Section 3. Town Manager Authorized. The Town Manager is authorized, on behalf of the Town, to negotiate and execute the vehicle repair and maintenance services contract with Auto Electric Service, for vehicle repair and maintenance services, in substantially the form attached hereto as Exhibit "A". The Town Manager is authorized to execute the Agreement without further Town Council action and once approved by the Town Attorney as to form and legal sufficiency.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF THE
TOWN OF CUTLER BAY ONLY:

WEISS, SEROTA, HELFMAN, PASTORIZA,
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

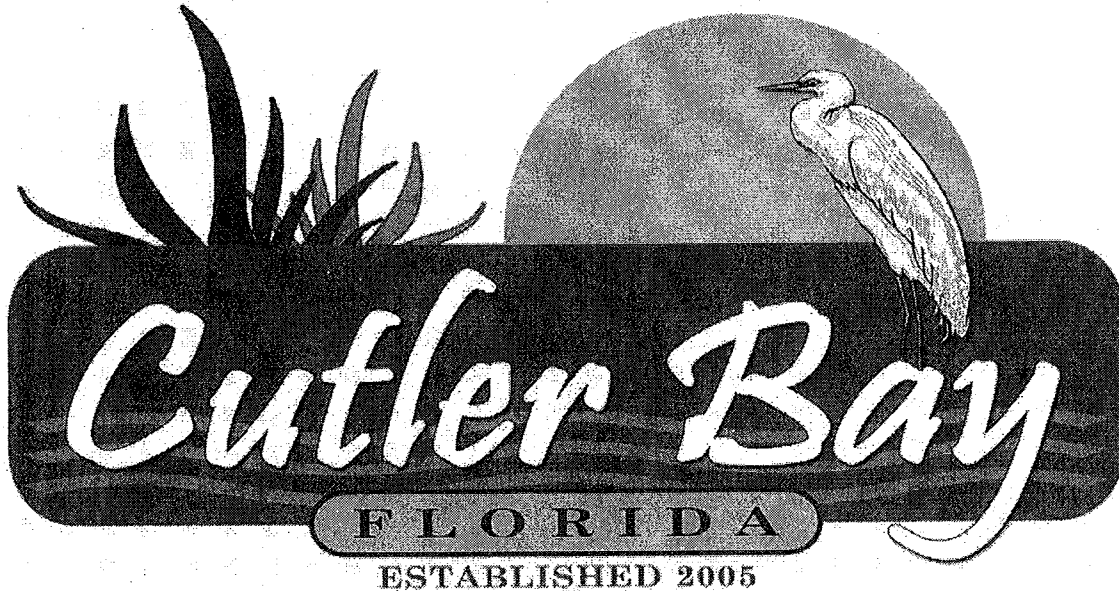
Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

**TOWN OF CUTLER BAY
REQUEST FOR PROPOSALS
09-03**



VEHICLE REPAIR AND MAINTENANCE SERVICES

**SUBMITTAL DATE: FRIDAY, FEBRUARY 20, 2009
TIME: 10:00 AM**

REQUEST FOR PROPOSALS

09 – 03

VEHICLE REPAIR AND MAINTENANCE SERVICES TOWN OF CUTLER BAY

The Town of Cutler Bay is requesting proposals from qualified firms to provide for the Vehicle Repair and Maintenance Services for the Town of Cutler Bay. **Interested firms should visit the Town's website at www.cutlerbay-fl.gov to obtain the Request for Proposal package. Packages may also be picked up at the following location:**

**Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189**

Sealed submittals including one (1) original and four (4) copies of the submittals must be received no later than **10:00 a.m. on Friday, February 20, 2008** and be clearly marked on the outside, **"RFP 09-03 Vehicle Repair and Maintenance Services"**, by **Erika Gonzalez-Santamaria, Town Clerk, Town of Cutler Bay, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida, 33189**. Late submittals and electronic submittals will **not** be accepted.

Pursuant to Town Code, public notice is hereby given that a "Cone of Silence" is imposed concerning the Town's competitive purchasing process, which generally prohibits communications concerning the RFP from the time of advertisement of the RFP until such time as the Town Manager makes a written recommendation to the Town Council concerning the competitive purchase transaction. Please see the detailed specifications for the public solicitation for services for a statement fully disclosing the requirements of the "Cone of Silence".

Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor. Please see the detailed specifications of this solicitation for further details.

The Town of Cutler Bay reserves the right to accept or reject any and/or all proposals or parts of proposals, to workshop or negotiate any and all proposals, to waive irregularities, and to request re-proposals on the required materials or services.

Steven J. Alexander
Town Manager



PUBLIC WORKS DEPARTMENT
RFP # 09-03
VEHICLE REPAIR AND MAINTENANCE SERVICES

Scope of Work (summary): The work covered by this specification consists of furnishing all material, labor, and equipment in performing all operations necessary in connection with the repair and maintenance of Town of Cutler Bay vehicles.

General Provisions: The successful Contractor(s) must be able to perform general and preventative maintenance and common repair services on vehicles and equipment that include, but are not limited to, brakes, suspension, heat/air conditioning systems, electrical systems, engine, etc. The Town's preference is to have a primary Contractor that has the ability to perform all required services if possible. However, work may be sub-contracted or the Town may select more than one contractor. When sub-contractors are used, the Contractor is primarily responsible for performance including but not limited to, billing, reporting, scheduling, delivery, work quality, and warranty.

Quality Assurance: The Town of Cutler Bay may inspect work and reject unsatisfactory or defective material or work at any time during progress of work. The contractor is expected to correct any deficiencies as soon as possible after notification.

Award of Contract and Disputes: The Town of Cutler Bay reserves the right to accept or reject any and/or all proposals or parts of proposals, to waive any informality, irregularities, or technicalities, to re-advertise for proposals, or take any other actions that may be deemed to be in the best interests of the Town. The Town also reserves the right to award the Contract on a split order basis, group by group, or item by item, or such combination as will best serve the interests of the Town, unless otherwise stated. The Town also reserves the right to waive minor variations to the specifications (interpretation of such to be made by the applicable department personnel). Final determination and award of contract(s) shall be made by the Town Council. In addition, each bidder agrees to waive any claim it has or may have against the Town and the respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any proposal.

SCOPE OF WORK (detailed)

General Provisions: The successful contractor must be able to perform general and preventative maintenance and common repair services on vehicles and equipment that include, but are not limited to, brakes, suspension, heat/air conditioning systems, electrical systems, engine, etc. The Town's preference is to have a primary Contractor that has the ability to perform all required services if possible. However, work may be sub-contracted. When sub-contractors are used, the Contractor is primarily responsible for performance including but not limited to, billing, reporting, scheduling, delivery, work quality, and warranty.

The Contractor must have the ability to provide required preventative maintenance and repair service listed below:

A. Preventative Maintenance

The Town vehicles are routinely driven in short distance; frequent start/stop; and long idle periods. The average annual usage is normally around 10,000 miles for general purposes vehicles.

B. Repairs and Maintenance

Provide service/repairs to all common mechanical and electrical systems as needed.

C. Transport of Vehicles for Service

- Contractor is responsible for transport (pickup and deliver) of vehicles for all preventative and scheduled services from the following location: Town Hall 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189
- For non-scheduled emergency service, courtesy transportation for customer to and from Town facilities and other locations within Town limits.
- For vehicles not drivable, additional towing charge may be billed upon approval of authorized Town staff.

D. Conditions on Required Services

- 24-hour turn-around on common repairs (including brakes, etc.) and routine maintenance.
- Provide adequate inventory on special parts to ensure minimum turn-around on non-common repairs.
- Wash and vacuum vehicle after each service.

E. Repair Order Content and Procedure

The Contractor shall provide repair orders for all services provided containing the following information:

- Repair estimates with anticipated work to be performed, estimated completion time, and estimate cost signed by the Town staff upon pick-up/drop-off. A confirming copy with final cost shall be mailed to Town upon completion, and a billing copy shall be sent to the Town with the monthly statement.
- Actual work/cost above written estimate requires Town approval prior to work start.
- Authorization of work by designated Town's Fleet Coordinator or designee is required for all repair orders.
- Individual vehicle charges shall be submitted on separate repair orders for each service visit. The repair order must include:
 - Date work performed
 - Vehicle and/or license #, make/model
 - Vehicle mileage at time of service/repair
 - Date in/ date out/ time completed
 - Detail type of service, hours, material used, and cost associated with each
 - Subcontracted repair orders containing same information shall
Be attached to contractor repair order.
- The Contractor guarantees and warrants that all material furnished and all services performed under said contract will be free from defects in material and workmanship and will conform to the requirements of this contract for a period of 90 days or 4,000 miles, whichever occurs first. The Contractor shall remedy all such defects at his/her own expense within two (2) working days

after notification by the Town's Fleet Coordinator.

- Warranty and subcontracted repair orders need to be provided by the Contractor. Contractor is prime contractor; however, subcontractors may be used by Contractor. Contractor assumes responsibility for work of subcontractors. The charges for such services to the Town shall be the amount of the subcontractor's invoice for services performed, or the contract price, whichever is less.

F. Hours of Operation

The Town has a number of services that are active on a 24/7 basis and desires the most comprehensive hour coverage possible. Please identify normal business hours and emergency business hours if available.

G. Quarterly Reports of Repairs/Maintenance

The Contractor shall submit a quarterly report listing all repairs and maintenance performed on each vehicle within 30 calendar days at the end of each quarter.

The report shall contain, at a minimum, the following information for each service provided in table format, submit one (1) hard copy and also one (1) copy of an electronic file (excel or access preferred):

- Work order number, vehicle number, and current mileage
- Service order, date and time
- Service completion, date and time
- Vehicle pick-up and return, date and time
- Service provided and costs (breakdown by labor and material)

EVALUATION OF PROPOSALS – SELECTION CRITERIA

Criteria.....Weight

1. Price.....**50%**

Proposers should complete section 13 of the attached agreement, enclose in an opaque envelope, and submit as part of their RFP. Price will be evaluated once the other two criteria listed below are completed.

2. Ability, experience, financial resources, location, availability.....**30%**

History of successfully completing contracts of this type, location of company and ease of

access, meeting projected deadlines and experience in similar work, location, hours of operation, the character, integrity, reputation, judgment and efficiency of the Contractor. The Town may ask to inspect proposer's facilities as part of this evaluation.

3. Responsiveness of the written proposal.....**20%**
 Completeness and clarity of all required submittal information contained in RFP package and any supplemental information provided by Contractor that will demonstrate the quality of services. All addenda must be acknowledged as well.

Total Criteria Weight.....100%

Each proposal will be independently evaluated on Factors 1 through 3.

Below is a list of all Town vehicles that shall be maintained under this bid/contract. Changes to the list may be made at any time such as additional vehicles or replacement vehicles.

YEAR	MAKE	MODEL	VIN #
2009	FORD	ESCAPE (HYBRID)	1FMCU49399KA17883
2009	FORD	ESCAPE (HYBRID)	1FMCU49379KA17882
2008	FORD	PICKUP (F-250 DIESEL)	1FTSX21R78ED85942
2007	CHEVY	TAHOE	1GNFK13077R344346
2007	CHEVY	PICKUP (2500)	1GCHK29K67E506300
2007	CHEVY	PICKUP (1500)	1GCEC14C97Z642875
2007	CHEVY	PICKUP (1500)	1GCEC14C67Z638637
2001	DODGE	PICKUP (2500)	1B7HF13YO1J601283
2000	FORD	CROWN VICTORIA	2FAFP71W8YX102635
1996	DODGE	PICKUP (1500)	1B7HC16X7TS717914
1996	INTL	71 PASS SCHOOL BUS	1HVBDNOTH383207
1996	INTL	71 PASS SCHOOL BUS	1HVBDABNOTH383191
1996	INTL	29 PASS SCHOOL BUS	1HVBBABK5TH383327
1996	INTL	71 PASS SCHOOL BUS	1HVBDABN2TH383189
1996	INTL	29 PASS SCHOOL BUS	1HVBRABK3TH383326

AGREEMENT FOR PROFESSIONAL SERVICES

Vehicle Maintenance and Services

THIS AGREEMENT, made and entered into on the 19 day of Feb 2009 by and between the Town of Cutler Bay, Dade County, Florida, party of the first part (hereinafter called "TOWN"), and Auto Electric, party of the second part (hereinafter called "CONTRACTOR");

RECITALS:

The TOWN wants to engage the CONTRACTOR to perform certain professional services as described in this Agreement in specific accordance with the Contractors Fee Schedule and with SECTION 2, Scope of Services, in this Agreement. The CONTRACTOR wants to provide such Specified Services in connection with the Maintenance and Repair of Cutler Bay Vehicles.

In consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

SECTION 1. DEFINITIONS

- a) Repairs: Shall mean any non-warranty or non-emergency repairs.
- b) Town Vehicle: Shall mean any Town owned or leased vehicle for which the Town is responsible for providing maintenance.
- c) Town: Shall mean the Town of Cutler Bay, Miami-Dade County, Florida.
- d) Town's Representative: The Town's representative for the administration of this agreement shall be the Town Manager or his designee.
- e) Contractor: The company selected to perform commercial Town Vehicle Repair and Maintenance Services, other than warranty repairs or emergency repairs.

SECTION 2. SCOPE OF SERVICES

This AGREEMENT is a franchise to do all commercial Town Vehicle Repair and

Maintenance Services, other than warranty repairs or emergency repairs.

SECTION 3. TERM

- a) The duration of this AGREEMENT shall be three (3) years from the date of signing of the AGREEMENT by all parties.
- b) This AGREEMENT may be extended for one (1) subsequent year by mutual written consent of both parties given ninety (90) days prior to the expiration of the AGREEMENT.

SECTION 4. ASSIGNMENT

This Agreement shall not be assignable by the CONTRACTOR.

SECTION 5. PROHIBITION AGAINST CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement unless approved by the Manager of the Town of Cutler Bay.

SECTION 6. TERMINATION

This Agreement may be terminated by the TOWN upon five (5) days' written notice with or without cause and by the CONTRACTOR upon 30 days' written notice with or without cause. If this Agreement is terminated, the CONTRACTOR shall be paid in accordance with the provisions of SECTION 13 of this contract for all acceptable work performed up to the date of termination.

SECTION 7. LOCATION

The actual repair facility shall be located either within the corporate limits of the Town of Cutler Bay or no further than six (6) miles outside such limits. Timely and efficient access to the maintenance facility by being located closer to the Town may be a consideration in award of this

contract.

SECTION 8. ADMINISTRATION

Any and all forms, records and reports required by this AGREEMENT shall be of a form and nature determined by the TOWN and shall be maintained or provided in whatever manner dictated by the TOWN. Such records as may be required to be maintained by the CONTRACTOR, including repair invoices broken down by, vehicle number, labor and parts charges, shall be open to inspection by the TOWN, without notice, at anytime during normal business hours.

All reports required pursuant to this AGREEMENT shall be maintained by the CONTRACTOR and are subject to inspection for at least one (1) year after the termination date of this AGREEMENT. The service records are to be kept by vehicle number for the duration of the contract with copies provided to the TOWN with each invoice.

SECTION 9. SERVICE AVAILABILITY

The CONTRACTOR shall provide Vehicle Repair Services a minimum of six (6) days a week, from at least 8:00 a.m. to 5:00 p.m. on normal business weekdays and at least 9:00 a.m. to 1:00 p.m. on normal business Saturdays. Specify the hours and days that service is provided.

DAYS OF SERVICE	<u>M-F 7 TO 7 SAT 8-1</u>
HOURS OF SERVICE	<u>12 Hrs.</u>

SECTION 10. INSURANCE REQUIREMENTS

During the term of this AGREEMENT the CONTRACTOR shall be required to maintain the following insurance coverage:

Bodily Injury	\$250,000 each person
Bodily Injury	\$500,000 each accident
Property Damage	\$100,000 each occurrence
Automobile Liability	\$100,000 each person
Bodily Injury	\$300,000 each occurrence
Property Damage (Fire/Theft)	\$100,000 each accident
Workers' Compensation	As required by law employer's liability \$100,000 each employee, each accident and \$100,000 each employee/\$500,000 policy limit for disease.

Completed Operations Coverage \$1,000,000 each occurrence

SECTION 11. APPEALS

The Town Manager or his designee, shall serve as the TOWN'S Representative in all matters concerning the administration of this AGREEMENT. Any disputes concerning the legitimacy of charges under this AGREEMENT may be appealed to the TOWN'S Representative who shall be authorized to resolve them and whose decision shall be final. Nothing in this provision shall preclude any party from appealing any decision of the TOWN'S Representative to a court of competent jurisdiction.

SECTION 12. PERFORMANCE REQUIREMENTS

The CONTRACTOR shall be required to:

- A. Comply with all of the terms and conditions of this AGREEMENT.
- B. Maintain accessibility to the maintenance facility pursuant to the requirements of this AGREEMENT.
- C. Maintain the same level of performance as proposed in the proposal throughout the term of the contract.
- D. Maintain all vehicles per manufacturer's suggested service intervals using only factory recommended parts and products.
- E. Earn and retain their ASE (Automotive Service Excellence) certification.

SECTION 13. FEES

The CONTRACTOR shall agree to bill the TOWN, on a monthly basis detailing the specific services provided, for the collection of all authorized fees allowable under this AGREEMENT. Copies of all signed invoices must be submitted with this bill. The original invoice must be kept on file by the contractor pursuant to SECTION 8.

The CONTRACTOR agrees that the following schedule of fees shall be the maximum amount which CONTRACTOR may charge for Vehicle Repair and Maintenance Services provided by CONTRACTOR as set forth in this AGREEMENT.

CONTRACTOR'S SCHEDULE OF FEES

OIL CHANGE

\$ 14.95

Must include:

- Change the vehicle's oil with required by manufacturer quarts of top quality motor oil*
- Replace the oil filter with top quality filter*
- Inspect the wiper blades and replace, if needed (do not include price of parts)
- Vacuum the interior floors
- Clean the exterior windows
- Lubricate all grease fittings (if needed)
- Check & fill (if needed) brake fluid
- Check & fill (if needed) transmission / transaxle fluid
- Check & fill (if needed) differential and coolant fluid
- Check & fill (if needed) power steering fluid
- Check & fill (if needed) windshield wash fluid
- Check & fill (if needed) battery water
- Check & inflate the tires to proper pressure and condition
- Check all exterior lights

* Both must meet manufacturer recommendations. Specify product details in proposal. This proposal will include all disposal and environmental fees.

OTHER MAINTENANCE (Include any and all shop supply fees & labor costs)

REPLACEMENT OF PVC VALVE

\$ 3.85

REPLACEMENT OF FUEL FILTER

\$ 7.42

REPLACEMENT OF BRAKES/BRAKE PARTS

- Front Slotted Disc Brakes (full: - all parts and labor) \$ 69.95
- Rear Disc Brakes (full: - all parts and labor) \$ 69.95
- Rear Drum Brakes (full: - all parts and labor) \$ 100.00
- Turn Brake Drums (per pair) \$ 8-
- Turn/Cut Rotors (per pair) \$ 8-
- Replace Rotors (per pair; full: - all parts and labor) \$ 80-
- Rebuild Wheel Cylinders (each) \$ 25.50
- Rebuild Master Cylinder \$ 89.-
- Flush Brake Fluid \$ 19.95

REPLACEMENT OF AIR FILTER	\$ <u>10-</u>
RADIATOR FLUSH (Include Fluid)	\$ <u>19.95</u>
AIR CONDITIONING SERVICE (Include 1 lb of Freon)	\$ <u>15-</u>
SERPENTINE BELT REPLACEMENT	\$ <u>29.95</u>
TRANSMISSION (Drain/Replace Fluid/Replace Filter)	\$ <u>24.95</u>
TUNE-UP (Including Plugs) any and all shop fees & labor costs)	
• Specify price when bidding for each:	
Four (4) cylinder	\$ <u>39.95</u>
Six (6) cylinder	\$ <u>49.95</u>
Eight (8) cylinder	\$ <u>59.95</u>
Diesel motors (international engines)	\$ <u>230.-</u>
 BATTERY (HD)- HEAVY DUTY	
• Replacement (Must meet manufacturer AMP specifications for vehicle)	\$ <u>59.95</u>
• On-board diagnostic inspections	\$ <u>19.95</u>
 ALTERNATOR REPLACEMENT	\$ <u>150-</u>
 ALIGNMENTS	
• Front Pair (2 Wheel)	\$ <u>35-</u>
• Rear Pair (2 Wheel)	\$ <u>39.95</u>
• Front and Rear (4 Wheel)	\$ <u>49.95</u>
 SHOCKS	
• Front	\$ <u>92.80</u>
• Rear	\$ <u>92.80</u>
 TIRES	
• Repair (specify type of repair: interior patch or equivalent)	\$ <u>9.95</u>
• Remove & Replace	\$ <u>5-</u>
• Balance	\$ <u>5-</u>
• Rotate (with inspection of brakes)	\$ <u>9.95</u>

• Road repair service for tire repairs/replacement	\$ <u>5-</u>
COMPUTER DIAGNOSTIC ASSESSMENT	\$ <u>19.95</u>
LABOR RATE/HOUR FOR NON-LISTED REPAIRS	\$ <u>67.50</u>
EMERGENCY ROAD SERVICE-DURING NORMAL BUSINESS HOURS	\$ <u>25-</u>
EMERGENCY TOWING CHARGE (Flat Rate)	\$ <u>60-</u>
PERCENTAGE DISCOUNT OFF LIST PRICE OF PARTS	<u>10</u> %

SECTION 14. SERVICE LEVEL

The CONTRACTOR agrees to provide services according to the vehicle manufacturer's recommended service levels.

SECTION 15. SPECIAL SERVICE

Specify any special service provided to expedite the maintenance of repairs of police vehicles such as priority service, pickup and delivery, etc.

We offer Road Service, Pick up & Delivery, Tow Service

SECTION 16. LICENSING

The CONTRACTOR must maintain a current occupational license to conduct a vehicle repair facility in the Town of Cutler Bay or other jurisdiction where the maintenance facility is actually located and comply with all requirements of such license.

SECTION 17. ENTIRE AGREEMENT

This Agreement, together with all pertinent documentation including bid specifications and related materials shall constitute the entire agreement which may only be amended or modified upon written agreement between the parties.

SECTION 18. WARRANTIES OF CONTRACTOR

The CONTRACTOR hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws necessary to perform the Specified Services.

CONTRACTOR:

AUTO Electric Service
8745 SW 129 TER
MIAMI, FL 33176
Phone: (305) 233-2288 Fax: (305) 238-3301

SECTION 14: INDEMNIFICATION

The parties agree that 1% of the total compensation paid to the Contractor for the performance of this agreement shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section and in the Terms and Conditions.

To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from and (b) is caused in whole or in part by any willful and wanton or negligent or gross negligent acts or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

SECTION 15. GOVERNING LAW

The law of the State of Florida shall govern the contract between the Town of Cutler Bay and the successful bidder and any action shall be brought in Miami-Dade County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney

fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year first above written.

CONTRACTOR:

AVTO Electric Service
8745 SW 129 Ter
MIAMI, FL 33176
Phone: 233-8888 Fax: 605-238-3301

By: *Susomo Defino*
Rod Becerra

Attest: _____

TOWN:

TOWN OF CUTLER BAY
Steven J. Alexander, Town Manager
10720 Caribbean Blvd., Suite #105
Cutler Bay, Florida 33189

By: _____

Steven J. Alexander
Town Manager

Attest: _____

Erika Gonzalez-Santamaria
Town Clerk

Campaign Finance Restrictions on Vendors:

Ordinance 06-11; Town Code Chapter 8A. Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor.

Vendors' Campaign Contribution Disclosure:

1. General requirements:

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

2. Disqualification

(A) As per Section 7.6 of the Town Charter, if a Vendor of products or services who directly or through a member of the person's immediate family or through a political action committee or through any other person makes a campaign contribution to a Town candidate and fails to disclose it then he/she/it shall be barred from selling any product or service to the town for a period of two years following the swearing in of the subject elected official.

Cone of Silence

Notwithstanding any other provision of these specifications, the provisions of Town "Cone of Silence" are applicable to this transaction. The entirety of these provisions can be found in the Town's Purchasing Ordinance, Town Ordinance 06-22. The "Cone of Silence," as used herein, means a prohibition on any communication regarding a particular Request for Proposal ("RFP"), Request for Qualification ("RFQ") or bid, between:

A potential vendor, service provider, proposer, bidder, lobbyist, or consultant; and

The Town Council, Town's professional staff including, but not limited to, the Town Manager and his or her staff, any member of the Town's selection or evaluation committee.

The Cone of Silence shall be imposed upon each RFQ, RFP and bid after the advertisement of said RFQ, RFP, or bid. The Cone of Silence shall terminate at the beginning of the Town Council meeting at which time the Town Manager makes his or her written recommendation to the Town Council. However, if the Town Council refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be re-imposed until such time as the Manager makes a subsequent written recommendation.

The Cone of Silence shall not apply to:

- (1) oral communications at pre-bid conferences;
- (2) oral presentations before selection or evaluation committees;
- (3) public presentations made to the Town Council during any duly noticed public meeting;
- (4) communication in writing at any time with any Town employee, unless specifically prohibited by the applicable RFQ, RFP or bid documents. The bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;
- (5) communications regarding a particular RFQ, RFP or bid between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's Purchasing Agent or Town employee designated responsible for administering the procurement process for such RFQ, RFP

or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

- (6) communications with the Town Attorney and his or her staff;
- (7) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;
- (8) any emergency procurement of goods or services pursuant to Town Code;
- (9) responses to the Town's request for clarification or additional information;
- (10) contract negotiations during any duly noticed public meeting;
- (11) communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff are in writing or are made at a duly noticed public meeting.

Please contact the Town Attorney for any questions concerning Cone of Silence compliance.

Violation of the Cone of Silence by a particular bidder or proposer shall render any RFQ award, RFP award or bid award to said bidder or proposer voidable by the Town Council and/or Town Manager.

Lobbyist Registration

Proposers must also comply with all Town Charter sections and Code provisions that pertain to lobbyists, including Section 7.6 of the Town Charter and implementing ordinance(s). Please contact the Town Clerk at (305) 234-4262 for additional information.

[THIS SPACE HAS BEEN LEFT BLANK INTENTIONALLY]

Technical Expertise and Specialized Equipment: As a part of the evaluation of this proposal, the effectiveness of the equipment or techniques being proposed to do this service shall be evaluated by the Town's Representative. Please specify the number of maintenance employees, any special certifications or ratings that they have and any special equipment that is available to service Town Vehicles such as electronic service monitors, diagnostic scanners/computers, front end alignment equipment, etc.

Fuel Analyzer, Charge System, (2) Computer Diagnostic Analyzer, A/C Charging System R134 (3) - Cooling System Flush - TRANS Flush service - Fuel INJECTOR Cleaning Unit - BRAKE Fluid Flush UNIT - Engine oil Flush - Computerize Alignment - LATHE Machine - High Speed BALANCE up to 24" Rims - Milling Machine
(3) ASE certificate Mechanics (5) Apprentice Mechanics
(3) Road Services Vehicles.

References:- All qualified bidders must submit a list of at least three firms, organizations, or major customers to which they have supplied Vehicle Maintenance Services on a regular basis within the past three years. Along with this information should be supplied the name, address and the phone number of each reference listed.

Reference #1: UNITED STATE Postal Service
2250 N.W. 72 Ave
MIAMI, FL. 33152-9891
(305) 470-0200

Reference #2: DEPARTMENT of TRANSPORTATION
DISTRICT Six MAINTENANCE
1000 N.W 111 Ave
MIAMI, FL. 33172
(305) 470-6713

Reference #3: TRULY Nolen
8777 SW 134 ST
MIAMI, FL. 33176
(305) 257-2420

Any other information that is relevant to the selection criteria described in the RFP may be

AUTO ELECTRIC
8745 SW 129 TERRACE
MIAMI, FL 33176
PHONE: (305) 233-2888
FAX: (305) 238-3301
E-MAIL AUTO_SVC@BELLSOUTH.NET

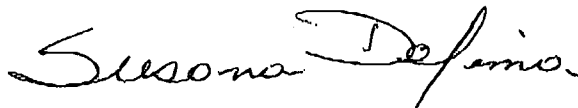
Dear Valued Customer:

Auto Electric has been servicing the South Florida Community and United Post Office vehicles for the past 30 years. We also starting servicing the Department Of Transportation (district six) for Doral and DOT South , Miami-Dade County School Buses, The Pinecrest Village ,and Truly Nolen. We are registered as vendor for the Miami-Dade County.

We know you have many choices today, and we appreciate you choosing Auto Electric Services to meet your vehicle repair needs. Our goal is to make the experience as pleasant, easy and convenient for you as possible. Hopefully, we will achieve that for you, and you will choose Auto Electric for your future Electrical and Mechanical needs.

Sincerely,

Auto Electric Service Inc.

A handwritten signature in cursive script that reads "Susana Delima". The signature is written in black ink and is positioned above the printed name and title.

Susana Delima
Service Manager

attached to this document.

**TOWN OF CUTLER BAY
ANTI-KICKBACK AFFIDAVIT**

STATE OF FLORIDA }
 } SS:
COUNTY OF MIAMI-DADE }

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the Town of Cutler Bay, its elected officials, and Auto Electric Service or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: Susana Defina
Title: Service Manager

Sworn and subscribed before this

19 day of February, 2009

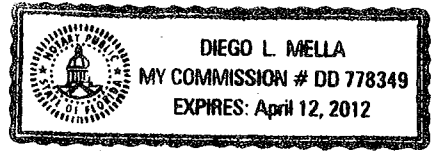
[Signature]

Notary Public, State of Florida

Diego L. Mella

(Printed Name)

My commission expires: 04-12-2012



TOWN OF CUTLER BAY
NON-COLLUSION AFFIDAVIT

State of Florida }

} SS:

County of Miami-Dade

Susana Delima being first duly sworn, deposes and says that:

- a) He/she is the Service Manager, (Owner, Partner, Officer, Representative or Agent) Auto Electric Service, the Proposer that has submitted the attached Proposal;
- b) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- c) Such Proposal is genuine and is not collusive or a sham Proposal;
- d) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices in the attached Proposal or of any other Bidder, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;

The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered

in the presence of:

Karissa Draxten
Witness

Emmeline Rodriguez
Witness

By: Susana Delima

SUSANA DELIMA
(Printed Name)

Service Manager
(Title)

TOWN OF CUTLER BAY
SWORN STATEMENT ON PUBLIC ENTITY CRIMES
SECTION 287.133(3)(a), FLORIDA STATUTES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Town of Cutler Bay

by SUSANA DELIMA, Service Manager
[print individual's name and title]

for AUTO ELECTRIC SERVICE
[print name of entity submitting sworn statement]

whose business address is

8745 SW 129 TER
MIAMI, FL. 33176

and (if applicable) its Federal Employer Identification Number (FEIN) is 651074936

(If the entity has no FEIN, include the Social Security Number of the individual

signing this sworn statement: Susana Delima)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)9g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand than an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

- a. A predecessor or successor of a person convicted of a public entity crime; or
- b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. **[Indicate which statement applies.]**

Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, not any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **[attach a copy of the final order]**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Susana Defina
Signature of Entity Submitting Sworn Statement

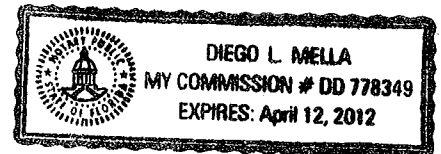
Sworn to and subscribed before me this 19 day of February, 2009.

Personally known _____

OR produced identification Notary Public – State of Florida

Drivers License My commission expires 4-12-2012
(type of identification)

[Signature]
(Printed, typed or stamped Commissioned name notary public)



TAB 3



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: May 20, 2009

Re: **AWARD OF ITB # 09-08: PAVING AND DRAINAGE IMPROVEMENTS – SAGA BAY
DRAINAGE BASINS 1.3 AND 1.4**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT TO PROVIDE FOR PAVING & DRAINAGE IMPROVEMENTS IN THE SAGA BAY DRAINAGE BASINS 1.3 AND 1.4; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED CONTRACTOR TASCO PLUMBING CORPORATION.; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

As a result of the Town opting-out of the Miami-Dade County's Stormwater Utility (Resolution # 07-18), the existing storm drainage structures were all transferred to the Town. The Town's adopted Stormwater Utility Master Plan (Resolution #08-50), has identified several neighborhoods with localized flooding and roadway resurfacing concerns. One of the identified projects to correct the deficiencies is located in the Saga Bay neighborhood (sub-basins 1.3 & 1.4) and will be funded through a State of Florida Department of Environmental Protection (FDEP) appropriation # LP8912.

The intent of this project is to alleviate the existing drainage issues by utilizing a combination of exfiltration trenches and upgrading storm water piping and inlets. Upon completion of the stormwater improvements, the roadways within the project areas will be resurfaced. Special consideration will be made to minimize disruptions to the residents during this project.

The Town prepared contract documents entitled "Saga Bay Drainage Basins 1.3 & 1.4 – Paving and Drainage Improvements" that were publicly advertised and were available for contractors on April 8, 2009. On May 6, 2009 bids were publicly opened and read. A Bid Tabulation Summary Sheet of the responsive bidders is attached for reference.

The apparent low responsive bidder for the contract is Tasco Plumbing Corporation, who submitted a total bid contract amount of \$243,779.00. The ITB was set-up in a Base Bid and Additive Bid format that allows for flexibility in award and construction of the project, and it was



developed as a unit cost project in order to assure that the Town only pays for actual work performed. Per the contract, award will be made to the lowest responsive and responsible bidder, whose qualifications indicate the award will be in the best interest of the Town and whose proposal complies with the requirements of the specifications. As part of the responsibility review the Town also considered previous engagements with the Town, past performance and experience with other contracts, comfort level with the project team and any other criteria deemed relevant by the Town. This is discussed in Paragraph 1.10 (Award of Contract) in the instructions to bidders.

A complete review was performed on the “Lowest & Responsive” bidder: Tasco Plumbing Corporation which, included:

- Contacting all of the provided references, as per ITB # 09-08; and
- Town staff’s facilities inspections, as per ITB # 09-08; and
- Confirmation of “good standing” with the State of Florida Department of Business and Professional Regulations, which included reviewing any registered complaints.

Additionally, the contract is set up as a unit price contract. Therefore, if we choose to do more of one bid item and less of another, there is no additional charge to the Town. Also, if we need to do less work than is outlined in the contract documents, there is no penalty to the Town.

The schedule of this contract is an important element of the project. Therefore, there is a liquidated damages section of the contract that can be enforced if the contractor’s actual construction activities extend beyond the proposed schedule. The liquidated damages are set at \$500 per day.

This item is included in the Town’s Capital Project budget for the current fiscal year.

RECOMMENDATION

Based on Town Staff’s evaluation of the “Lowest & Responsive” bidder, Tasco Plumbing Corporation, it is recommended that the Town Council approve the attached Resolution.



Town of Cutler Bay

Office of the Town Clerk - Ranking Sheet

ITB #09-08 Saga Bay Drainage Basin 1.3 and 1.4

Paving and Drainage Improvements

Bid Submission Date: May 6, 2009 at 2:00 p.m.

RANK	COMPANY	BID AMOUNT
1	Tasco Plumbing	\$ 243,779.00
2	Florida Engineering & Developing	\$ 277,925.00
3	Rock Power Paving	\$ 285,724.00
4	Williams Paving	\$ 286,477.00
5	Ram Tech Construction	\$ 288,040.00
6	A&A Fonte	\$ 289,001.25
7	Maggolc, Inc.	\$ 290,410.00
8	JVA Engineering	\$ 318,122.75
9	Redland Company	\$ 320,955.00
10	Acosta Tractors	\$ 322,419.14
11	Downrite Engineering	\$ 324,758.60
12	Solution Construction	\$ 340,673.90
13	MVRT, Inc.	\$ 342,708.00
14	Gonzalez Paving	\$ 359,879.44
15	SFM Services	\$ 363,819.00
16	Marks Brothers	\$ 380,315.00
17	Pabon Engineering, Inc.	\$ 382,280.00
18	Miguel Lopez Jr.	\$ 385,269.00
19	Solo Construction Corp.	\$ 406,900.00
20	Envirowaste Services Group	\$ 422,019.00
21	Master Excavators	\$ 423,672.00
22	Pavex Corporation d/b/a Ranger Construction - So	\$ 450,702.00
23	H&J Asphalt	\$ 451,445.50
24	H&R Paving	\$ 497,975.00
25	Community Asphalt Corp.	\$ 555,151.00

Bid's were opened at 2:00 p.m.

The following staff were witnesses to the bid opening:

Yani Ramos, Administrative Services Director

Erin O'Donnell, Assistant to the Town Clerk

Rafael Casals, Public Works Director

Sandra Cuervo, Building Division Manager

Heather Spencer, Kimley-Horn and Associates

Respectfully Submitted By:

Erika Santamaria, CMC, Town Clerk

RESOLUTION NO. 09-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT TO PROVIDE FOR PAVING & DRAINAGE IMPROVEMENTS IN THE SAGA BAY AREA; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED CONTRACTOR TASCO PLUMBING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay's (the "Town") adopted 2008-09 fiscal year Stormwater Utility Fund budget includes funding obtained from the Department of Environmental Protection (DEP) – LP8912 for stormwater drainage improvement projects; and

WHEREAS, the Town Council places a high priority of capturing and treating existing stormwater runoff pollutants within the Town's Stormwater system; and

WHEREAS, the Saga Bay drainage basins 1.3 and 1.4 area has been identified as a "priority" area in the Stormwater Utility Master Plan, which was adopted by Town Resolution Number 08-50; and

WHEREAS, the Town Council authorized the issuance of a Invitation to Bid (ITB) 09-08 for Saga Bay Drainage Basins 1.3 and 1.4 Paving & Drainage Improvements; and

WHEREAS, the ITB resulted in twenty-five (25) bids being received prior to the May 6, 2009 deadline; and

WHEREAS, pursuant to the ITB competitive selection process utilized by the Town and the recommendation of the Town Manager, the Town Council desires to utilize the services of first ranked firm, Tasco Plumbing (the "Contractor"), to provide paving & drainage improvements in the Saga Bay area; and

WHEREAS, should the negotiations be unsuccessful with the Contractor fail, the Town Council desires to obtain the services of Florida Engineering & Developing (the "Alternative Contractor") as the second-ranked firm; and

WHEREAS, the Town Attorney's Office has reviewed the terms of the agreement with Contractor or Alternative Contractor, attached as Exhibit "A", and has determined that it is legally sufficient; and

WHEREAS, the Town Manager has determined in accordance with Section 3.10 of the Town Charter and the Town purchasing ordinance that there is a sufficient unencumbered budget appropriation within the department to pay for this agreement, and

the Town Manager has made a written recommendation to the Council for its approval; and

WHEREAS, the Town finds that this Resolution will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, THAT:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of the Agreement. The Town Council hereby approves the agreement with the first-ranked firm, Tasco Plumbing, and in the alternative with the second-ranked firm, Florida Engineering & Developing, for paving & drainage improvements in the Saga Bay area, which incorporates Invitation to Bid 09-08 and associated documents, in substantially the form attached hereto as Exhibit “A” (the “Agreement”).

Section 3. Town Manager Authorized. The Town Manager is authorized, on behalf of the Town, to negotiate and execute the Agreement for paving and drainage with the first-ranked firm, Tasco Plumbing for paving & drainage improvements in the Saga Bay area, in substantially the form attached hereto as Exhibit “A”. In the event the Town Manager is unable to execute a contract in substantially the form attached hereto with Tasco Plumbing then the Town Manager may negotiate and execute the Agreement with Florida Engineering & Developing as the second-ranked firm. The Town Manager is authorized to execute the Agreement without further Town Council action and once approved by the Town Attorney as to form and legal sufficiency.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND

LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

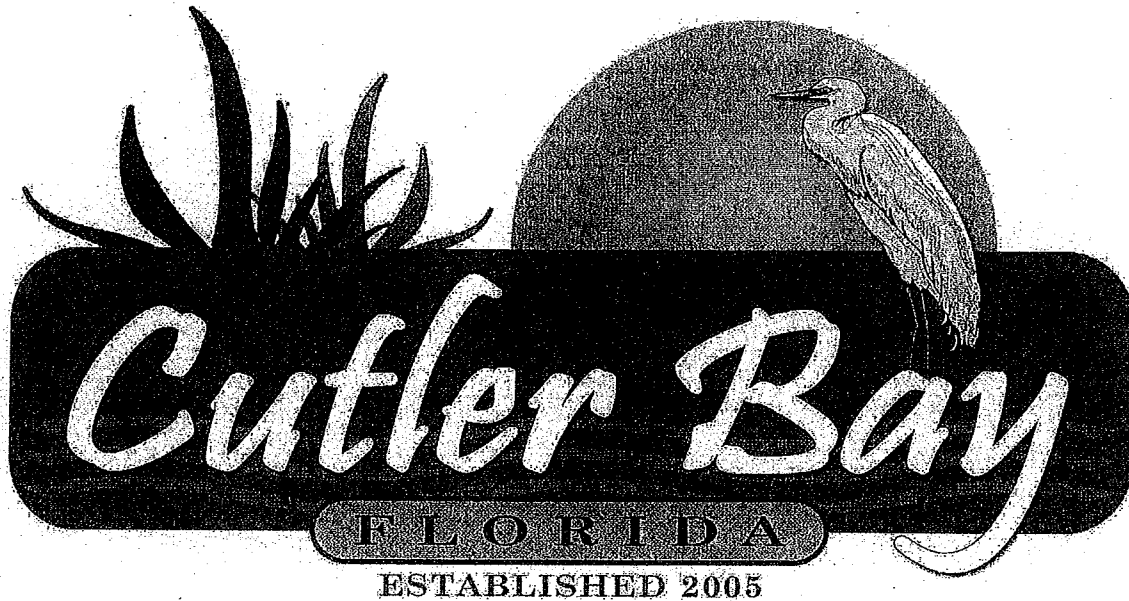
WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____
Vice Mayor Edward P. MacDougall _____
Councilmember Peggy R. Bell _____
Councilmember Timothy J. Meerbott _____
Councilmember Ernest N. Sochin _____

**TOWN OF CUTLER BAY
INVITATION TO BID
09-08**



**SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS**

**SUBMITTAL DATE: May 6, 2009
TIME: 2:00 PM**

INVITATION TO BID
09-08
SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS
TOWN OF CUTLER BAY

The Town of Cutler Bay is requesting bids from qualified firms to provide Roadway and Drainage Improvements for the Town of Cutler Bay. Interested firms should visit the Town's website at www.cutlerbay-fl.gov to obtain the Invitation to Bid package. Packages may also be picked up during normal business hours at the office of the Town Clerk, Erika Gonzalez-Santamaria, located at:

TOWN OF CUTLER BAY
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

A pre-bid meeting will be held on April 29, 2009 at 2:00 PM in the Town Hall Conference Room. Sealed submittals including one (1) original and four (4) copies of the submittals must be received no later than 2:00 PM on May 6, 2009 and be clearly marked on the outside, "ITB 09-08 Saga Bay Drainage Basins 1.3 and 1.4 Paving and Drainage Improvements", by Erika Gonzalez-Santamaria, Town Clerk, Town of Cutler Bay, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida, 33189. Late submittals and electronic submittals will not be accepted.

Pursuant to Town Code, public notice is hereby given that a "Cone of Silence" is imposed concerning the Town's competitive purchasing process, which generally prohibits communications concerning the ITB from the time of advertisement of the ITB until the Town Council meeting at which the Council considers the Town Manager's recommendation to the Town Council concerning the competitive purchase transaction. Please see the detailed specifications for the public solicitation for services for a statement fully disclosing the requirements of the "Cone of Silence".

Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor. Please see the detailed specifications of this solicitation for further details.

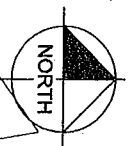
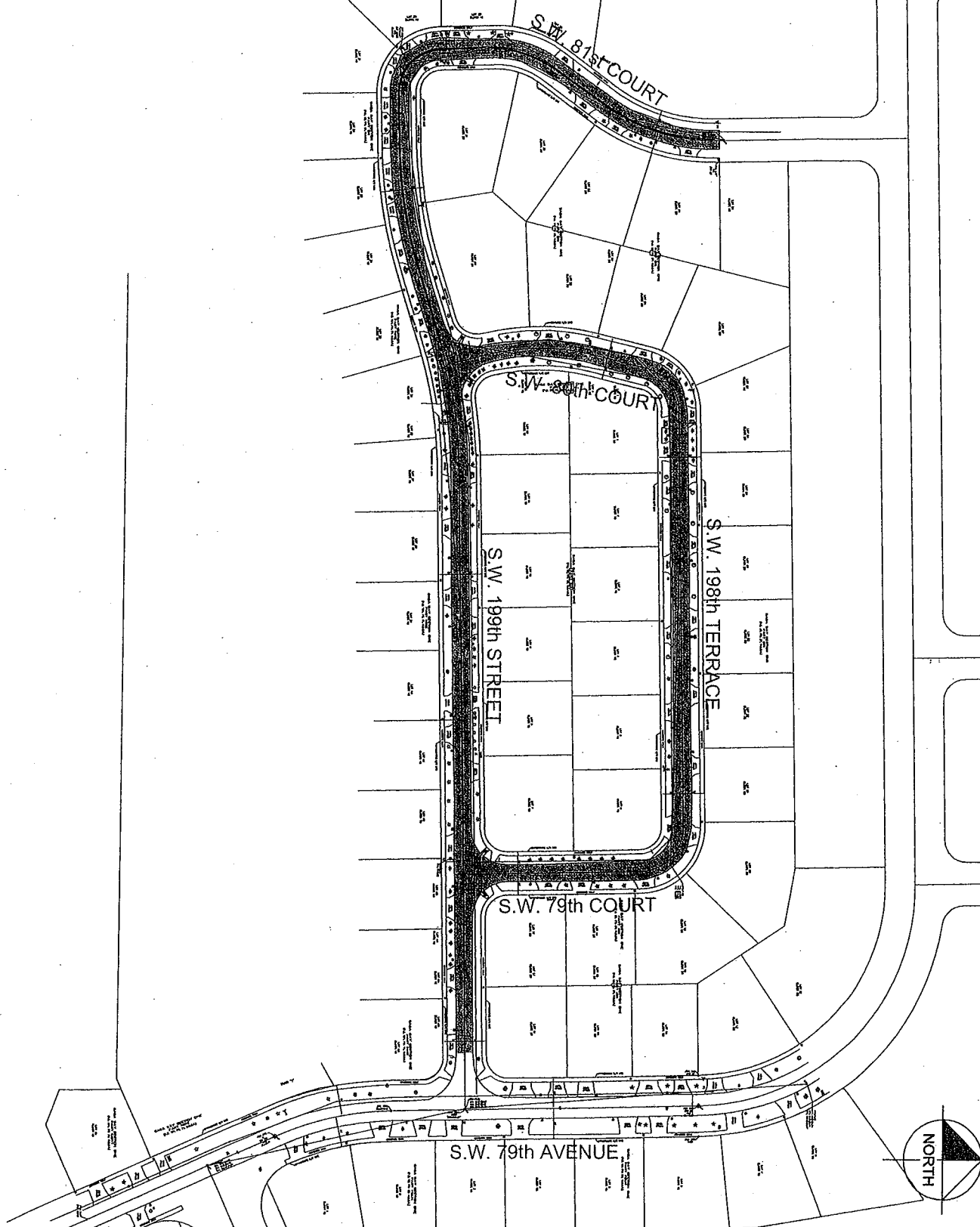
The Town of Cutler Bay reserves the right to accept or reject any and/or all bids or parts of bids, to workshop or negotiate any and all bids, to waive irregularities, and to request re-bids on the required materials or services.


Steven J. Alexander
Town Manager



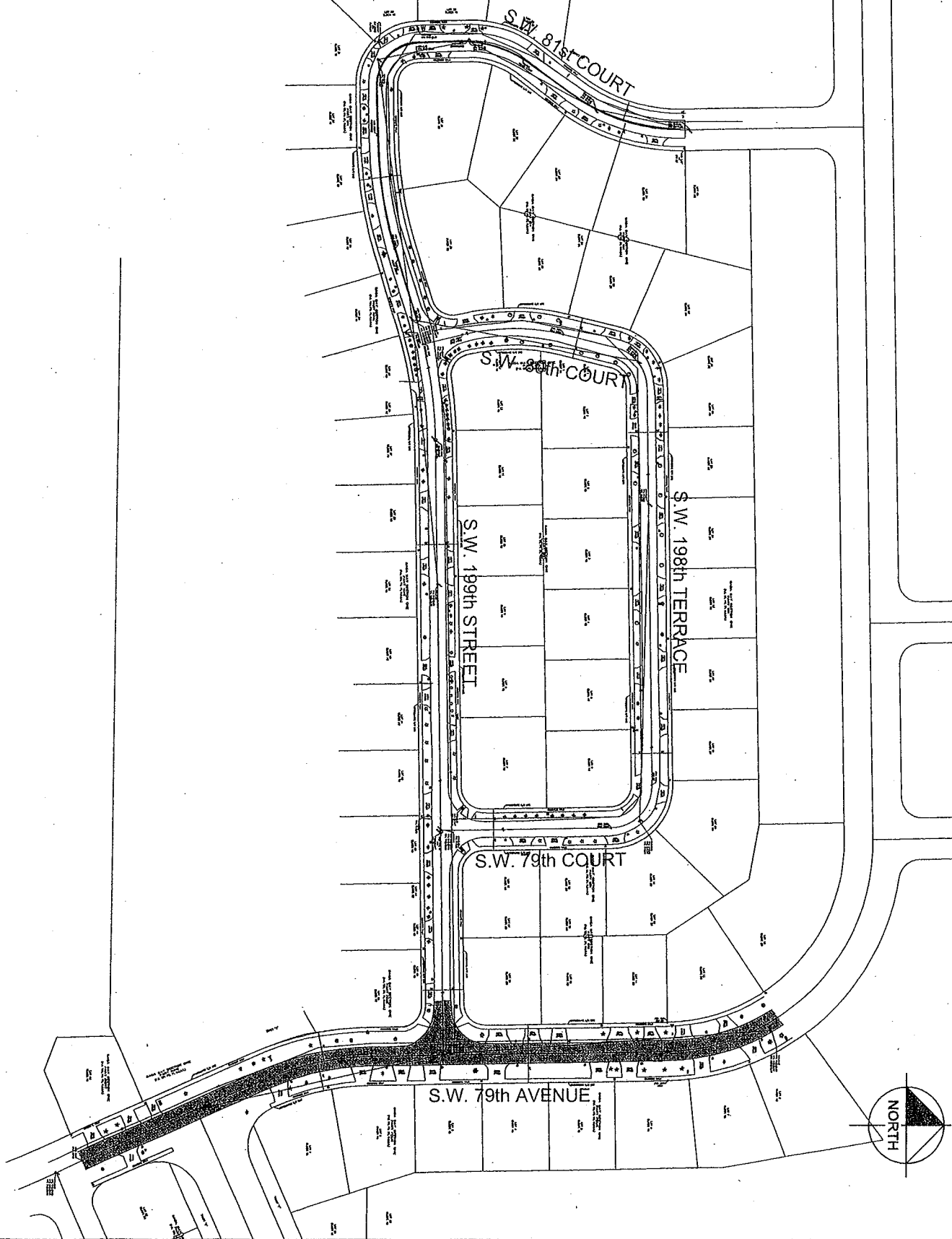
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ITB 09-08


This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



SHEET NUMBER EX-1	TOWN OF CUTLER BAY SAGA BAY DRAINAGE BASINS 1.3 & 1.4 LIMITS OF BASE BID	SCALE AS NOTED DESIGNED BY TJW DRAWN BY TJW CHECKED BY HS	DESIGN ENGINEER: HEATHER SPENCER FLORIDA P.E. LICENSE NUMBER: 59511 DATE:	 Kimley-Horn and Associates, Inc. © 2009 KIMLEY-HORN AND ASSOCIATES, INC. 3200 NW 33rd Avenue, Suite 109, Fort Lauderdale, FL 33309 PHONE (954) 535-5100 FAX (954) 739-2247 WWW.KIMLEY-HORN.COM CA 00000696
	DATE 02-01-09	PROJECT NO. 043145006	PROJECT NO. 043145006	
	PROJECT NO. 043145006	PROJECT NO. 043145006	PROJECT NO. 043145006	
	PROJECT NO. 043145006	PROJECT NO. 043145006	PROJECT NO. 043145006	

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adoption by Kimley-Horn and Associates, Inc. shall be a liability to Kimley-Horn and Associates, Inc.



EX-2 SHEET NUMBER	DATE 02-01-09	TOWN OF CUTLER BAY SAGA BAY DRAINAGE BASINS 1.3 & 1.4 LIMITS OF ADDITIVE BID	SCALE AS NOTED DESIGNED BY TJW DRAWN BY TJW CHECKED BY HS	DESIGN ENGINEER: HEATHER SPENCER FLORIDA P.E. LICENSE NUMBER: 59511	 © 2009 KIMLEY-HORN AND ASSOCIATES, INC. 6200 NW 33rd Avenue, Suite 109, Fort Lauderdale, FL 33309 PHONE (954) 535-5100 FAX (954) 739-2247 WWW.KIMLEY-HORN.COM CA 00000696
	PROJECT NO. 043145006				
	DATE 02-01-09				
	PROJECT NO. 043145006				

TOWN OF CUTLER BAY

SECTION 4

PROPOSAL/BID FORM

SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS

Proposal of Tasco Plumbing Corporation
(name)
301 E. 10th Avenue, Hialeah, FL 33010
(address)

to furnish all materials, equipment, and labor and to perform all work in accordance with the Contract Documents for:

SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS ("THE PROJECT")

TO: Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189
Attention: Town Clerk

The undersigned, as Bidder, hereby declares that the only person or persons interested in the proposal, as principal or principals, is or are named herein and that no other person than herein mentioned has any interests in the Proposal of the contract to which the Work pertains; that this Proposal is made without connection or arrangement with any other person, company, or parties making Bids or Proposals and that the Proposal is in all respects fair and made in good faith without collusion or fraud.

The Bidder further declares that he or she has examined the geographic location and sites of the Work; that he has made sufficient investigations to fully satisfy himself that such sites are suitable for this Work; and he assumes full responsibility therefore; that he has examined the specifications for the Work and from his own experience or from professional advice that the specifications are sufficient for the Work to be done and he has examined the other Contract Documents relating thereto, including the Instructions to Bidders, the Contract, Proposal/Bid Form, Detailed Scope of Work/Specifications, Construction Plans, Qualification Statement, Public Entity Crime Form, and Insurance requirements and he has read all addenda prior to the opening of Bids, and that he has satisfied himself fully, relative to all matters and conditions with respect to the Work to which this Proposal pertains.

This project includes an Additive Bid Form that reflects estimated quantities for additional work on roadway sections not included in the Base Bid. The Base Bid and Additive Bid items are defined below.

The Bidder proposes and agrees, if this Proposal is accepted, to timely execute the Contract with the Town in the form attached and to furnish all necessary materials, all equipment, all necessary machinery, tools, apparatus, means of transportation, and labor necessary to complete the Work specified in the Proposal and the Contract, and called for by the specifications and in the manner specified and to timely submit all required bonds and insurance certificates.

NOTE: THIS SCHEDULE OF BID ITEMS IS MERELY ILLUSTRATIVE OF THE MINIMUM AMOUNT/QUANTITY OF WORK TO BE PERFORMED UNDER THE CONTRACT. IN THE CASE OF ANY CONFLICT BETWEEN THIS SCHEDULE OF BID ITEMS AND THE DETAILED SPECIFICATIONS, THE DETAILED SPECIFICATIONS WILL PREVAIL.

The Bidder further proposes and agrees to comply in all respects with the time limits for commencement and completion of the Work as stated in the contract form.

The Bidder agrees to execute a contract and furnish the executed contract, all required bonds, insurance certificates, and other required information to Town within ten (10) ten calendar days after written notice of the award of contract. Failure on the part of the Bidder to timely comply with this provision shall give Town all rights and remedies set forth in the Instructions to Bidders.

The undersigned agrees to accept as full compensation therefore the total of the lump sum prices and extended unit prices items named in the following schedule. It is understood that the unit prices quoted or established for a particular item are to be used for computing the amount to be paid to the Contractor, based on the Work actually performed as determined by the contract and the Town. However, in utilizing the schedule, the Bidder agrees that in no event shall compensation paid to the Bidder under the contract exceed the dollar amount of the Bidder's proposal amount, as set forth in the attached proposal form.

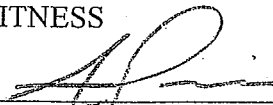
It is intended that all Work to be performed under this Proposal shall commence approximately 30 days after contract execution.

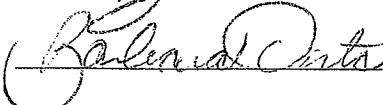
In no event shall Town be obligated to pay for work not performed or materials not furnished.

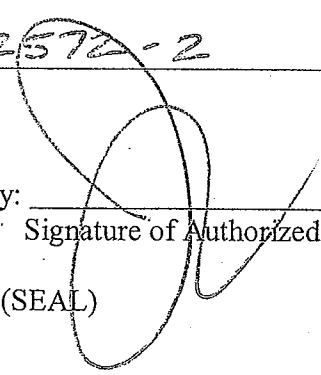
Bidder's Certificate of Competency No. CFC 057030

Bidder's Occupational License No. 402572-2

WITNESS





By: 

Signature of Authorized Agent

(SEAL)

PROPOSAL/BID FORM

The following Bid Proposal is presented to assist the Town in evaluating the Bid. The Bid Amounts will include all items described in the Bid Documents (Detailed Specifications). Payment shall be made on the basis of Work actually performed and completed.

The Base Bid Amount includes all work on the following roadway sections:

- S.W. 79th, 80th, and 81st Court
- S.W. 198th Terrace
- S.W. 199th Street

BASE BID AMOUNT \$ 159,814.⁰⁰

BASE BID AMOUNT (IN WORDS) One hundred fifty nine thousand, eight hundred fourteen dollars and zero cents

The Additive Bid Amount includes all work on the remaining roadway sections not included as part of the Base Bid Amount:

- S.W. 79th Avenue

ADDITIVE BID AMOUNT \$ 83,965.⁰⁰

ADDITIVE BID AMOUNT (IN WORDS) Eighty three thousand, nine hundred sixty five dollars and zero cents

If the Additive Bid is not awarded as part of the initial contract, the Contractor is required to maintain the validity of the Additive Bid unit prices for a period of four (4) months from the Notice to Proceed date.

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT \$ 243,779.⁰⁰

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT (IN WORDS) Two hundred forty three thousand, seven hundred seventy nine dollars and zero cents

The following two (2) exhibits are general illustrations of the proposed Base Bid and Additive Bid roadway sections for reference.

Taxpayer Identification Number: 65. 0775125

BIDDER: TASCO Plumbing Corporation
(Company Name)

[Signature]
(Signature of Authorized Representative)

Javier Cruz VP.
(Printed Name and Title)

301 E. 10th Avenue, Hialeah, FL 33010
(Company Address)

305. 455. 1377
(Company Phone Number)

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BASE BID FORM

The following Base Bid Form is presented to assist the Town in evaluating the Bid. This Base Bid Form reflects estimated quantities for the Base Bid roadway sections as described above. After award, the Town reserves the right to modify estimated quantities subject to the unit price, and eliminate line items if necessary. In the event of discrepancy or approved quantity change, the Unit Price for each item will govern. Payment shall be made for the items listed on the Bid Form on the basis of the Work actually performed and completed.

<u>Bid Item No.</u>	<u>DESCRIPTION</u>	<u>Estimated Quantity</u>	<u>UNIT</u>	<u>Unit Price</u>	<u>Value</u>
101-1	Mobilization	1	EA	2,000 ⁰⁰	2,000 ⁰⁰
102-1	Maintenance of Traffic	1	EA	1,150 ⁰⁰	1,150 ⁰⁰
104-10	Baled Hay or Straw or Filter Fabric Inlet Protection - Per Inlet	9	EA	11. ⁰⁰	99. ⁰⁰
110-1	Clearing and Grubbing	1	LS	2,350 ⁰⁰	2,350 ⁰⁰
331-72	Type S-3 Asphaltic Concrete Surface Course	7,000	SY	5.70	39,900 ⁰⁰
425-1	Inlets (Ditch Bottom - Type C)	1	EA	1,400 ⁰⁰	1,400 ⁰⁰
425-2	Manholes (Type P-7)	7	EA	1,550. ⁰⁰	10,850 ⁰⁰
425-3	Control Structure Inlet	3	EA	2,385 ⁰⁰	7,155. ⁰⁰
425-6	Adjusting Valve Boxes/ Manholes	10	EA	180 ⁰⁰	1,800 ⁰⁰
430-99	Polyethylene Pipe (15" Pipe)	120	LF	30 ⁰⁰	3,600 ⁰⁰
443-70	French Drain (15" Pipe)	710	LF	78 ⁰⁰	55,380 ⁰⁰
524-1	Concrete Aprons	40	SY	37 ⁰⁰	1,480 ⁰⁰
711-1	Signing and Pavement Markings	1	LS	1,250 ⁰⁰	1,250 ⁰⁰
737-71	Advanced utility Exploration (soft Digs)	4	EA	150 ⁰⁰	600 ⁰⁰
SR-1	Swale Restoration	1	LS	800 ⁰⁰	800 ⁰⁰
A-1	Allowances	1	LS	\$30,000	\$30,000

BASE BID AMOUNT \$ 159,314.⁰⁰

BASE BID AMOUNT (IN WORDS) One hundred fifty nine thousand, eight hundred fourteen dollars and zero cents

Bid Item Notes:

1. Bid Item 101-1 is a lump sum pay item for all mobilization costs and also includes the construction of two (2) project signs that shall be displayed at approaches to the project area. The intent is that the signs will be freestanding. The sign shall display on both sides the project name, Town Logo, elected officials, engineer, and contact information. A detail of the sign is included in the plans. Shop drawings must be submitted for approval prior to ordering the projects signs. Photos of the actual project signs must be submitted for approval prior to installation of the project signs.
2. Bid Item 102-1 is a lump sum pay item for a Maintenance of Traffic and includes all pedestrian access maintenance. All crosswalks and sidewalks shall remain open and free of obstructions. Temporary painting for roadways and crosswalks shall be maintained throughout the project.
3. Bid Item 110-1 is a lump sum pay item that includes the removal and disposal of all existing asphalt/concrete pavement and soil/planting as required for the project.
4. Bid Item 331-72 includes all costs associated with resurfacing the entire project area upon completion of the entire trench/pavement restoration phase.
5. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
6. Bid Items 443-70 and 430-99 includes all costs associated with the trench excavation, protection of trench, management of excavated material, trench backfill and compaction, testing, and asphalt restoration per the plans and details.
7. Bid Item 524-1 includes all costs associated with installing concrete aprons at new and existing catch basins. This bid item shall also include costs associated with retaining walls if required by adjacent grades.
8. Bid Items 425-1, 425-2, 425-3 and 425-4 includes all costs associated with installing inlets and manholes, modifying/core drilling/removing existing inlets, and all drainage pipe connections per the plans.
9. Bid Item 737-71 includes all necessary advanced explorations to verify and determine existing pipe invert elevations, material, and locations where conflicts with the proposed drainage system may occur (soft digs). Work shall also include verification and determination of interior dimensions and elevations (including pipe inverts) of any existing affected drainage structure. If a conflict is determined or a discrepancy with the plans is found, the Contractor is to notify the Engineer and provide all pertinent field information to assist the resolution of the conflict. This work is to be carried out in advance of construction.
10. Bid Item SR-1 is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons (concrete pavers), mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.

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ADDITIVE BID FORM

The following Additive Bid Form is presented to assist the Town in evaluating the Bid. This Additive Bid Form reflects estimated quantities for additional work on roadway sections not included in the Base Bid as described above. After award, the Town reserves the right to modify estimated quantities subject to the unit price, and eliminate some or all line items if necessary. In the event of discrepancy or approved quantity change, the Unit Price for each item will govern. Payment shall be made for the items listed on the Bid Form on the basis of the Work actually performed and completed.

<u>Bid Item No.</u>	<u>DESCRIPTION</u>	<u>Estimated Quantity</u>	<u>UNIT</u>	<u>Unit Price</u>	<u>Value</u>
101-1	Mobilization	1	EA	400 ⁰⁰	400 ⁰⁰
102-1	Maintenance of Traffic	1	EA	150 ⁰⁰	150 ⁰⁰
104-10	Baled Hay or Straw or Filter Fabric Inlet Protection – Per Inlet	5	EA	10 ⁰⁰	50 ⁰⁰
110-1	Clearing and Grubbing	1	LS	1400 ⁰⁰	1400 ⁰⁰
331-72	Type S-3 Asphaltic Concrete Surface Course	2500	SY	5.70	14,250 ⁰⁰
425-1	Inlets (Ditch Bottom – Type C)	4	EA	1,340 ⁰⁰	5,360 ⁰⁰
425-2	Manholes (Type P-7)	3	EA	1,575 ⁰⁰	4,725 ⁰⁰
425-3	Control Structure Inlet	1	EA	2,400 ⁰⁰	2,400 ⁰⁰
425-6	Adjusting Valve Boxes/ Manholes	4	EA	145 ⁰⁰	580 ⁰⁰
430-99	Polyethylene Pipe (15" Pipe)	210	LF	30 ⁰⁰	6,300 ⁰⁰
443-70	French Drain (15" Pipe)	200	LF	82. ⁰⁰	16,400 ⁰⁰
524-1	Concrete Aprons	15	SY	40 ⁰⁰	600 ⁰⁰
711-1	Signing and Pavement Markings	1	LS	250 ⁰⁰	250 ⁰⁰
737-71	Advanced utility Exploration (soft Digs)	4	EA	150 ⁰⁰	600 ⁰⁰
SR-1	Swale Restoration	1	LS	500 ⁰⁰	500 ⁰⁰
A-1	Allowances	1	LS	\$30,000	\$30,000

ADDITIVE BID AMOUNT \$ 83,965.⁰⁰

ADDITIVE BID AMOUNT (IN WORDS) Eighty three thousand, nine hundred sixty five dollars and zero cents

If the Additive Bid is not awarded as part of the initial contract, the Contractor is required to maintain the validity of the Additive Bid unit prices for a period of four (4) months from the Notice to Proceed date.

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT \$ 243,779.00

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT (IN WORDS) Two hundred forty three thousand, seven hundred seventy nine dollars and zero cents

Bid Item Notes:

1. Bid Item 101-1 is a lump sum pay item for all mobilization costs and also includes the construction of two (2) project signs that shall be displayed at approaches to the project area. The intent is that the signs will be freestanding. The sign shall display on both sides the project name, Town Logo, elected officials, engineer, and contact information. A detail of the sign is included in the plans. Shop drawings must be submitted for approval prior to ordering the projects signs. Photos of the actual project signs must be submitted for approval prior to installation of the project signs.
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3. Bid Item 110-1 is a lump sum pay item that includes the removal and disposal of all existing asphalt/concrete pavement and soil/planting as required for the project.
4. Bid Item 331-72 includes all costs associated with resurfacing the entire project area upon completion of the entire trench/pavement restoration phase.
5. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
6. Bid Items 443-70 and 430-99 includes all costs associated with the trench excavation, protection of trench, management of excavated material, trench backfill and compaction, testing, and asphalt restoration per the plans and details.
7. Bid Item 524-1 includes all costs associated with installing concrete aprons at new and existing catch basins. This bid item shall also include costs associated with retaining walls if required by adjacent grades.
8. Bid Items 425-1, 425-2 and 425-4 includes all costs associated with installing inlets and manholes, modifying/core drilling existing inlets, and all drainage pipe connections per the plans.
9. Bid Item 737-71 includes all necessary advanced explorations to verify and determine existing pipe invert elevations, material, and locations where conflicts with the proposed drainage system may occur (soft digs). Work shall also include verification and determination of interior dimensions and elevations (including pipe inverts) of any existing affected drainage structure. If a conflict is determined or a discrepancy with the plans is found, the Contractor is to notify the Engineer and provide all pertinent field information to assist the resolution of the conflict. This work is to be carried out in advance of construction.
10. Bid Item SR-1 is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.

TRENCH SAFETY

Bidder acknowledges that included in the various items of the Bid and in the Total Bid Price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Fla.) effective October 1, 1990. The Bidder identifies the costs included in the Total Bid Price to be summarized below.

	TRENCH SAFETY MEASURE (DESCRIPTION)	UNITS OF MEASURE (LF, SY)	UNIT (QUANTITY)	UNIT COST	EXTENDED COST
A.	<u>Trench box</u>	<u>LF LF</u>	<u>760</u>	<u>\$2.00</u>	<u>\$1,520</u>
B.	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
C.	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Failure to complete the above shall result in the Bid being declared non-responsive.

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Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we **Tasco Engineering**
301 E. 10th Avenue, Hialeah, FL 33010

as Principal, hereinafter called the Principal, and **Western Surety Company**
P.O. Box 5077, Sioux Falls, SD 57117-5077

a corporation duly organized under the laws of the State of **South Dakota**

as Surety, hereinafter called the Surety, are held and firmly bound unto **Town of Cutler Bay, 10720 Caribbean Blvd, Suite 105, Cutler Bay, FL 33189**

as Obligee, hereinafter call the Obligee, in the sum of **Five Percent of Amount Bid (5%)**

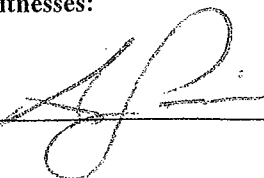
for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has submitted a bid for **Saga Bay Drainage Basins 1.3 and 1.4.**

NOW, THEREFORE, if the Obligee shall accept the bid of the principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed May 6, 2009.

Witnesses:



Tasco Engineering

(Seal)

By: 

Western Surety Company

(Seal)



By: 

**Shawn A. Burton, Attorney-In-Fact and
Florida Resident Agent**

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Gerald J Arch, Shawn Alan Burton, James F Murphy, Joanne M Mursell, Individually

of Fort Lauderdale, FL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 13th day of May, 2008.



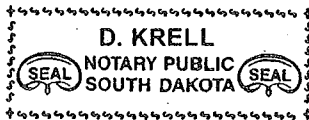
WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

State of South Dakota }
County of Minnehaha } ss

On this 13th day of May, 2008, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
November 30, 2012



D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 6th day of May, 2009.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

TOWN OF CUTLER BAY

SECTION 3

CONTRACT BETWEEN OWNER AND CONTRACTOR

THIS CONTRACT is dated as of the 6th day of May in the year 2009 (which shall be the Effective Date of the Contract) by and between the Town of Cutler Bay (hereinafter called "OWNER" or "TOWN") and Tasco Plumbing Corporation (hereinafter called "CONTRACTOR").

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK. CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Provide labor and equipment required to construct roadway and drainage improvements within the Sage Bay Drainage Basins 1.3 and 1.4 area located in the Town of Cutler Bay. Work shall include but not be limited to the installation of catch basins, manholes, pipes, exfiltration trench, stabilized subgrade, limerock, asphalt, striping, manholes and utility cover adjustments, sodding/swale restoration, and driveway restoration. Utilization of these services will require close coordination with the Town and Engineer.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

TOWN OF CUTLER BAY

SAGA BAY DRAINAGE BASINS 1.3 AND 1.4

PAVING AND DRAINAGE IMPROVEMENTS ("THE PROJECT")

Article 2. ENGINEER. The Project has been designed by the following:

ENGINEER

Kimley-Horn and Associates, Inc.
5200 N.W. 33rd Avenue, Suite 109
Fort Lauderdale, FL 33309

- 1.24. **EXAMINATION OF BIDDER'S FACILITIES** - The Town as part of their evaluation may perform an examination of the Bidder's facilities. The Town Manager or a delegate of his appointment, as part of the evaluation, may perform this examination.

The term facilities as used in this Solicitation shall include, but shall not be limited to, all properties operated by the Bidder, all equipment used in the performance of business by the Bidder, and/or any other evidence, tangible or intangible, that the Town may deem necessary to substantiate the technical and other qualifications, and the abilities of the Bidder to perform the Services.

The examination shall include, but shall not be limited to, appearance and cleanliness of facilities, appearance and cleanliness of equipment, "road worthiness" of vehicles, appearance and visibility of all signage on vehicles, and possession and distribution of mandatory equipment. Vehicles shall be examined for compliance with State of Florida Statutes, as well as applicable County and Town Ordinances. Additionally, examination may include verification of some of the (physical) minimum requirements for Bidders. Additionally, the Town reserves the right to perform such examinations on the Successful Bidder as often as it deems necessary, to ensure proper performance of the proposed Contract.

- 1.25 **ALLOWANCES** – Included in the contract sum is an allocation account for unforeseen conditions, potential construction changes and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town in accordance with the contract documents.

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who is hereinafter called "ENGINEER" and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

- 3.1 If awarded the Base Bid Work, the work will be substantially completed within 90 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 120 calendar days after the date when the Contract Time commences to run.
- 3.2 If awarded the Base Bid and Additive Bid Work, the Base Bid and Additive Bid Work will be substantially completed within 150 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 180 calendar days after the date when the Contract Time commences to run.
- 3.3 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Contract and that OWNER will suffer financial loss and other damages if the Work is not substantially or finally complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially or finally complete on time. CONTRACTOR acknowledges and agrees that the actual delay damages which OWNER will suffer in the event of delay in achieving Substantial Completion or Final Completion of the Work are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair and reasonable estimate of the delay damages which the OWNER is expected to suffer in the event of such delay. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree, that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER One Thousand and 00/100 dollars (\$1,000.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion until the Work is substantially complete. Liquidated damages shall be deducted from the CONTRACTOR's Applications for Payment. However, if at the time of the CONTRACTOR's Final Application for Payment, CONTRACTOR is owed insufficient amounts to fully cover the deduction for liquidated damages, then CONTRACTOR shall pay any amount due within 10 days of written demand by OWNER.

Article 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents and the Schedule of Values provided for payment request purposes in current funds as follows:

Contract Price \$ _____

Contract Price (in words) _____

- 4.2 Included in the Agreement Sum is an allowance account of \$30,000.00 for the Base Bid Form and an allowance account of \$30,000.00 for the Additive Bid Form for unforeseen conditions, potential construction changes and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town Manager in accordance with the Contract Documents. Money may only be taken from this account at the prior approval of the Engineer and pursuant to any procedures outlined by the Town Manager.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14. of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or before the 28th day of each month during construction as provided below. The Application for Payment shall be in AIA format. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided in paragraph 14.01 of the General Conditions and the requirements of the Contract Documents.
- 5.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to: 90% of the Work completed and 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.
- 5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions.
- 5.2. Final Payment. Upon Final Completion and acceptance of the Work in accordance with paragraph 14.07.B.1 of the General Conditions, OWNER shall pay the remainder

of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.B.1.

Article 6. INTEREST. Not Applicable

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into the Contract, CONTRACTOR makes the following representations:

- 7.1. CONTRACTOR has thoroughly and to its full satisfaction familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. CONTRACTOR has: (a) examined the Contract Documents, Project Specifications and Drawings thoroughly to its full satisfaction and has undertaken the responsibility to determine, within the scope of CONTRACTOR's competence as a licensed General Contractor, that the Project Specifications and Drawings are fit and proper for the performance of the Work and to the best of CONTRACTOR's knowledge are: (i) free from material errors, omissions, and/or inconsistencies; and (ii) are in compliance with applicable laws, statutes, building codes, ordinances, rules and regulations, recognizing however, that CONTRACTOR is not responsible for the design of the Project; (b) visited the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work; (c) examined the Project Site to its full satisfaction, including any existing work or improvements in place, and has determined that the same are fit and proper to receive the Work in their present condition and CONTRACTOR waives all claims that same are not in accordance with all data and information with respect to the Project as specified in the Drawings and Project Specifications and/or as provided by OWNER and Engineer; (d) familiarized himself with federal, state and local laws, ordinances, rules, policies, and regulations that may in any manner affect cost, progress or performance of the Work; (e) studied and carefully correlated CONTRACTOR's observations with the Contract Documents; and (f) at CONTRACTOR's own expense, made or obtained any additional examinations, investigations, explorations, tests and studies, and obtained any additional information and data which pertain to the physical conditions (surface, sub-surface and underground facilities) at or contiguous to the Project or otherwise which may affect cost, progress, performance or furnishing of the Work and which CONTRACTOR deems necessary to determine its Contract Price for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

- 7.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the

preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.

- 7.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4. CONTRACTOR has correlated and considered the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents and in reaching the Contract Price and Contract Time.
- 7.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR. CONTRACTOR shall not rely on any conflicts, errors or discrepancies that CONTRACTOR knew or should have known exist in the Contract Documents as a basis for a claim for an extra to the Contract Price or Contract Time.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents that comprise the entire Contract between OWNER and CONTRACTOR are attached to this Contract, made a part hereof and consist of the items listed in the general conditions and the following:

- 8.1. This Contract
- 8.2. Proposal/Bid Forms
- 8.3. Standard General Conditions
- 8.4. Supplementary Conditions
- 8.5. Detailed Specifications as included in this package and as referenced
- 8.6. Cone of Silence
- 8.7. Addendum Acknowledgement
- 8.8. Anti-Kickback Affidavit
- 8.9. Non-Collusive Affidavit
- 8.10. Sworn Statement
- 8.11. Qualification Statement
- 8.12. Performance Bond

- 8.13. Payment Bond
- 8.14. Notice of Intent to Award
- 8.15. Notice to Proceed
- 8.16. Construction Plans titled – “Saga Bay Drainage Basins 1.3 and 1.4 Paving and Drainage Improvements”
- 8.17. Any Modifications, including Work Authorizations, duly delivered after execution of the Contract.
- 8.18. Project Geotechnical Report
- 8.19. DEP Form 62-621.300(4)(b)

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 9. MISCELLANEOUS

- 9.1. Terms used in this Contract which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4. This Contract may be executed in counterparts.
- 9.5. Should there be any action brought to enforce the terms of this Contract, the prevailing party shall be entitled to recovery of attorney’s fees (including paralegal fees) incurred through mediation, arbitration, or the appellate processes.

- 9.6 The OWNER shall retain the ownership of all shop drawings and design drawings once payment therefore is made.
- 9.7 OWNER and CONTRACTOR hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action or proceeding based upon the Contract Documents or arising out of, under, or in connection with the Work or the Project.

IN WITNESS WHEREOF, the parties hereto have signed 6 copies of this Contract. At least one counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on OWNER'S behalf.

OWNER
Town of Cutler Bay

ADDRESS
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

BY _____

Steven Alexander
 Print Name
Town Manager
 Title

WITNESS _____

(CORPORATE SEAL)

CONTRACTOR
TASCO Plumbing Corporation

ADDRESS
301 E. 10TH Avenue
Hialeah, FL 33010

BY _____

James Cruz
 Print Name
VP
 Title

WITNESS _____

(CORPORATE SEAL)

TOWN OF CUTLER BAY

SECTION 6

CONE OF SILENCE

- I. Notwithstanding any other provision in the specifications, the provisions of Section 2-11.1 Conflict of Interest and Code of Ethics Ordinance, as set forth in subsection (t) "Cone of Silence," of the Miami-Dade County Code are applicable to this transaction. The "Cone of Silence" prohibits the following activities:
 - A. Any communication regarding this RFP, RFQ or Bid between a potential vendor, service provider, bidder, lobbyist or consultant and the Town's professional staff, including, but not limited to, the Town Manager and his or her staff;
 - B. Any communication regarding this RFP, RFQ or Bid between the Mayor, Town Council members and any member of the Town's professional staff, including but not limited to, the Town Manager and his or her staff;
 - C. Any communication regarding this RFP, RFQ or Bid between potential vendor, service provider, bidder, lobbyist or consultant and any member of a selection committee;
 - D. Any communication regarding this RFP, RFQ or Bid between the Mayor, Town Council members and any member of the selection committee therefore;
 - E. Any communication regarding a particular RFP, RFQ or bid between any member of the Town's professional staff and any member of the selection committee; and
 - F. Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant and the Mayor or Town Council.
- II. These prohibitions do not apply to communications with the Town Attorney and his or her staff.
- III. The "Cone of Silence" is imposed upon this RFP, RFQ or Bid after advertisement of said RFP, RFQ or Bid. The "Cone of Silence" shall terminate at the time that the Town Manager makes his or her recommendation to the Town Council, unless the Council refers the Manager's recommendation back to the Manager or staff for further review.
- IV. The "Cone of Silence" shall NOT apply to:
 - A. Oral communications at pre-bid conferences;
 - B. Oral presentations before publicly noticed selection committee meetings;
 - C. Contract negotiations during any duly noticed public meeting;
 - D. Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;
 - E. Emergency procurement of goods or services;
 - F. Communications regarding a particular RFP, RFQ or bid between any person and the Town's procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited

- strictly to matters of process or procedure already contained in the corresponding solicitation document; or
- G. Communications regarding a particular RFP, RFQ or bid between the Town's procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.
 - H. Communications in writing at any time with any Town employee, official or member of the Town Council unless specifically prohibited by the RFP, RFQ or Bid.
 - I. Communications between the Town Manager and the Chairperson of the selection committee about a particular selection committee recommendation, only after the selection committee has submitted an award recommendation to the Town Manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the Town Manager with the Town Clerk and be included in any recommendation memorandum submitted by the Town Manager to the Town Council.
 - V. Any questions, explanations or other requests desired by a bidder regarding this RFP, RFQ or Bid must be requested in writing to the Town Clerk: Erika Gonzalez-Santamaria, CMC, Town Clerk, 10720 Caribbean Boulevard, Suite 105, Cutler Bay, Florida, 33189 or via facsimile at 305-234-4251 or e-mail at esantamaria@cutlerbay-fl.gov. Bidders must file copies of all written communications with the Town Clerk.
- VI. Please contact the Town Attorney with any questions concerning the "Cone of Silence" compliance.
- VII. Upon imposition of the Cone of Silence for a particular RFP, RFQ or Bid, the Town Manager shall:
- A. issue a written notice to affected Town departments;
 - B. file a copy of the Notice required by subsection (1) with the Town Clerk with a copy to the Mayor and Town Council; and
 - C. include in the public solicitation for goods and services a statement disclosing the requirements of the Cone of Silence as follows:

Pursuant to subsection (t) "Cone of Silence" of Section 2-11.1 "Conflict of Interest and Code of Ethics Ordinance" of Miami-Dade County, public notice is hereby given that a "Cone of Silence" is imposed concerning this purchase. The "Cone of Silence" prohibits communications concerning RFP's , RFQ's or Bids, until such time as the Town Manager makes a written recommendation to the Town Council concerning the transaction. Procedures regarding the Cone of Silence can be found in the Request for Proposal, or Request for Qualifications.

TOWN OF CUTLER BAY

SECTION 7

ADDENDUM ACKNOWLEDGEMENT FORM

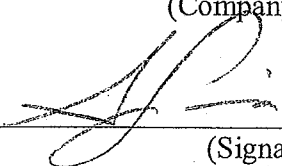
Addendum #

Date Received

1

May 4, 2009

BIDDER: Tasco Plumbing Corporation
(Company Name)


(Signature)

AL Garcia - V.P. Operations
(Printed Name & Title)

END OF SECTION

ADDENDUM NO. 1
TO CONTRACT DOCUMENTS

April 30, 2009

PROJECT TITLE: Town of Cutler Bay
Saga Bay Drainage Basins 1.3 and 1.4
Paving and Drainage Improvements
KHA Project No. 043145006

This addendum forms a part of the Contract Documents and modifies the original Contract Documents as noted. Acknowledge receipt of this Addendum in Section 7 of the Invitation to Bid. Failure to do so may subject the bidder to disqualification.

Each plan holder must return the attached Addendum Acknowledgment form to the Owner upon receipt. The Acknowledgment Form shall be faxed to (305) 234-4251.

CONTRACT DOCUMENTS

- ADVERTISEMENT FOR BIDS - **The bid opening does not change.** Sealed Bids must be received by the Town of Cutler Bay at 10720 Caribbean Boulevard, Suite 105, Cutler Bay, FL, up to **2:00 PM on May 6th, 2009.** Bids received after this time will not be accepted.
- INSTRUCTIONS TO BIDDERS – Section 1.05. **Each Bidder shall submit an original and four (4) duplicate copies of their Proposal.**
- PRE-BID MEETING MINUTES – Pre-bid meeting minutes are attached for reference.

END OF ADDENDUM NO. 1

043145006
Addendum No. 1

TOWN OF CUTLER BAY

SECTION 8

ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA }
 }
COUNTY OF MIAMI-DADE } SS:
 }

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the Town of Cutler Bay, its elected officials, and Tasco Plumbing Corporation or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

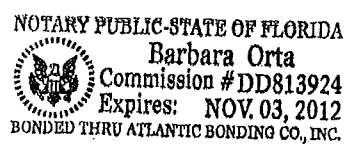
By: _____
Title: Vice President

Sworn and subscribed before this

6 day of May, 2009

Barbara Orta
Notary Public, State of Florida

BARBARA ORTA
(Printed Name)



My commission expires: 11/3/2012

END OF SECTION

TOWN OF CUTLER BAY

SECTION 9

NON-COLLUSIVE AFFIDAVIT

State of Florida }
County of Miami-Dade } SS:

JAVIER CRUZ being first duly sworn, deposes and says that:

- a) He/she is the VICE - PRESIDENT, (Owner, Partner, Officer, Representative or Agent) TASCO Plumbing Corporation, the Bidder that has submitted the attached Proposal;
- b) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- c) Such Proposal is genuine and is not collusive or a sham Proposal;
- d) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices in the attached Proposal or of any other Bidder, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;

The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

Witness [Signature]
Witness [Signature]

By: [Signature]
Javier Cruz
(Printed Name)
VP
(Title)

TOWN OF CUTLER BAY

SECTION 10

SWORN STATEMENT ON PUBLIC ENTITY CRIMES
SECTION 287.133(3)(a), FLORIDA STATUTES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Town of Cutler Bay.

by Javier Cruz vs
[print individual's name and title]

for Tasco Plumbing Corporation
[print name of entity submitting sworn statement]

whose business address is

301 E. 10TH Avenue
Hialeah, FL 33010

and (if applicable) its Federal Employer Identification Number (FEIN) is 65-0775125

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)9g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand than an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
- a. A predecessor or successor of a person convicted of a public entity crime; or
 - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.
6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. **[Indicate which statement applies.]**

Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, not any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **[attach a copy of the final order]**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND HAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signature]
Signature of Entity Submitting Sworn Statement

Sworn to and subscribed before me this 6th day of May, 2009.

Personally known

OR produced identification _____ Notary Public – State of FLORIDA.

(type of identification)

My commission expires 11/3/2012

NOTARY PUBLIC-STATE OF FLORIDA
Barbara Orta
Commission #DD813924
Expires: NOV. 03, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

[Signature]
(Printed, typed or stamped Commissioned name notary public)

END OF SECTION

TOWN OF CUTLER BAY

SECTION 11

SUPPLEMENT TO BID/TENDER FORM

THIS FORM MUST BE SUBMITTED WITH BID FOR BID TO BE DEEMED RESPONSIVE.

QUALIFICATION STATEMENT

The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your company in detail.

*Civil/Sitework and Underground Utility Contractor &
Plumbing Contractor*

2. The address of the principal place of business is:

*301 E. 10th Avenue
Hialeah, FL 33010*

3. Company telephone number:

305.455.1377

4. Number of employees:

60

5. Number of employees assigned to this project:

8

6. Company Identification numbers for the Internal Revenue Service:

65-0775125

7. Miami-Dade County and Town of Cutler Bay Occupational License Number, if applicable, and expiration date.

Miami-Dade County # 402572-2

Expires 7/22/09

8. How many years has your organization been in business?

12 years

9. What similar engagements is your company presently working on?

Traffic Calming & Drainage - Village of Palmetto Bay
Olive Garden - Sitework & Utilities
Langston - Sitework & Utilities

10. Have you ever failed to complete any work awarded to you? If so, where and why?

No

11. Give names, addresses and telephone numbers of three individuals, corporations, agencies, or institutions for which you have performed work:

11.1. Ralph Casals Town of Cutler Bay 305-234-4262
(name) (address) (phone #)

B&H Development
11.2. Robert Hernandez 804 SW 81 Lane 305-796-0491
(name) (address) (phone #)

11.3. Danny Casals Village of Palmetto Bay 305-484-7656
(name) (address) (phone #)

12. List the following information concerning all contracts in progress as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

<u>NAME OF PROJECT</u>	<u>OWNER</u>	<u>TOTAL CONTRACT VALUE</u>	<u>CONTRACTED DATE OF COMPLETION</u>	<u>% OF COMPLETION TO DATE</u>
Traffic Calming	Palmetto Bay	\$156,000	May 2009	99%
Olive Garden	Darden	\$235,000	June 2009	95%
Langston	Darden	\$140,000	May 2009	98%

(Continue list on insert sheet, if necessary.)

13. Has the Bidder or his or her representative inspected the proposed project and does the Bidder have a complete plan for its performance?

Yes

14. Will you subcontract any part of this work? If so, give details including a list of each subcontractor(s) that will perform work in excess of ten percent (10%) of the contract amount and the work that will be performed by each such subcontractor(s).

A & D Paving

The foregoing list of subcontractor(s) may not be amended after award of the contract without the prior written approval of the Contract Administrator, whose approval shall not be unreasonably withheld.

15. What equipment do you own that is available for the work?

Excavator
Loader

16. What equipment will you purchase for the proposed work?

None

17. What equipment will you rent for the proposed work?

None

18. State the name of your proposed project manager and give details of his or her qualifications and experience in managing similar work.

AL Garcia
22 years experience - Civil Construction

19. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)

19.1 The correct name of the Bidder is:

Tasco Plumbing Corporation
301 E. 10th Avenue
Hialeah, FL 33010
Carlos Pajan - President
Savira Cruz - Vice President

19.2. The business is a (Sole Proprietorship) (Partnership) (Corporation).

Corporation

19.3. The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:

Carlos Pagan - President
Javier Cruz - Vice President

19.4. List all organizations which were predecessors to Bidder or in which the principals or officers of the Bidder were principals or officers.

N/A

19.5. List and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Bidder, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description the disposition of each such petition.

N/A

19.6. List and describe all successful Bid, Performance or Payment Bond claims made to your surety(ies) during the last five (5) years. The list and descriptions should include claims against the bond of the Bidder and its predecessor organization(s).

None

19.7. List all claims, arbitrations, administrative hearings and lawsuits brought by or against the Bidder or its predecessor organization(s) during the last five (5) years. The list shall include all case names; case, arbitration or hearing identification numbers; the name of the project over which the dispute arose; and a description of the subject matter of the dispute.

N/A

NAME

RELATIONSHIPS

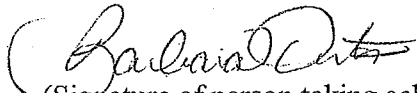
Signature of entity submitting supplement form

STATE OF FLORIDA)
)SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 6th day of May, 2009, by JAVIER CRUZ who is personally known to me or who has produced as identification and who did/did not take an oath.

WITNESS my hand and official seal, this 6th day of May, 2009.

(NOTARY SEAL)


(Signature of person taking acknowledgment)

NOTARY PUBLIC-STATE OF FLORIDA
Barbara Orta
Commission #DD813924
Expires: NOV. 03, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

[THIS SPACE LEFT BLANK INTENTIONALLY]

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID I8
TASCO-1

DATE (MM/DD/YYYY)
08/29/08

PRODUCER
Brown & Brown of Florida, Inc.
100 N. Andrews Ave. #300
Box 5727
Lauderdale FL 33310-5727
Phone: 954-776-2222 Fax: 954-776-4446

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

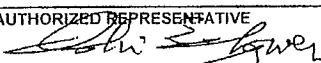
Tasco Plumbing Corporation
301 East 10th Avenue
Hialeah FL 33010

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Bridgefield Employers Ins. Co	10701
INSURER B:	Amerisure Mutual Ins. Co.	23396
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

ADD'L INSUR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	GL2056583	09/02/08	09/02/09	EACH OCCURRENCE	\$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
					MED EXP (Any one person)	\$ 5,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
					Emp Ben	\$1,000,000
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	CA2056581	09/02/08	09/02/09	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 0	CU2056584	09/02/08	09/02/09	EACH OCCURRENCE	\$ 5,000,000
					AGGREGATE	\$ 5,000,000
						\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	83025436	08/28/08	08/28/09	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
					E.L. EACH ACCIDENT	\$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 30 days notice applies for non-payment of premium.

CERTIFICATE HOLDER	CANCELLATION
INSURED XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXINSUREDS COPYXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

CORPORATE RESOLUTION

I, the undersigned, hereby certify that I am the Vice-President of Tasco Plumbing Corporation a corporation duly organized and existing under and by virtue of the laws of the State of Florida ; that I am the keeper of the corporate records of this Corporation and that as such, I am authorized to execute this certification on behalf of this Corporation; that the following is a true, correct and compared copy of a resolution duly adopted and ratified at a meeting of the Board of Directors of this Corporation, duly called and held on January 19, 2002 , in accordance with its charter and by-laws, at which meeting a quorum was present and acting throughout; that said resolution has not been in any way amended, annulled, modified, rescinded or revoked, but is in full force and effect.

Resolved, that the President and Vice-President of this Corporation are hereby authorized in the name of this Corporation to make decisions on behalf of Tasco Plumbing Corp.

I further certify that the Board of Directors of this Corporation has, and at the time of adoption of this resolution had, full power and lawful authority to adopt the foregoing resolution and to confer the powers granted to the persons named who have full power and lawful authority to exercise the same.

IN WITNESS WHEREOF, I hereunto subscribe my name and affixed the seal of this Corporation on this

19 day of January, 2002

SEAL

Secretary

Attest:

Carlos Rojas

President

Treasurer



FIRST-CLASS
U.S. POSTAGE
PAID
MIAMI, FL
PERMIT NO. 231

THIS IS NOT A BILL-DO NOT PAY

385559-1
BUSINESS NAME / LOCATION
TASCO PLUMBING CORP
301 E 10 AVE
33010 HIALEAH

RENEWAL
RECEIPT NO. 402572-2
STATE# CFC057030

OWNER
TASCO PLUMBING CORP
Sec. Type of Business
196 PLUMBING CONTRACTOR

WORKER/S
2

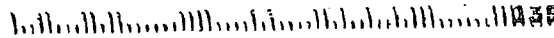
THIS IS ONLY A LOCAL
BUSINESS TAX RECEIPT. IT
DOES NOT PERMIT THE
HOLDER TO VIOLATE ANY
EXISTING OR REGULATORY
OR ZONING LAWS OF THE
COUNTY OR CITIES. NOR
DOES IT EXEMPT THE
HOLDER FROM ANY OTHER
PERMIT OR RECEIPT
REQUIRED BY LAW. THIS IS
NOT A CERTIFICATION OF
THE HOLDER'S QUALIFICA-
TION.

DO NOT FORWARD

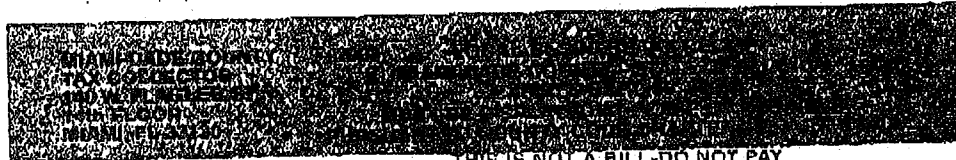
TASCO PLUMBING CORP
CARLOS PAJON PRES
301 E 10 AVE
HIALEAH FL 33010

PAYMENT RECEIVED
MIAMI-DADE COUNTY TAX
COLLECTOR:

07/22/2009
60030000420
000045.00



SEE OTHER SIDE



FIRST-CLASS
U.S. POSTAGE
PAID
MIAMI, FL
PERMIT NO. 231

THIS IS NOT A BILL-DO NOT PAY

485046-8
BUSINESS NAME / LOCATION
TASCO PLUMBING CORP
301 E 10 AVE
33010 HIALEAH

RENEWAL
RECEIPT NO. 506246-8
STATE# CMC057156

OWNER
TASCO PLUMBING CORP
Sec. Type of Business
196 GENERAL MECHANICAL CONTRACTOR

WORKER/S
5

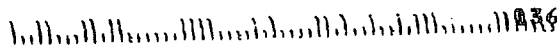
THIS IS ONLY A LOCAL
BUSINESS TAX RECEIPT. IT
DOES NOT PERMIT THE
HOLDER TO VIOLATE ANY
EXISTING OR REGULATORY
OR ZONING LAWS OF THE
COUNTY OR CITIES. NOR
DOES IT EXEMPT THE
HOLDER FROM ANY OTHER
PERMIT OR RECEIPT
REQUIRED BY LAW. THIS IS
NOT A CERTIFICATION OF
THE HOLDER'S QUALIFICA-
TION.

DO NOT FORWARD

TASCO PLUMBING CORP
CARLOS PAJON PRES
301 E 10 AVE
HIALEAH FL 33010

PAYMENT RECEIVED
MIAMI-DADE COUNTY TAX
COLLECTOR:

07/22/2009
60030000422
000045.00



SEE OTHER SIDE

TAB 4



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: May 20, 2009

Re: **AN AMENDMENT TO THE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE CUTLER RIDGE ELEMENTARY SCHOOL AREA PAVING AND DRAINAGE IMPROVEMENTS, BASE BID SCOPE OF WORK**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE CUTLER RIDGE ELEMENTARY SCHOOL AREA PAVING AND DRAINAGE IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

On January 17, 2007, the Town Council adopted Resolution # 07-03, approving the execution of non-exclusive professional services agreements with firms to provide various engineering and architectural services for the Town, including Landscape Architectural Services. Subsequently at the November 14, 2007 Town Council meeting, the Town Council approved Resolution # 07-52 approving the execution of non-exclusive professional services agreements with those firms to provide the aforementioned services for the Town

Utilizing the thorough evaluation by the Town's Selection Committee conducted as a part of the process established by Resolution # 07-03, which included a review of previous experience with similar projects, the proposed scope of services, project deliverables and over-all cost, the Public Works Department selected Kimley-Horn and Associates, Inc. to complete engineering design services for Cutler Ridge Elementary school area paving & drainage improvements.

On June 18, 2008, the Town Council adopted Resolution # 08-37 – authorizing the Town Manager to enter into an agreement with Kimley-Horn and Associates to design the drainage project. The design was completed and permitted by Miami-Dade County Department of Environmental Management. Additionally, on April 15, 2009, the Town Council adopted Resolution # 09-32, which awarded the construction of the project to William Paving Company.



The purpose of this memo is to execute with Kimley-Horn and Associates an amendment to their agreement to allow them to perform construction phase services, base bid scope of work, for the Cutler Ridge Elementary School area paving and drainage improvements. The selection of Kimley-Horn and Associates to perform these services would provide continuity and the Town would benefit their existing understanding of the project.

The attached Exhibit "A" will allow the Town's Kimley-Horn and Associates to "manage" the project and ensure that the contractor, William Paving Company, is constructing the project, as per the Town's contract specifications. There are five separate construction phase tasks that this proposal will address associated with the project. The tasks are as follows:

- Task 1 Meetings
- Task 2 Resident Project Representation
- Task 3 Shop Drawing Review
- Task 4 Contract Administration
- Task 5 Project Close-out

RECOMMENDATION

Town staff recommends that the attached resolution be adopted, authorizing the Town Manager to execute an amendment to their agreement with Kimley-Horn and Associates, Inc. for construction phase services for the Cutler Ridge Elementary school area paving & drainage improvements project, base bid scope of work.



RESOLUTION NO. 09-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE CUTLER RIDGE ELEMENTARY SCHOOL AREA PAVING AND DRAINAGE IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 14, 2007 the Town of Cutler Bay (the “Town”) adopted Resolution No. 07-52 approving the execution of non-exclusive professional services agreements (the “Agreements”) to allow firms to provide various engineering and architectural services for the Town; and

WHEREAS, the Town was awarded a State of Florida Department of Environmental Protection grant (LP6819) for the Town’s Stormwater Utility and Management Projects Plan; and

WHEREAS, the Cutler Ridge Elementary School area paving and drainage improvement project was a critical part of the Town’s Stormwater Utility and Management Projects Plan;

WHEREAS, the Cutler Ridge Elementary School area paving and drainage improvement project costs are eligible for reimbursement from the State of Florida Department of Environmental Protection grant (LP6819); and

WHEREAS, in accordance with the terms of the Agreements and the provisions set forth in Resolution 07-52, the Public Works Department solicited a proposal from Kimley-Horn and Associates, Inc., which has an executed Agreement with the Town, to provide construction phase services for the Cutler Ridge Elementary School area paving and drainage improvement project; and

WHEREAS, Kimley-Horn and Associates had already been selected by the Town to design the Cutler Ridge Elementary School area paving and drainage improvements and has performed well thus far; and

WHEREAS, Town staff has determined that Kimley-Horn and Associates would be best suited to provide construction phase services for the base bid scope of work because their selection would provide continuity and the Town would benefit their existing understanding of the project; and

WHEREAS, Town staff has conducted preliminary negotiations with Kimley-Horn and Associates and estimated the cost of providing these services to the Town to be approximately \$29,000; and

WHEREAS, the Town desires to enter into an amendment to the Agreement with Kimley-Horn and Associates to provide construction phase services, base bid scope of work, for the Cutler Ridge Elementary School area paving and drainage improvements (attached as Exhibit "A"); and

WHEREAS, the Town finds that this Resolution will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Authorization. In accordance with the terms and conditions of Resolution No. 07-52, which approved the execution of non-exclusive professional services agreements (the "Agreement") to allow firms to provide various engineering and architectural services for the Town, the Town Manager is authorized, on behalf of the Town, to negotiate and execute with Kimley-Horn and Associates an amendment to the Agreement to provide construction phase services, base bid scope of work, for the Cutler Ridge Elementary School area paving and drainage improvements, in substantially the form attached hereto as Exhibit "A".

Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____

EXHIBIT “A”

PROJECT AGREEMENT

Between

TOWN OF CUTLER BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

for

Work Authorization No. 09-05

Cutler Ridge Elementary School Area
Paving and Drainage Improvements
Limited Construction Phase Services – Base Bid Scope of Work

PROJECT AGREEMENT

Between

THE TOWN OF CUTLER BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

For

Work Authorization No. 09-05

Cutler Ridge Elementary School Area
Paving and Drainage Improvements
Limited Construction Phase Services – Base Bid Scope of Work

Pursuant to the provisions contained in the “Non-Exclusive Professional Services Agreement” between the TOWN OF CUTLER BAY, FLORIDA, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189 (the “TOWN”) and Kimley-Horn and Associates, Inc., (“CONSULTANT” or “ENGINEER”) dated January 17, 2008, this project agreement authorizes the CONSULTANT to provide the services as set forth below:

The TOWN and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide limited construction phase to the TOWN for the project as described in the “Project Description” attached as Exhibit “1.”

1.2 The “Scope of Services” and tasks to be provided by the CONSULTANT for this project are those services and tasks as listed in Exhibit “2.”

1.3 The TOWN may request changes that would increase, decrease, or otherwise modify the Scope of Services. The changes must be contained in a written change order executed by the parties in accordance with the provisions of the continuing services agreement, prior to any deviation from the terms of the project agreement, including the initiation of any extra work.

SECTION 2. DELIVERABLES

As part of the Scope of Services and Project Schedule, the CONSULTANT shall provide to the TOWN the following Deliverables:

See Scope of Services in Attachments EXHIBIT "2".

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This project agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect until the project is completed, unless otherwise terminated pursuant to section 6 or other applicable provisions of this project agreement. The TOWN manager, in his sole discretion, may extend the term of this agreement through written notification to the CONSULTANT. The extension shall not exceed 90 days.

3.2 **Commencement.** The CONSULTANT's services under this project agreement and the time frames applicable to this project agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the CONSULTANT from the TOWN. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the TOWN manager or his designee prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the TOWN on the Commencement Date, and shall continuously perform services to the TOWN, without interruption, in accordance with the time frames set forth above. The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the project or the date of actual completion of the project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the Town in writing, in the event that the consultant fails to meet to the contract time for completion of services as determined by the Project Schedule, the consultant shall pay to the Town the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$0 per day. The consultant may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the consultant shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this agreement. When the Town reasonably believes that completion will be inexcusably delayed, the Town shall be entitled, but not required, to withhold from any amounts otherwise due the consultant an amount then believed by the Town to be adequate to recover liquidated damages applicable to the delays. If and when the consultant overcomes the delay in achieving

completion, or any part thereof, for which the Town has withheld payment, the Town shall promptly release to the consultant those funds withheld, but no longer applicable, as liquidated damages.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** TOWN agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit “2” \$29,000.00. The Lump Sum fee will not exceed \$29,000.00

4.2 **Reimbursable Expenses.** The following expenses are included in the Lump Sum fee: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage, photo and reproduction services.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit “3”, to this project agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the TOWN. The TOWN shall pay CONSULTANT within 30 days of approval by the TOWN manager of any invoices submitted by CONSULTANT to the TOWN.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the TOWN for payment to the CONSULTANT is disputed, or additional backup documentation is required, the TOWN shall notify the CONSULTANT within 15 working days of receipt of the invoice of the objection, modification or additional documentation request. The CONSULTANT shall provide the TOWN with additional backup documentation within five working days of the date of the TOWN’S notice. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The TOWN, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the TOWN becomes credibly informed that any representations of the CONSULTANT, provided pursuant to subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this project agreement, the TOWN may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy,

or other breach of project agreement, and the cause thereof, is corrected to the TOWN'S reasonable satisfaction.

5.4 **Retainage.** The Town reserves the right to withhold retainage in the amount of 10 percent of the final payment due to the consultant until the project is completed. Said retainage may be withheld as security for the successful completion of the consultant's duties and responsibilities under the project agreement. Any retainage held will be released immediately upon receipt of deliverables for all tasks as outlined in the Scope of Work and Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT's invoice for final payment and reimbursement shall constitute the CONSULTANT's representation to the TOWN that, upon receipt from the TOWN of the amount invoiced, all obligations of the CONSULTANT to others, including its CONSULTANT's, incurred in connection with the project, shall be paid in full. The CONSULTANT shall deliver to the TOWN all documents requested by the TOWN evidencing payments to any and all subconsultant's, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the TOWN by the CONSULTANT.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This project agreement may be terminated by either party upon five calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this project agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify the TOWN against any costs incurred in replacing CONSULTANT for this project agreement. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that the termination was without cause, the termination shall thereupon be deemed a termination for convenience under section 6.2 of this project agreement and the provision of section 6.2 shall apply.

6.2 **For Convenience.** This project agreement may be terminated by the TOWN for convenience upon 14 days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the project and shall, to the extent possible, terminate any outstanding sub CONSULTANT obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the TOWN and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of paragraph 5.1 of this project agreement. Under no circumstances shall the TOWN make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this project agreement, a copy of all of the CONSULTANT's work product shall become the property of the TOWN and the CONSULTANT shall, within 10 working days of receipt of written direction from the TOWN, transfer to either the TOWN or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this project agreement. Further, upon the TOWN'S request, the CONSULTANT shall assign its rights, title and interest under any subconsultant's agreements to the TOWN.

6.4 **Suspension for Convenience.** The TOWN shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to 30 calendar days. If the suspension is directed by the TOWN, the CONSULTANT shall immediately comply with same. In the event the TOWN directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for the suspension.

SECTION 7. INCORPORATION OF TERMS AND CONDITIONS

7.1 This project agreement incorporates the terms and conditions set forth in the attached Kimley-Horn and Associates, Inc. Standard Provisions. In the event that any terms or conditions of this project agreement conflict with the Standard Provisions, the provisions of this specific project agreement shall prevail and apply.

TOWN OF CUTLER BAY

By: _____
Steven J. Alexander, Town Manager

Date: _____

ENGINEER

Kimley-Horn and Associates, Inc.

By: _____
Gary R Ratay, Senior Associate

Date: _____

Exhibit “1”

Project Description Limited Construction Phase Services – Base Bid Scope of Work

The CONSULTANT provided planning and engineering services to the TOWN for the design and permitting of sidewalk, paving, and drainage improvements within the area surrounding Cutler Ridge Elementary School. The area consists of Cutler Ridge Drive from Bel Aire Drive to Coral Sea Road, Coral Sea Road from Cutler Ridge Drive to Bahia Drive, and Bahia Drive to approximately 433 feet west of Blue Water Road. The paving and drainage improvements were designed in accordance with the TOWN’s Storm Water Master Plan. The project bidding phase is complete and the project is proceeding into the construction phase. The project will be funded by FDEP grant number LP6819.

This Work Authorization is to provide additional professional services for limited construction phase service by the CONSULTANT during construction of the project. There are five separate construction phase tasks that this proposal will address regarding the TOWN’s Cutler Ridge Elementary Area Paving and Drainage Improvements project. The tasks are as follows:

1. Meetings
2. Resident Project Representative
3. Shop Drawing Review
4. Contract Administration
5. Project Close-out

This project was bid with a Base Bid and an Additive Bid format. The construction duration for the Base Bid scope of work is 120 days. The construction duration for the Additive Bid adds an additional 60 days to the construction duration. This limited construction phase services scope and fee is for work associated with the Base Bid portion of the project only. If the TOWN does authorize the contractor to perform additional work associated with the Additive Bid, a separate proposal will be provided for the 60 days of additional limited construction phase services.

Exhibit “2”

Scope of Services and Project Schedule Limited Construction Phase Services – Base Bid Scope of Work

Task 1 Meetings

The CONSULTANT shall attend bi-monthly progress meetings (as scheduled by the CONSULTANT) with the Contractor(s) to assess the project schedule and Contractor progress for the duration of the construction process. This task includes eight (8) meetings.

Task 2 Resident Project Representation

A Resident Project Representative (“RPR”) shall be furnished by the CONSULTANT and shall act as directed by the CONSULTANT in order to assist the CONSULTANT in observing performance of the work of the Contractor(s). The duties, responsibilities, and limitations on the authority of the RPR and assistants will be in accordance with the sections of EJCDC Document associated with this issue.

The RPR shall visit the site three (3) times per week, for three (3) hours per day, for twelve (12) weeks (total of 36 visits) at the various stages of construction to observe the progress and quality of the executed work of the Contractor(s) and to determine if such work is proceeding in accordance with the contract documents for the construction of the improvements (the “Contract Documents”). The RPR shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). The RPR’s efforts will be directed toward providing the TOWN with a greater degree of confidence that the completed work of Contractor(s) will conform to the Contract Documents. The RPR shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations, the CONSULTANT shall keep the TOWN informed of the progress of the work, shall endeavor to protect the TOWN against defects and deficiencies in such work, and may disapprove or reject work if it fails to conform to the Contract Documents. The CONSULTANT shall perform the observations in accordance with the standard of care of the profession at the time of service.

The RPR shall prepare and submit monthly reports of the field visits describing the general working conditions, areas of construction activity, tests performed, and special and unusual events.

Task 3 Shop Drawing Review

The CONSULTANT shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the General Conditions of each construction contract) and samples and other data that each Contractor is required to submit, but only for conformance

with the design concept of the Project and compliance with the information given in the Contract Documents. Such review and approval, or other action, shall not extend to means, methods, sequences, techniques or procedures of construction, or safety precautions and programs incident hereto. The CONSULTANT shall perform these reviews in accordance with the standard of care of the profession at the time of service.

The CONSULTANT shall consult with and advise the TOWN as to the acceptability of substitute materials and equipment that are proposed by the prime contractor(s) hereinafter called "Contractor(s)".

Task 4 Contract Administration

4.1 Contract Clarifications

The CONSULTANT shall issue the TOWN's instructions to Contractor(s), as well as issue necessary interpretations and clarifications of the plans and specifications in connection therewith and review change orders as required.

4.2 Review of Pay Application

Based on the CONSULTANT's on-site observations and upon review of applications for payment and the accompanying data and schedules, the CONSULTANT shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment shall constitute a representation to the TOWN based on such observations and review that the work has progressed to the point indicated and that, to the best of the CONSULTANT's knowledge, information, and belief, the quality of work is in accordance with the Contract Documents (subject to any qualifications stated in the CONSULTANT's recommendations), and that payment of the amount recommended is due to Contractor(s).

By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, equipment choice and usage, sequences, or procedures of construction of safety precautions or programs incident thereto, nor Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

Task 5 Project Close-out

The CONSULTANT shall review the Project to determine if the Project is substantially complete and conduct a final review to determine if the work has been completed in accordance with the Contract Documents. If the Contractor has fulfilled all of his obligations there under, the CONSULTANT may recommend, in writing, final payment to each Contractor and may give written notice to the TOWN and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed).

The CONSULTANT will review project record drawings prepared, provided, and certified by the Contractor. One set of reproducible "As-Built" drawings will be provided to the TOWN.

The CONSULTANT shall not be responsible for the acts or omissions of any Contractor or subcontractor, any of the Contractor(s)' or subcontractor(s)' agents or employees, or any other persons (except the CONSULTANT's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work.

EXHIBIT “3”

Payment Schedule Limited Construction Phase Services – Base Bid Scope of Work

The CONSULTANT will complete this scope of services for the lump sum amount of \$29,000.00. The following is a breakdown of the lump sum amount for reference:

Task 1	Meetings	\$5,300.00
Task 2	Resident Project Representative	\$15,000.00
Task 3	Shop Drawing Review	\$1,400.00
Task 4	Contract Administration	\$4,000.00
Task 5	Project Close-out	<u>\$3,300.00</u>
	Total Fee	\$29,000.00

TAB 5



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: May 20, 2009

Re: **ISSUANCE OF FIVE (5) SEPARATE ITBS – ROADWAY RESURFACING IMPROVEMENTS
(FUNDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT 2009)**

REQUEST:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO ROADWAY RESURFACING IMPROVEMENTS IN THE TOWN; AUTHORIZING THE ISSUANCE OF FIVE SEPERATE INVITATION TO BIDS (ITB) FOR ROADWAY RESURFACING IMPROVEMENTS; FUNDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT 2009; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

In order to receive federal stimulus funding, the Town was required to obtain certification from Florida Department of Transportation (FDOT) as a certified local agency under FDOT's Local Agency Program ("LAP"). The LAP certification process requires the local agency (Town) enters into a Local Agency Certification Qualification Agreement with the FDOT. On March 3, 2009, the Town Council adopted Resolution# 09-18 authorizing the Town Manager to proceed with FDOT's LAP certification process. Town staff worked closely with FDOT staff to expedite the LAP certification process which normally takes several months to be approved. On March 11, 2009, the Town received its approval letter from FDOT awarding the Town the LAP certification that allows the Town to receive funding through the American Recovery and Reinvestment Act 2009!

Upon receiving the LAP certification status, Town staff and engineering consultants have met on several occasions with FDOT staff to develop the necessary Invitation to Bid (ITB) documents that will meet all of the State and Federal contractual requirements. These preapproved documents may be used on all future ITB for this process. Based on the allocation process, approved through the Miami-Dade Metropolitan Planning Organization (MPO), the Town is scheduled to receive \$ 941,285 from the American Recovery and Reinvestment Act 2009.

The following Federal Highway Administration (FHWA) roadways, located with the Town, are scheduled to be resurfaced with the awarded stimulus funds:



Project # 1: Old Cutler Road

- (A) SW 224 Street to SW 97 Avenue
- (B) SW 87 Avenue to SW 184 Street

Project # 2: Caribbean Blvd.

- (A) US-1 to Fla. Turnpike
- (B) Fla. Turnpike to Coral Sea Road
- (C) SW 87 Avenue to SW 184 Street

Project # 3: Marlin Road

- (A) US-1 to Sterling Drive
- (B) Sterling Drive to Old Cutler Road

Project # 4: SW 87 Avenue

SW 184 Street to Old Cutler Road

Project # 5(A): Quail Roost Drive (SW 186 Street)

US-1 to Franjo Road

Project # 5(B) : Franjo Road (SW 97 Avenue)

SW 184 Street to Old Cutler Road

The above-mentioned FHWA roadways were approved by both the Miami-Dade Metropolitan Planning Organization (MPO) and the State of Florida Department of Transportation (FDOT). This list was based on eligibility and “shovel-ready” status as well as road condition and geographic location.

Town Ordinance # 06-22 requires the Town Manager to obtain authorization from the Town Council in order to advertise solicitations for bids and proposals, prior to advertising the public notice.

RECOMMENDATION

We recommend that the attached “Invitation to Bid” resolution be adopted.



RESOLUTION NO. 09-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO ROADWAY RESURFACING IN THE TOWN, AUTHORIZING THE ISSUANCE OF FIVE SEPARATE INVITATIONS TO BID (ITB) FOR ROADWAY RESURFACING IMPROVEMENTS; PROVIDING FOR FUNDING BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council adopted Resolution # 09-18 on May 3, 2009, approving the Town's Local Agency Certification Qualification Agreement with the Florida Department of Transportation (FDOT) in order to receive Federal Stimulus monies as a part of the American Recovery and Reinvestment Act of 2009 (the "ARRA"); and

WHEREAS, on May 11, 2009 the Town received an approval letter from FDOT awarding the Town a Local Agency Certification classification; and

WHEREAS, both the Miami-Dade Metropolitan Planning Organization (MPO) and the FDOT have reviewed and approved the use of ARRA funds for the five (5) separate roadway resurfacing improvement projects submitted by the Town; and

WHEREAS, Town staff has developed the attached Invitation to Bid (Exhibit "A") in order to obtain bids for the five (5) separate roadway resurfacing improvement projects from potential contractors; and

WHEREAS, Town Ordinance Number 06-22 requires the Town Manager to obtain authorization from the Town Council to advertise solicitations for proposals and bids prior to advertising the solicitation; and

WHEREAS, the Town Council finds that this Resolution is in the best interest of the health, safety and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Authorization. The Town Manager is authorized to advertise and issue of five (5) separate Invitations to Bid for roadway resurfacing improvements, in substantially the form attached hereto as Exhibit "A," on behalf of the Town.

Section 3. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____ 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

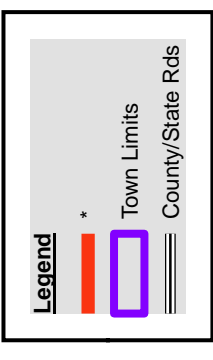
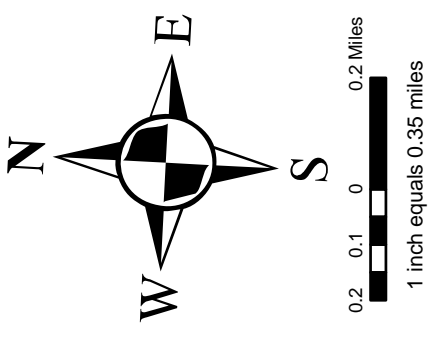
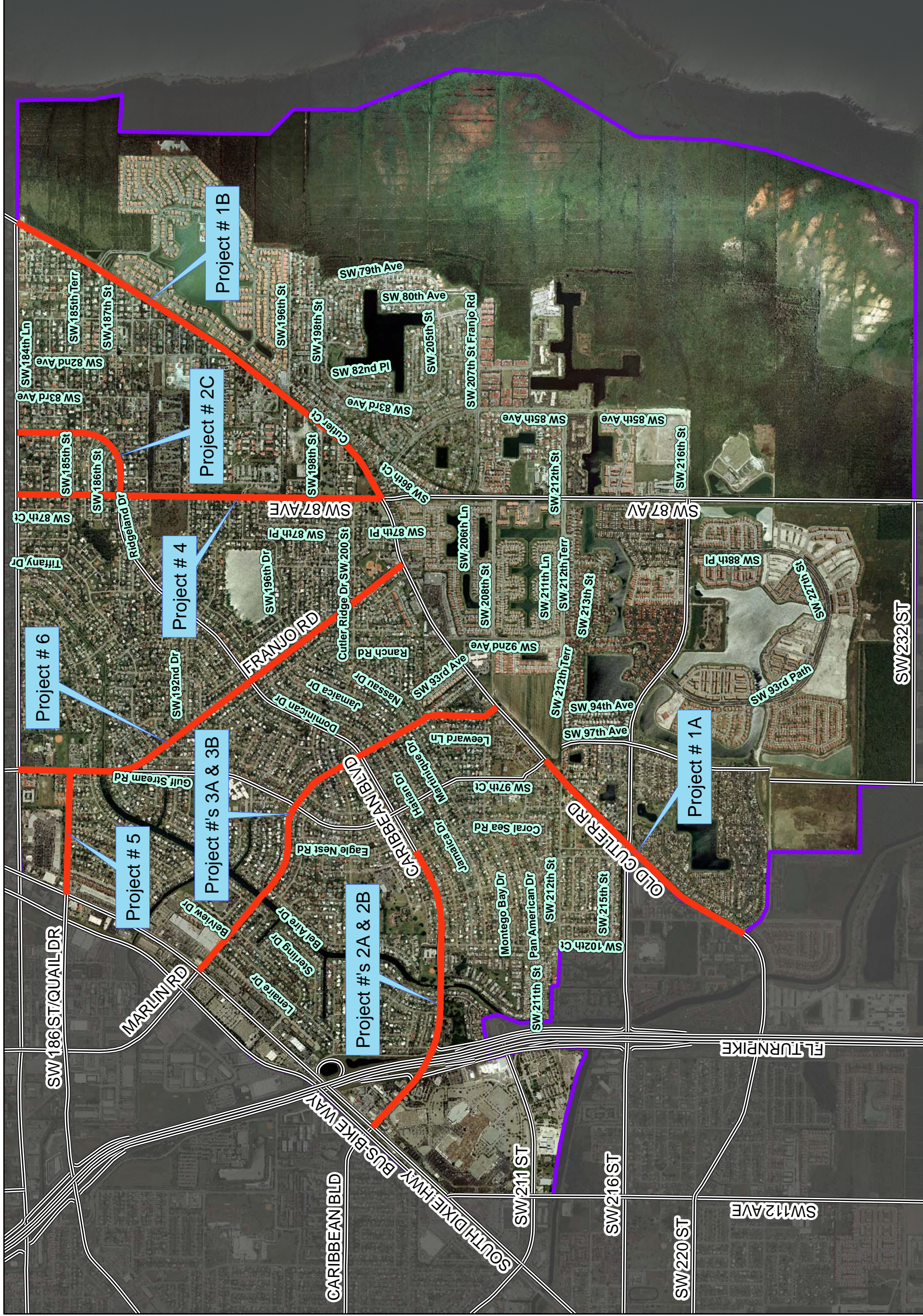
Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____



*Roadway Asphalt Resurfacing/
Federal Aid Eligible Roads



**Federal Stimulus LAP Eligible Projects Roadway
Asphalt Resurfacing/Federal Aid Eligible Roads**

Town of Cutler Bay

**PROJECT MANUAL
FOR
OLD CUTLER ROAD RESURFACING IMPROVEMENTS
(From SW 224th Street to SW 184th Street (w/ exception)
TOWN OF CUTLER BAY**

This project is being funded through the American Recovery and Reinvestment Act of 2009



Mayor:	Paul Vrooman
Vice Mayor:	Edward MacDougall
Councilmembers:	Peggy Bell
	Timothy Meerbott
	Ernest Sochin
Town Manager:	Steven J. Alexander
Town Attorney:	Weiss, Serota, Helfman et al.
Town Clerk:	Erika Gonzalez-Santamaria

June, 2009

C3TS Project No.: 00359-003.01

FDOT-WPA Item/Segment No. 426429-1



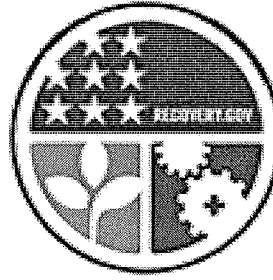
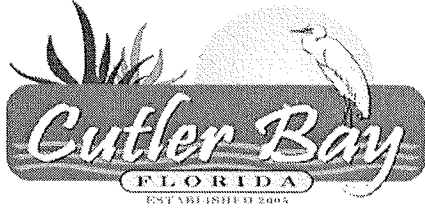
Engineers • Architects • Planners

901 Ponce de Leon Boulevard, Suite 900 • Coral Gables, Florida 33134 • Telephone No. 305.445.2900

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**NOTICE OF BID INVITATION
TOWN OF CUTLER BAY**

The Town of Cutler Bay will receive sealed proposals until 2:00 P.M. local time, _____, _____, 2009 at the Town Clerk's office, Cutler Bay Town Hall, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189, for the following project:

**OLD CUTLER ROAD RESURFACING IMPROVEMENTS
(From SW 224th Street to SW 184th Street (w/ exception))**

The project consists of improvements to Old Cutler Road in the Town of Cutler Bay. Improvements include asphalt resurfacing, sidewalk repairs and improvements and pavement markings.

This project is being federally funded through the American Recovery and Reinvestment Act of 2009 (ARRA 2009), and as such bidders must comply with criteria conditions of the ARRA 2009, Presidential Executive Order 11246, and 41 CFR Part 60-4; the Davis Bacon Act, as supplemented by 29 CFR Part 5; the Copeland (Anti-Kick Back) Act; the Contract Work Hours and Safety Standards Act as supplemented by 29 CFR Part 5, and all other applicable federal, state and local ordinances.

Attention is called to the fact that no less than the minimum salaries and wages as set forth in the Contract Documents may be paid on this project and that the Contractor must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex or national origin.

Bids will be opened publicly at or shortly after **2:05 P.M. on _____, _____, 2009** at the Town Clerk's office, Cutler Bay Town Hall, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189.

Bid documents may be obtained on or after _____, _____, 2009 from Town Clerk at the Cutler Bay Town Hall, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189. A \$100.00 non-refundable deposit per set of plans and specifications is required.

The bid will be awarded to the lowest responsible responsive bidder. If, however, the Town Manager deems it to be in the best interest of the Town of Cutler Bay, the Town of Cutler Bay reserves the right to reject any and all bids, to waive any informalities or minor defects in any bids, and to increase or decrease the quantities shown in the Bid Form. Bids, which contain irregularities of any kind, may be rejected as informal.

A mandatory pre-bid conference will be held at the Cutler Bay Town Hall, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189, at **10:00 A.M. local time on _____, _____, 2009**. All interested contractors are invited to attend.

The Local Agency of the Town of Cutler Bay hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprise 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, gender, religion, age, disability, marital status or national origin in consideration for an award. There is an 8.4% DBE utilization goal on this contract.

Erika Gonzalez-Santamaria
Town Clerk

SECTION 00200

INSTRUCTIONS TO BIDDERS

1. BID FORM

All bids must be submitted in conformity with the requirements of the Project Manual and on the Bid Form included herewith (Section 300) including non-collusion affidavit and certification regarding debarment. Also include the Contractor's Questionnaire (Section 00350, with copies of applicable licenses and certifications, latest financial statement, and a list of similar projects completed), and Bid Bond (Section 00410). The bids shall be placed in sealed envelopes, marked on the outside with the Contractor's name, address, phone number and Project Name, with the words 'SEALED BID' clearly marked on the outside. Bids which contain irregularities of any kind, or incomplete bids, may be rejected as informal.

2. BID GUARANTY

The bid must be accompanied by a Bid Guaranty which shall be for an amount equal to five percent (5%) of the proposal, and at the option of the bidder may be a certified check, cashier's check, or bid bond. Cash deposits will not be accepted. The Guaranty shall be forfeited if the successful bidder fails to enter into a contract in the form shown within ten (10) working days of the Notice of Award of the Contract. The checks and bid bonds of all except the three lowest bidders will be returned immediately after the opening of bids, and the remaining checks or Bid Bonds will be returned within ten (10) working days after the signing of the contract by the successful bidder.

3. TIME FOR RECEIVING BIDS

Bids received prior to the time of opening shall be securely kept, unopened. All bids shall be delivered to the Town Clerk's office, Cutler Bay Town Hall, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida, 33189. No bids will be received after 2:00 P.M. on date of bid opening.

4. QUESTIONS' DEADLINE

Deadline for submitting questions is _____, _____, 2009, 5:00 p.m. All questions shall be submitted in writing by letter or fax to the Engineer.

5. WITHDRAWAL OF BIDS

Bids may not be withdrawn for a period of sixty (60) days from the opening thereof.

6. BIDDERS PRESENT

At or shortly after **2:05 P.M. on** _____, _____, 2009, the bids will be opened and their contents will be made public for the information of the bidders and others properly interested, who may be present either in person or by representative.

7. AWARD OF CONTRACT

The contract will be awarded not later than **sixty (60) days from the bid opening date** to the lowest responsible, responsive bidder, complying with the conditions of the Notice of Bid Invitation, provided the bid is reasonable, and it is in the interest of the Town to accept it. The Town however, reserves the right to reject any or all bids.

8. QUALIFICATIONS OF BIDDERS

In the event portions of the work called for in the specifications are to be installed, constructed, or assembled by a sub-contractor or sub-contractors, the bidder must fill in the information requested in the Proposal.

9. WARRANTY

Neither the final payment nor any provision of the Contract Documents, nor the use of the equipment by the Town shall constitute an acceptance of items found not to comply with stipulations of the Contract Documents. The Contractor shall furnish suitable warranty and guarantee equal to that generally furnished to purchasers of the equipment described herein. Please refer to paragraph 21 of the Supplementary Conditions for additional express warranties by Contractor.

10. INSURANCE

The bidder to whom a Contract is awarded shall take out and maintain Worker's Compensation Insurance to cover all his/her employees as well as maintain public liability and property damage insurance during the term of this contract and until the last day of furnishing work, labor, services and materials for the project described herein. Refer to Certificate of Insurance (Section 650), General Conditions (Section 700) and Supplementary Conditions (Section 800). The Town of Cutler Bay and Corzo Castella Carballo Thompson Salman, P.A., shall be named as additional insured in all policies required under this contract.

11. ELIGIBLE BIDDERS

The Town reserves the right, before awarding a Contract, to require a Bidder to submit evidence of his/her qualifications, as may be deemed necessary, and consider any evidence available to it of the financial, technical, and other qualifications and abilities of the bidder. The Contract will be awarded only to a Bidder fully qualified to under take the proposed work. All material or services must meet all applicable Federal, State and Local specifications and permit requirements. In accordance with 23 CFR 635.112(e), no public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors.

12. SAFETY PRECAUTIONS

The Contractor shall maintain suitable and sufficient guards and barriers and, at night, suitable and sufficient safety standards required by Municipal, County, State and Federal ordinances and laws.

13. PRE-BID INSPECTION

The Bidder, before submitting a Proposal, is required to visit and examine the site of the work and satisfy himself/herself about the character of the work, any possible difficulties, and all conditions and circumstances which do and may affect the work.

14. PERFORMANCE AND PAYMENT BONDS

Within ten (10) working days of the award of the Contract, the successful bidder shall furnish a Performance and a Payment Bond in the form shown on Sections 00610 and 00620 guaranteeing the faithful performance of his contract and for the payment of all persons performing labor or furnishing materials in connection therewith. Each bond shall be in the amount of one hundred percent (100%) of the Contract price.

When necessary the successful bidder will be required to obtain the necessary permits from the Town of Cutler Bay, Miami-Dade County Public Works Department and the Florida Department of Transportation. The Town of Cutler Bay's permit fees will be waived by the Town. The contractor is responsible for all necessary end of construction clearance, certification or release fees required by local agencies, if applicable.

16. CONTRACTOR'S QUESTIONNAIRE

Section 00350 contains the form entitled "Contractor's Questionnaire." This form must be completed and submitted as an integral part of the bid package.

17. QUALIFICATION OF SURETIES

- A. General: The following requirements shall be met by all surety companies furnishing bid, performance payment or other type of bonds:
- B. Qualifications: As to companies being rated acceptable:
 - 1. The Surety shall be rated as "A" or better as to General Policyholders Rating and Class V or better as to Financial Category by Best's Key Rating Guide, published by Alfred M. Best Company, Inc., of 75 Fulton Street, New York, New York, 10038.
 - 2. The Surety shall be listed on the U.S. Department of the Treasury, Fiscal Service, Bureau of Government Financial Operations, Circular 570, (1982 Revision) entitled, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."
 - 3. All Surety Companies are subject to approval and may be rejected by the Owner without cause, in the same manner that bids may be rejected.
- C. Limitations: Bonding Limits or Bonding CapaTown refer to the limit or amount of Bond acceptable on any one risk.
 - 1. The bonding limit of the Surety shall not exceed ten percent (10%) of the policyholder surplus (capital and surplus) as listed by the aforementioned Best's Key Rating Guide, on anyone risk (penalty or amount of any one bond).
- D. Requirements:
 - 1. Policy Holders Surplus is required to be 5 times the amount of any one bond.
 - 2. The Agent countersigning the bond shall be a resident of Miami-Dade County.

18. DEFINITIONS

Terms used in the "Instructions To Bidders" shall be as defined in the General Conditions.

END OF SECTION

SECTION 00300

**PROPOSAL
OLD CUTLER ROAD RESURFACING IMPROVEMENTS
(From SW 224th Street to SW 184th Street (w/ exception)
TOWN OF CUTLER BAY, FLORIDA**

Town Clerk's Office
Town of Cutler Bay Town Hall
10720 Caribbean Boulevard
Suite 105
Cutler Bay, Florida 33189

The undersigned, as Bidder, hereby declares that the only person or persons interested in the Proposal, as principal or principals, is or are named herein and that no other person than herein mentioned has any interest in the Proposal of the Contract to which the work pertains; that this Proposal is made without connection or arrangement with any other person, company, or parties making a bid or proposal and that the Proposal is in all respects fair and made in good faith without collusion or fraud.

The Bidder certifies that the bidder is not a nonresident alien, or a foreign corporation/entity formed under the laws of a country other than the United States.

The Bidder further declares that he has examined the site of the work and that from personal knowledge and experience, or that he has made sufficient observations of the conditions of the proposed Project Site to satisfy himself that such site is a correct and suitable one for this work and he assumes full responsibility therefore, that he has examined the Drawings and Specifications for the work and from his own experience or from professional advice that the Drawings, including bid item quantities, and Specifications are sufficient for the work to be done and he has examined the other Contractual Documents relating thereto, including the Notice of Bid Invitation, Instructions to Bidders, Proposal, Contract, Davis Bacon Wage Determination, General Conditions, Supplementary Conditions, Special Conditions, Technical Specifications, Drawings and has read all addenda prior to the receipt of bids, and that he has satisfied himself fully, relative to all matters and conditions with respect to the work to which this Proposal pertains.

The Bidder proposes and agrees, if this Proposal is accepted, to contract with the Town of Cutler Bay (Owner), in the form of contract specified, to furnish all necessary materials, all equipment, all necessary machinery, tools, apparatus, means of transportation, and labor necessary to complete the work specified in the Proposal and the Contract, and called for by the Drawings and Specifications and in the manner specified.

The Bidder further proposes and agrees to comply in all respects with the time limits for commencement and completion of the work as stated in the Contract Form.

The Bidder further agrees that the deductions for liquidated damages, as stated in the Contract Form, constitute fixed, agreed, and liquidated damages to reimburse the Owner for additional costs to the Owner resulting from the work not being completed within the time limit stated in the Contract Form.

Payment Bonds each in the amount of one-hundred percent of the Contract price, within ten (10) consecutive calendar days after written notice being given by the Owner of the award of the Contract, and the undersigned agrees that in case of failure on his part to execute the said Contract and Performance and Payment Bonds within the ten (10) consecutive calendar days after the award of the Contract, the cashier's check or Bid Bond accompanying his bid and the money payable thereon shall be paid to the Owner as liquidation of damages sustained by the Owner; otherwise, the check accompanying the Proposal shall be returned to the undersigned after the Contract is signed and the Performance and Payment Bonds are filed.

Bidders Certificate of Competency No. _____

Bidders Occupational License No. _____

Acknowledgment is hereby made of the following Addenda received since issuance of the Project Manual:

Addendum No. _____ Dated: _____ Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____ Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____ Addendum No. _____ Dated: _____

Attached hereto is a cashier's check on the _____

_____ Bank of _____

_____ or Bid Bond for the sum of _____

_____ Dollars

(\$ _____), made payable to the Town of Cutler Bay, Florida.

(Name of Bidder) (Affix Seal) L.S.

Signature of Officer L.S.

(Title of Officer) L.S.

Address: _____

City: _____ State: _____

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

Name of the executive who will give personal attention to the work:

OLD CUTLER ROAD RESURFACING IMPROVEMENTS
(From SW 224th Street to SW 184th Street (w/ exception))
Town of Cutler Bay, Florida
C3TS Project No. 00359-003.01

BID FORM

Bid unit prices stated in this proposal include all costs and expenses for labor, equipment, materials, contractor's overhead and profit. Unit prices for the various work items are intended to establish a total price for completing the project in its entirety. The Contractor shall include in the Bid price any work item and materials for which a separate pay item has not been included in the Bid Form. All work and incidental costs shall be included for payment under the several scheduled items of the overall contract, and no separate payment will be made therefore.

BASE BID

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
<u>Roadway Items</u>					
101	Mobilization	1	L.S.	\$ _____	\$ _____
102-1	Maintenance of Traffic	1	L.S.	\$ _____	\$ _____
334-1-12	Superpave Asph Conc. – Traffic B	2,340	TN	\$ _____	\$ _____
522-2	Concrete sidewalk (6" wide) Remove and reconstruct	1,280	S.F.	\$ _____	\$ _____
711-11111	Standard Thermoplastic 6" White (incl. rpms)	4.5	NM	\$ _____	\$ _____
711-11125	Standard Thermoplastic 24" white	580	L.F.	\$ _____	
711-11170	Standard Thermoplastic Arrow	30	EA.	\$ _____	
711-11211	Standard Thermoplastic 6" Yellow (incl. rpms)	4.5	NM	\$ _____	\$ _____
711-11224	Standard Thermoplastic 18" yellow	1,420	L.F.	\$ _____	\$ _____
711-STOP	24" White Thermoplastic Stop Bar with 50 LF of Double Yellow & rpms	18	EA.	\$ _____	\$ _____
711-MAT	F & I ADA Tactile Warning Mat at H/C ramp	20	EA.	\$ _____	\$ _____
	Contingency Amount (Do not Bid)	1	L.S.	\$ 22,594	\$ 22,594

GRAND TOTAL IN FIGURES (LUMP SUM): \$ _____

GRAND TOTAL WRITTEN: _____

BIDDER: _____

By: _____

Title: _____

Telephone: _____

Fax: _____

NON-COLLUSION AFFIDAVIT

STATE OF _____
COUNTY OF _____

_____ (“Affiant”), being first duly sworn, deposes and says that:

1. Affiant is _____ of _____, (the “Bidder”) and has submitted the attached Bid;
2. Affiant has personal knowledge of the matters set forth herein and is competent to testify;
3. Affiant is fully informed respecting the preparation and contents of the attached Bid and all pertinent circumstances respecting the Bid;
4. The Bid is genuine and is not a collusive or sham Bid;
5. Neither the Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including Affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm, or person to submit a collusive or sham Bid, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm, or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit, or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against Town of Cutler Bay or any person interested in the proposed Contract.

By: _____

(Corporate Seal)

Title: _____

Subscribed and sworn before me this ___ day of _____, 20___, by _____, who is personally known to me or has produced _____ as identification.

Notary Public

Print Name
My commission expires:

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS
PRIMARY COVERED TRANSACTIONS**

- (1) 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 three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State 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 (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) 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.

Signature: _____

_____ Project Name

Name: _____

_____ Project Number

Firm/Agency: _____

Street Address: _____

CFR 24.510 & 24 CFR, Part 24, Appendix A

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. 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.
3. 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 when submitted or has become erroneous by reason of changed circumstances.
4. 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 person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. 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.
6. The prospective lower tier 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 Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it 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 (Telephone Number).
8. 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 a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 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.

BUY AMERICA

CERTIFICATE OF COMPLIANCE

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, prestressed 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 of \$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.

The Bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323 (j) (1). Section 165 (a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirements pursuant to Section 165 (b) (2) or (b) (4) of the Surface Transportation Assistance Act of 1982 and regulation in 49 CFR 661.7.

Firm Name: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements
Appendix A – 49 CFR Part 20

The undersigned (Contractor) certifies, to the best of his or her knowledge and belief, that:

1. 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 an 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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—LLL, “Disclosure Form to Report Lobbying”, in accordance with the instructions {as amended by “Government Wide Guidance for New Restrictions on Lobbying”, 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)}
3. 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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. {Note: Pursuant to 31 U.S.C. § 1352©(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure}.

The Contractor, _____, certified or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Official _____

Name and Title of Contractor’s Authorized Official _____

Date _____

SECTION 00350

CONTRACTOR'S QUESTIONNAIRE

Submitted to: The Mayor and Town Council of the Town of Cutler Bay, Florida:

By _____

Principal Office _____

How many years has your organization been in business as a General Contractor under your present business name? _____

Does your organization have current occupational licenses entitling it to do the work contemplated in this Contract? _____

State of Florida Occupational License (State type and number):

Federal I.D. No: _____

Dade County Certificate of Competency (State type and number):

Town of Cutler Bay Occupational License (State type and number):

Please include copies of above licenses and certifications with proposal.

How many years experience in similar work has your organization had?

- (A) As a General Contractor _____
- (B) As a Sub-Contractor _____
- (C) What contracts has your organization completed? State below:

Contract Amount	Class of Work	When Completed	Name & Address of Owner

How many years has your organization, or your concrete curb and sidewalk sub-contractor had in the actual construction of municipal, urban, decorative sidewalks and streetscapes?
_____ years

List the detailed experience below:

<u>Name & tel. number of Owner</u>	<u>Project Name</u>	<u>Date completed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Are you a Certified Disadvantaged Business Enterprise (DBE) with the State of Florida?

Have you ever failed to complete any work awarded to you? _____

If so, where and why? _____

Has any officer or partner of your organization ever failed to complete a contract handled in his own name? _____

If so, state name of individual, name of owner, and reason thereof:

In what other lines of business are you financially interested or engaged?

Give references as to experience, ability and financial standing.

What equipment do you own that is available for the proposed work and where is it located?

Financial Statement: _____

What Bank or Banks have you arranged to do business with during the course of the Contract should it be awarded to you? _____

I hereby certify that the above answers are true and correct.

Name of Bidder: _____ (Affix Seal)

Signature of Officer: _____

Title of Officer: _____

END OF SECTION

SECTION 00410

BID BOND

STATE OF FLORIDA)

ss

COUNTY OF)

KNOW ALL MEN BY THESE PRESENTS, that _____

_____ as Principal, and

_____, as Surety, a

Corporation chartered and existing under the laws of the State of _____, with its

principal offices in the City of _____, and authorized to do business in the State of

Florida are held and firmly bound unto the Owner, _____ in

the penal sum of _____

_____ Dollars (\$ _____) lawful money of

the United States, for the payment of which sum will and truly to be made, we bind ourselves, our

heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated _____, 20____, for:

**OLD CUTLER ROAD RESURFACING IMPROVEMENTS
(From SW 224th Street to SW 184th Street (w/ exception)
TOWN OF CUTLER BAY, FLORIDA**

NOW, THEREFORE:

- A. If the principal shall not withdraw said bid within sixty (60) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the Owner in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.
- B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the Owner the difference between the amount specified in said bid and the amount for which the Owner may procure the required work and supplies, if the latter amount be in excess of the former, then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals, this ____ day of _____, A.D., 20 ____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESSES: (If Sole Ownership or Partnership, two (2) witnesses required).
(If Corporation, Secretary Only will attest and affix seal).

WITNESSES:

PRINCIPAL:

Name of Firm

Signature of Authorized (Affix Seal)

Title

Business Address

City, State & Zip Code

WITNESSES:

SURETY:

Corporate Surety

Attorney-in-Fact (Affix Seal)

Business Address

City, State & Zip Code

Name of Local Insurance Agency

CERTIFICATES AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____ who signed said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

Secretary (Corporate Seal)

STATE OF FLORIDA)
 ss
COUNTY OF)

Before me, a Notary Public duly commissioned, qualified and acting, personally appeared _____, to be well known, who being by me first duly sworn upon oath, says that he is the Attorney-in-Fact, for the _____ and that he has been authorized by _____ to execute the foregoing bond on behalf of the Contractor named therein in favor of the Owner, the _____.

Sworn and Subscribed to before me this ____ day of _____, 20____, A.D.

(Attach Power of Attorney
to original Bid Bond)

Notary Public State of Florida at Large
My Commission Expires:

END OF SECTION

CONTRACT FOR CONSTRUCTION

THIS IS A CONTRACT, by and between THE TOWN OF CUTLER BAY, FLORIDA, a municipal corporation of the State of Florida, (hereinafter referred to as "Town"), and _____, a Florida corporation, (hereinafter referred to as "Contractor".)

WITNESSETH, that Contractor and Town, for the considerations hereinafter named, agree as follows:

ARTICLE 1

SCOPE OF WORK

- 1.1 Contractor hereby agrees to furnish all of the labor, materials, equipment, services and incidentals necessary to perform all of the Work described in the Contract Documents including Plans, Specifications and Addenda thereto for the following Project:

**OLD CUTLER ROAD RESURFACING IMPROVEMENTS
(From SW 224th Street to SW 184th Street (w/ exception)
TOWN OF CUTLER BAY, FLORIDA**

as described in the Plans prepared by CORZO CASTELLA CARBALLO THOMPSON SALMAN, P.A. ("C3TS") (the "Town's Project Engineer").

ARTICLE 2

CONTRACT TIME

- 2.1 Contractor shall be instructed to commence the Work by written instructions in the form of a Notice to Proceed issued by the Town Manager. The Notice to Proceed will not be issued until Contractor's submission to Town of all required documents and after execution of this Contract.
- 2.2 Time is of the essence throughout this Contract. The Contractor shall prosecute the work with faithfulness and diligence and the Base Bid Work shall be substantially completed within One Hundred Twenty (120) calendar days from the date specified in the Notice to Proceed. The Work shall be completed and ready for final payment in accordance with Article 3 within sixty (60) calendar days from the date certified by Town's Project Engineer as the date of Substantial Completion.

- 2.3 Upon failure of Contractor to substantially complete the Contract within the specified period of time, Contractor shall pay to Town the sum of Five Hundred Dollars (\$500.00) for each calendar day after the time specified in Section 2.2 above for Substantial Completion. After Substantial Completion, should Contractor fail to complete the remaining Work within the time specified in Section 2.2 above for completion and readiness for final payment, Contractor shall pay to Town the sum of Two Hundred Fifty Dollars (\$250.00) for each calendar day after the time specified in Section 2.2 for completion and readiness for final payment. These amounts are not penalties but are liquidated damages to Town for its inability to obtain full beneficial occupancy and use of the Project. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by Town as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete the Contract on time. The above-stated liquidated damages shall apply separately to each phase of the Project for which a time for substantial and/or final completion is given.
- 2.4 Town is authorized to deduct the liquidated damages from monies due to Contractor for the Work under this Contract.

ARTICLE 3

CONTRACT PRICE

- 3.1 Town shall pay to Contractor for the performance of the Contract, the total lump sum of _____ (\$ _____) subject to the conditions, limitations and restrictions of Sections 3.4, herein. This price shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Plans and Specifications.
- 3.2 The sum set forth in Paragraph 3.1 shall constitute the Contract Price which shall not be modified except by any Change Order issued by Town or as otherwise specified herein.
- 3.3 The Contract Price may be adjusted by Town pursuant to Article 12 of the General Conditions.
- 3.4 Town and Contractor agree that this Contract shall be subject to the condition precedent that Town funds are available and budgeted for the accomplishment of the Work for this Project, and that the Town secures and obtains any necessary loans for the accomplishment of this Project pursuant to a borrowing enabling ordinance and

any loan implementing resolution adopted by the Town Council and as described in the
Town Council Resolution which awards and authorizes the execution of this Contract.

ARTICLE 4

CONTRACT DOCUMENTS

- 4.1 The Contract Documents which comprise the entire agreement between the Town and the Contractor concerning the Work consist of this Contract for Construction, the Drawings, Plans and Specifications, the Invitation for Bids, the Addenda, the Bid, Instructions to Bidders, the General and Supplementary Conditions, FHWA-1273, the Performance Bond and Payment Bond, Insurance Certificates, the Notice of Award, the Notice to Proceed, any Change Orders and any other Contract Documents, not specifically listed herein which shall be considered incorporated into and made a part of this Contract by this reference and shall govern this Project. Contractor is reminded and hereby recognizes that all Work under this contract must comply with applicable federal regulations. Any mandatory clauses which are required by such federal regulations shall be deemed to be incorporated herein immediately upon Town's written request.
- 4.2 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of these Contract Documents that are not 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.
- 4.3 The Contract Documents shall remain the property of the Town. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the Contractor use, or permit to be used, any or all of such Contract Documents on other Projects without the Town's prior written authorization.

ARTICLE 5

WAIVER OF JURY TRIAL

Town and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract for Construction, arising out of, under, or in connection with the Construction of the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

ARTICLE 6

ASSIGNMENT

Neither party shall assign the Contract or any sub-contract in whole or in part without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Town Manager.

ARTICLE 7

MISCELLANEOUS

7.1 Insurance Requirements:

Contractor shall provide and maintain in force until all the Work to be performed under this Contract has been completed and accepted by Town (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth in the Contract Documents.

7.2 Town's Right To Terminate Contract

7.2.1 If Contractor fails to timely begin the Work, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if the Contractor shall fail to perform any material term set forth in the Contract Documents or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Town may, upon seven (7) days written Notice of Termination, terminate the services of Contractor, exclude Contractor from the Project site and take the prosecution of the Work out of the hands of Contractor, and use any or all materials on the Project site which have been paid for by the Town, as may be suitable and acceptable and may finish the Work by whatever methods it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Project is completed. All damages, costs and charges incurred by Town, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Town shall exceed the unpaid balance,

then Contractor shall be liable and shall pay to Town the amount of said excess.

7.3 **Contractor to Check Plans, Specifications and Data:**

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Town's Project Engineer, and shall notify Town's Project Engineer in writing of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery and Town's Project Engineer will promptly review the same. Any Work done after such discovery, but prior to written authorization of the Town's Project Engineer, will be done at the Contractor's sole risk.

7.4 **Contractor's Responsibility for Damages and Accidents:**

7.4.1 Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by Town, and shall promptly repair any damage done from any cause.

7.4.2 Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by Town, Contractor shall replace same without cost to Town.

7.5 **Defective Work/Guarantee:**

7.5.1 Town shall have the authority to reject or disapprove Work which the Town finds to be defective. If required by the Town, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with nondefective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

7.5.2 Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Town's Project Consultant, Town shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Town in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor. In the event of failure of Contractor to make all necessary repairs promptly and fully, Town may declare Contractor in default.

7.5.3 The Contractor shall unconditionally guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of substantial completion. If, within one (1) year after the date of substantial completion, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from Town, shall promptly correct such defective or nonconforming Work within the time specified by Town without cost to Town. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects.

7.5.4 Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

7.6 **Legal Restrictions and Traffic Provisions:**

Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Contractor's general operations. Contractor shall conduct its operations so as not to interfere with or close any thoroughfare, except as provided for in the Contract Documents, without the written consent of the proper authorities.

7.7 **Examination and retention of Contractor's Records**

7.7.1 The Town or any of their duly authorized representatives shall, until 5 years after final payment under this contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

7.7.2 The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as subparagraph 7.7.1 above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

7.7.3 The right to access and examination of records in subparagraph 7.7.1 shall continue until disposition of any mediation, claims, litigation or appeals.

7.8 **No Damages for Delay:**

No claim for damages or any claim, other than for an extension of time shall be made or asserted against Town by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind

from Town for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay. Notwithstanding the above, and in accordance with the requirements of Article 12 of the General Conditions, the Contractor shall be granted an extension of time and suspension of liquidated damages for any delay beyond the control of the Contractor. Should any delay, disruption, interference or hindrance be caused by the Town, for a continuous period or cumulative period of thirty (30) days, the Contractor may terminate the Contract upon seven days written notice to the Town.

7.9 **Public Entity Crimes Affidavit**

Contractor shall comply with Section 287.133, Florida Statutes, (Public Entity Crimes Statute) notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

7.10 **Indemnification**

Contractor shall indemnify and hold harmless Town, Town's officers and employees and Town's Project Engineer and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor and persons employed or utilized by Contractor in the performance of the Agreement.

7.11 **Capitalized Terms**

Capitalized terms shall have their plain meaning as indicated herein.

7.12 **Independent Contractor:**

The Contractor is an independent contractor under the Contract. Services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the Town. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to services rendered under the Contract shall be those of the Contractor.

7.13 **Payment to Sub-contractors**

Certification of Payment to Subcontractors: The term “subcontractor”, as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Town made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Town will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor’s work is satisfactorily complete, as determined by the Town. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor’s work. Contractor shall provide this certification in the form designated by the Town.

The Town will not make any progress payments after the initial partial payment until the Contractor completes the Equal Opportunity monthly report, unless the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Town and the affected subcontractors and suppliers.

Within 30 days of the Contractor’s receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Town will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes suppliers within said 30-day period.

7.14 **DBE Contract Assurance**

The Contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFE Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Town deems appropriate.

7.15 **Compliance with American Recovery and Reinvestment Act of 2009**

This project is subject to the criteria and conditions of the American Recovery and Reinvestment Act of 2009. there will be federal reporting requirements, such as monthly reports on the number of jobs created and the number of jobs retained by the project for both the contractor and subcontractors, which the Contractor will

have to satisfy. The exact nature and extent of the reporting requirements and unknown at this time. When the reporting requirements are known, the Contractor will be required to provide the information on a form provided by the Department.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: TOWN OF CUTLER BAY, FLORIDA, signing by and through its Town Manager authorized to execute same by Council action on the _____ day of _____ 2009, and _____ signing by and through _____, duly authorized to execute same.

ATTEST:

TOWN OF CUTLER BAY, FLORIDA

Town Clerk

By: _____
Town Manager

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
TOWN ATTORNEY

This ____ day of _____, 2009.

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION FORMAT, AS APPLICABLE.

CONTRACTOR

ATTEST:

(Secretary)

By: _____
(Signature and Title)

(Corporate Seal)

(Type Name/Title signed above)

This ____ day of _____, 2009.

SECTION 00610

PERFORMANCE BOND

STATE OF FLORIDA)

COUNTY OF _____) ^{SS}

KNOW ALL MEN BY THESE PRESENTS, that _____ as Principal, hereinafter called Contractor, and _____ as Surety, hereinafter called Surety, are held and firmly bound unto the Town of Cutler Bay, as Obligee, hereinafter called Owner, in the amount of _____ Dollars (\$ _____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, contractor has by written agreement dated _____, 20_____, entered into a Contract with Owner for:

**OLD CUTLER ROAD RESURFACING IMPROVEMENTS
(From SW 224th Street to SW 184th Street (w/ exception)
TOWN OF CUTLER BAY, FLORIDA**

in accordance with Drawings and Specifications prepared by Corzo Castella Carballo Thompson Salman, P.A. which Contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that, if the Principal shall in all respects promptly and faithfully perform and comply with the terms and conditions of said Contract and his obligations thereunder and shall indemnify the Owner and the Consulting Engineer and save either or all of them harmless against and from all costs, expenses and damages arising from the performance of said Contract or the repair of any work thereunder, then this obligation shall be void; otherwise, this Bond shall remain in full force and effect, in accordance with the following terms and conditions:

- A. The Principal and Surety jointly and severally agree to pay the Owner any difference between the sum to which the said Principal would be entitled on the completion of the Contract, and that sum which the Owner may be obliged to pay for the

completion of said work by Contract or otherwise, and any damages, direct or indirect or consequential, which the said Owner may sustain on account of such work, or on account of the failure of said Contractor to properly and in all things, keep and execute all of the provision of said Contract.

- B. And this Bond shall remain in full force and effect for a period of one (1) year from the date of acceptance of the project by the Owner and shall provide that the Contractor guarantees to repair or replace for said period of one (1) year all work performed and materials and equipment furnished that were not performed or furnished according to the terms of the Contract, and shall make good, defects thereof which have become apparent before the expiration of said period of one (1) year. If any part of the project, in the judgment of the Owner, for the reasons above stated needs to be replaced, repaired or made good during that time, the Owner shall so notify the Contractor in writing. If the Contractor refuses or neglects to do such work within five (5) days from the date of service of such Notice, the Owner shall have the work done by others and the cost thereof shall be paid by the Contractor or his Surety.
- C. And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive Notice of any change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.
- D. The surety represents and warrants to the Owner that they have a Best's Key Rating Guide General Policyholder's Rating of " _____ " and Financial Category of "Class _____".

IN WITNESS WHEREOF, the above bounded parties executed this instrument under their several seals, this ____ day of _____ 20 ____, A.D., the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership or Partnership, two (2) Witnesses Required).
(If Corporation, Secretary Only will attest and affix seal).

WITNESSES:

WITNESSES:

PRINCIPAL:

Signature of Authorized Officer
(Affix Seal)

Title

Business Address

City, State & Zip Code

SURETY:

Corporate Surety

Title

Business Address

City, State & Zip Code

Name of Local Insurance Agency

SECTION 00620

PAYMENT BOND

STATE OF FLORIDA)

COUNTY OF)^{SS}

KNOW ALL MEN BY THESE PRESENTS, that _____ as Principal, hereinafter called Contractor, and _____ as Surety, hereinafter called Surety, are held and firmly bound unto the Town of Cutler Bay, as Obligee, hereinafter called Owner, in the amount of _____ Dollars (\$ _____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, 20__, entered into a Contract with Owner for:

**OLD CUTLER ROAD RESURFACING IMPROVEMENTS
(From SW 224th Street to SW 184th Street (w/ exception)
TOWN OF CUTLER BAY, FLORIDA**

in accordance with Drawings and Specifications prepared by Corzo Castella Carballo Thompson Salman, P.A. which Contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the Principal shall promptly make payment to all claimants, as herein below defined, then this obligation shall be void; otherwise, this Bond shall remain in full force and effect, subject to the following terms and conditions:

- A. A claimant is defined as any person supplying the Principal with labor, material and supplies, used directly or indirectly by the said Principal or any subcontractor in the prosecution of the work provided for in said Contract, and is further defined in Section 255.05(1) of the Florida Statutes.
- B. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after performance of the labor or after complete delivery of materials and supplies by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and

have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

- C. No suit or action shall be commenced hereunder by any claimant.
1. Unless claimant, other than one having a direct contract with the Principal, shall within forty-five (45) days after beginning to furnish labor, materials or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to this bond for protection.
 2. Unless claimant, other than one having a direct contract with the Principal, shall within ninety (90) days after such claimant's performance of the labor or complete delivery of materials and supplies, deliver to the Principal written notice of the performance of such labor or delivery of such material and supplies and the nonpayment therefore.
 3. After the expiration of one (1) year from the performance of the labor or completion of delivery of the materials and supplies; it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitations shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 4. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
- D. The Principal and the Surety jointly and severally, shall repay the Owner any sum which the Owner may be compelled to pay because of any lien for labor or materials furnished for any work included in or provided by said Contract.
- E. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration of or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications applicable thereto shall in any way affect its obligations on this Bond, and the Surety hereby waives notice of any such change, extension of time, alterations of or addition to the terms of the Contract, or to the work or to the Specifications.
- F. The Surety represents and warrants to the Owner that they have a Best's Key Rating Guide General Policyholder's rating of " _____ " and Financial Category of "Class _____ ".

IN WITNESS WHEREOF, the above bounded parties executed this instrument under their several seals, this _____ day of _____ 20____, A.D., the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership or Partnership, two (2) Witnesses Required).
(If Corporation, Secretary Only will attest and affix seal).

WITNESSES:

WITNESSES:

PRINCIPAL:

Signature of Authorized Officer
(Affix Seal)

Title

Business Address

City, State & Zip Code

SURETY:

Corporate Surety

Title

Business Address

City, State & Zip Code

Name of Local Insurance Agency

/

Executive Order 11246--Equal employment opportunity

Source: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I--Nondiscrimination in Government Employment

[Part I superseded by Executive Order 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

Part II--Nondiscrimination in Employment by Government Contractors and Subcontractors**Subpart A--Duties of the Secretary of Labor**

Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart B--Contractors' Agreements

Sec. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or

pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

[Sec. 202 amended by Executive Order 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided,* That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such

a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by Executive Order 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684.; Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

Subpart C--Powers and Duties of the Secretary of Labor and the Contracting Agencies

Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive

branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D--Sanctions and Penalties

Sec. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart E--Certificates of Merit

Sec. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

Sec. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

Sec. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III--Nondiscrimination Provisions in Federally Assisted Construction Contracts

Sec. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts.

under Part II, Subpart D, of this Order.

[Sec. 301 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

Sec. 303. (a) The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

Part IV--Miscellaneous

Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Sec. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

Sec. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by Executive Order 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

Sec. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

Sec. 405. This Order shall become effective thirty days after the date of this Order.

Page URL: <http://www.archives.gov/federal-register/codification/executive-order/11246.html>

The U.S. National Archives and Records Administration
8601 Adelphi Road, College Park, MD 20740-6001 • Telephone: 1-86-NARA-NARA or 1-866-272-6272

Earthmover.....	\$ 9.57
Forklift Op.....	\$ 8.00
Front End Loader:	
1 cu. yard and under.....	\$ 9.29
Over 1 cu. yard.....	\$ 9.68
Gradall.....	\$ 10.50
Grademan.....	\$ 7.64
Guardrail Post Driver	
Operator.....	\$ 10.75
Mechanic.....	\$ 12.00
Milling Machine.....	\$ 8.71
Milling Machine Grade	
Checker.....	\$ 7.78
Motor Grader.....	\$ 11.52
Mulching Machine.....	\$ 7.75
Oiler, Grease Man.....	\$ 12.21
Pavement Striping	
Machine.....	\$ 9.34
Paving Striping Machine	
Nozzleman.....	\$ 7.91
Piledrivers:	
Leadsman.....	\$ 14.77
Operator.....	\$ 13.71
Power Subgrade Mixer.....	\$ 8.50
Rollers:	
Finish.....	\$ 9.18
Rough.....	\$ 7.66
Self Prop. Rubber Tire....	\$ 9.20
Scraper.....	\$ 7.55
Sign Erector.....	\$ 11.65
Small Tool Operator.....	\$ 8.05
Tractor, Light.....	\$ 7.83
Trenching Machine.....	\$ 8.19
Widening Spreader	
Machine.....	\$ 8.50
Traffic Controller	
TRAFFIC CONTROL	
SPECIALIST:.....	\$ 7.95
TRAFFIC SIGNALIZATION:	
Installer.....	\$ 8.61
Mechanic.....	\$ 11.47
TRAFFIC SIGNALIZATION:	
Truck drivers:	
Low-Boy.....	\$ 8.63
Single & Multi-Rear Axle....	\$ 8.05

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations

indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====
END OF GENERAL DECISION

00640-3

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM.
(REV 6-6-02) (FA 7-17-02) (1-03)**

SECTION 7 (Pages 55-71) is expanded by the following:

7-24 Disadvantaged Business Enterprise Program.

7-24.1 General: Prior to award of the Contract, have an approved DBE Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan and commitment to carry out the Plan must be incorporated into and become a part of the awarded Contract. Failure to keep these commitments will be deemed noncompliance with these Specifications and a breach of the Contract. 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 DOT assisted Contracts.

7-24.2 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 Department.

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 Department.

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 Department.

7-24.3 DBE Records and Reports: Submit the Anticipated DBE Participation Statement at or before the Pre-Construction Conference. Report monthly, through the Equal Opportunity Reporting System on the Department's Website, actual payments, retainage, minority status, and work type of all subcontractors and major suppliers. The 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 Department 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 Department 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 Department and the Federal Highway Administration.

SECTION 00650

CERTIFICATE OF INSURANCE

THIS IS TO CERTIFY THAT THE _____
(Insurance Company)

Address _____

of _____

has issued policies of insurance, as described below and identified by a policy number, to the insured named below; and to certify that such policies are in full force and effect at this time. It is agreed that none of these policies will be canceled or changed so as to affect the interest(s) of the Town of Cutler Bay (hereinafter sometimes called the Owner) until thirty (30) days after written notice of such cancellation or change has been delivered to the Engineer; Corzo Castella Carballo Thompson Salman, P.A..

Insured _____

Address _____

Status of Insured: _____ Corporation _____ Partnership _____ Individual

Location of Operations Insured _____

Description of Work:

**OLD CUTLER ROAD RESURFACING IMPROVEMENTS
(From SW 224th Street to SW 184th Street (w/ exception)
TOWN OF CUTLER BAY, FLORIDA**

INSURANCE POLICIES IN FORCE:

Forms of Coverage	Policy Number	Exp. Date
*Workers Comp./Employers Liability	_____	_____
+Comprehensive Automobile Liability	_____	_____
oComprehensive General Liability	_____	_____
+Excess Liability	_____	_____
Other (Please specify type: _____)	_____	_____

POLICY INCLUDES COVERAGE FOR:

YES

NO

- | | | |
|--|--|---|
| <ol style="list-style-type: none"> 1. Additional Insured: Owner & Engineer 2. *Liability under the United States Longshoremen's and Harbor Workers' Compensation Act. 3. +All owned, hired, or nonowned automotive equipment used in connection with work done for the Owner. 4. oContractual Liability 5. oDamage caused by explosion, collapse or structural injury, and damage to underground utilities. 6. oProducts/Completed Operations 7. oOwners and Contractors Protective Liability 8. oPersonal Injury Liability 9. +Excess Liability applies excess of: <ol style="list-style-type: none"> (a) Employers Liability (b) Comprehensive General Liability (c) Comprehensive Automobile Liability | <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> | <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> |
|--|--|---|

TYPES OF POLICY	FORMS OF COVERAGE	LIMITS OF LIABILITY	
Workers' Compensation	Bodily Injury	\$	Statutory
Employers Liability	Bodily Injury	\$ _____	Each Accident
	Disease	\$ _____	Each Person
	Disease	\$ _____	Policy Limit
Comprehensive Auto Liability	Combined Single Limit BI/PD	\$ _____	Each Accident

Comprehensive General Liability	Bodily Injury	\$_____ Each Occurrence
		\$_____ Aggregate
	Property Damage	\$_____ Each Occurrence
		\$_____ Aggregate
OR		
	Combined Single Limit BI/PD Occurrence	\$_____ Each
		\$_____ Aggregate

Excess Liability	Combined Single Limit BI/PD	\$_____ Aggregate
------------------	-----------------------------	-------------------

Other

The Insurance Company hereby agrees to deliver, within ten (10) days, two (2) copies of the above policies to the Engineer when so requested.

NOTE: Entries on this certificate are limited to the Authorized Agent or Insurance Company Representative.

Date _____

(SEAL) _____
Insurance Company

Issued at _____

Authorized Representative

Insurance Agent or Company
-Send original and one copy to:

Corzo Castella Carballo Thompson Salman, P.A.
901 Ponce De Leon Boulevard, Suite 900
Coral Gables, Florida 33134
Attention: Ramon Castella, P.E., Principal in Charge

Send two (2) copies to:

Town of Cutler Bay
Public Works Department
Town of Cutler Bay Town Hall
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189
Attention: Rafael Casals, Public Works Director

END OF SECTION

SECTION 00660

ACKNOWLEDGEMENT OF CONFORMANCE

WITH O.S.H.A. STANDARDS

TO THE TOWN OF CUTLER BAY:

We, _____, hereby acknowledge and agree that as Contractors for the construction of OLD CUTLER ROAD RESURFACING IMPROVEMENTS, TOWN OF CUTLER BAY, FLORIDA, Engineer's Project No.: 00359-003.01, within the limits of the Town of Cutler Bay, Florida, that we have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health Act of 1970, and all State and Local Safety and Health regulations, and agree to indemnify and hold harmless the Town of Cutler Bay, and its Consulting Engineers against any and all legal liability or loss the Town, or the Engineer may incur due to

_____ failure to comply with such act.

ATTEST

CONTRACTOR

ATTEST

BY: _____
NAME

DATE

END OF SECTION

SECTION 00665

TRENCH SAFETY ACT COMPLIANCE

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 et. seq. which became effective October 1, 1990, shall be in effect during the period of construction of the project. The Bidder, by signing and submitting the bids, in writing, assuring that it will perform any trench excavation in accordance with applicable trench safety standards. The Bidder further identifies the following separate item of costs of compliance with the applicable trench safety standards as well as the methods of compliance:

Methods of Compliance

(fill in methods)

Total \$ _____

Bidder acknowledges that this cost is included in the applicable items of the Proposal and in the Grand Total Bid Price. Failure to complete the above will result in the bid being declared non-responsive.

The Bidder is, and the Owner and Engineer are not, responsible to review or assess Bidder's safety precautions, programs or costs, or the means, methods, techniques or technique adequacy, reasonableness of cost, sequences or procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Florida Statute Section 553.60 et. seq. cited as the "Trench Safety Act". Bidder is, and the Owner and Engineer are not, responsible to determine if any safety or safety related standards apply to the project, including but not limited to, the "Trench Safety Act."

Signature of Authorized Representative (Manual)

Name of Authorized Representative (Typed or Printed)

Sworn to and subscribed before me in the State and County first mentioned above on the day of _____, 20__.

Notary Public

(affix seal)

My Commission Expires:

END OF SECTION

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



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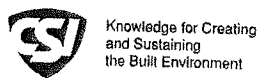
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These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract

Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but

which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and

workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be

performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents, or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or

c. has been damaged prior to Engineer's - recommendation of final payment (unless responsibility for the protection thereof has been

assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to*

Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with

Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids),

except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

- a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or
2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice*: If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for

Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any

Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified

in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and

any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and

subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities

identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary

shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with

the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used,

cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. "Or-Equal" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed

by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or

Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable,

brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities

not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent

threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals , any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria,

installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners,

employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of

such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be

final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be respon-

sible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such

Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,
2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim.

Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. Cash Allowances

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

**ARTICLE 12 - CHANGE OF CONTRACT PRICE;
CHANGE OF CONTRACT TIMES**

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. Contractor's Fee: The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract

Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to

Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor

without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of

Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals

and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply

with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the

results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may

be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to

Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with

Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment

and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and , will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's

continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision

becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in

accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION 00800

SUPPLEMENTARY CONDITIONS

1. DEFINITIONS

Add the following:

The term(s) "**or equal**" or "**approved equal**," shall be interpreted to mean an item or material or equipment similar to that named and which is suited to the same use and capable of performing the same function and be of the same quality as that named. Such material or equipment shall be subject to approval by the Engineer.

The term **Acceptance**, shall be interpreted to mean that the OWNER of the work is satisfied that it is fully complete and in accordance with the Contract Documents.

The term **Affidavit**, shall be interpreted as the instrument which is to be signed by the Contractor and submitted to the OWNER through the Engineer, upon completion of that job, showing that all bills have been paid. It shall also mean such instrument that may be requested by the OWNER incident to partial payments.

The term **Approval**, shall be interpreted as the item in question is accepted as satisfactory.

The term **Article**, shall be interpreted as the prime subdivision of a section of these or any other referenced Specifications, the instructions to Bidders, the Special Conditions and the General Conditions.

The term **Materials**, shall be interpreted as any substance proposed to be used in connection with the construction of any structure, facility or appurtenance, or of other work under the contract.

The term "**Provided**", as used in the Specifications upon the Drawings, shall be understood to mean "provided complete in place", that is, "furnished and installed". Where "as shown," "as indicated", "as detailed", or words of similar importance are used, it shall be understood that the references to the Drawings and/or Specifications accompanying these documents are intended unless otherwise expressly stated.

The words "**furnish**", "**furnish and**", "**install**", and "**provide**" or words with similar meaning shall be interpreted unless otherwise specifically stated, to mean "furnish and install complete in place and ready for service".

2. AWARD OF CONTRACT

The award of the contract, if it is awarded, will be to the lowest responsible, responsive Bidder. No Notice of Award will be given until the OWNER has concluded such investigations as he deems necessary to establish the responsibility, qualifications and financial ability of the Bidders to do the Work in accordance with the Contract Documents to the satisfaction of the OWNER within the time prescribed. The OWNER reserves the right to reject the Bid of any Bidder who does not pass such investigation to the OWNER's satisfaction. In analyzing Bids, the OWNER may take into consideration alternates and unit prices, if requested by the Bid forms. If the Contract is awarded, the OWNER will issue the Notice of Award and give the successful Bidder a contract for execution within one hundred and twenty (120) days after the opening of Bids.

3. FORFEITURE OF BID SECURITY

Failure of the successful Bidder to execute and deliver the Agreement and deliver the required Bonds to the OWNER within 10 working days or 15 calendar days of receipt of the Agreement from the Owner, shall be just cause for the OWNER to annul the Notice of Award and declare the Bid and any security therefore forfeited.

4. QUALIFICATION OF SUB CONTRACTORS MATERIALMEN AND SUPPLIERS

Within ten working days after bid opening, the CONTRACTOR will submit to the OWNER and the ENGINEER for acceptance a list of the names of sub contractors and such other persons and organizations (including those who are to furnish principal items of materials or equipment) proposed for those portions of the work as to which the identity of the subcontractors and other persons and organizations must be submitted as specified in the Contract Documents. Within thirty working days after receiving the list, the Engineer will notify the CONTRACTOR in writing if either the OWNER or the ENGINEER, after due investigation, has reasonable objection to any subcontractor, person or organization on such list. The failure of the OWNER or the ENGINEER to make objection to any subcontractor, person or organization on the list within thirty days of receipt shall constitute an acceptance of such subcontractor, person or organization. Acceptance of any such subcontractor, person or organization shall not constitute a waiver of any right of the OWNER or the ENGINEER to reject defective work, material or equipment or work material or equipment not in conformance with the requirements of the contract documents.

5. DELIVERY OF BONDS

Add to paragraph 2.01

Failure of the successful Bidder to execute the Agreement and deliver the required Bonds within ten (10) days of the Notice of Award shall be just cause for the Owner to annul the award and declare the Bid and any guarantee thereof forfeited.

6. COPIES OF DOCUMENTS

Add the following to paragraph 2.02

The Contractor will be furnished, free of charge, up to five (5) copies of the drawings and specifications in lieu of the ten (10) copies as stated.

7. CHANGE OF THE CONTRACT TIME

Add paragraph 12.03

Because this is a calendar day contract, normal rainfall, weather and climatic conditions which may be reasonably expected are not considered grounds for an extension of contract time.

8. PAYMENTS TO CONTRACTOR AND COMPLETION

Add the following to paragraph 14.07(c).

The certificate of completion will not be issued nor the final payment made until ALL punch list items have been completed.

9. CONTRACTOR'S LIABILITY INSURANCE

Refer to General Condition 5.04

The Contractor will, at his own expense, purchase and maintain such insurance as will protect the Owner and the Contractor from claims under workmen's compensation laws, disability benefit laws or other similar employee laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees, or any person other than his employees, including claims insured by usual personal injury liability coverage; from claims for injury to or destruction of tangible property including loss of use resulting therefrom - any or all of which may arise out of or result from the Contractor's operations under the Contract Documents, whether such operations be by any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts may be legally liable. This insurance shall be written for not less than \$1,000,000.00 combined single limit per occurrence (no aggregate limitation) or as required by law, whichever is greater, and shall include contractual liability insurance. Before starting the work, the Contractor will file with the Owner and Engineer certificates of such insurance, acceptable to the Owner; these certificates shall contain a provision that the coverage afforded under the policies will not be cancelled or materially changed until at least 15 days after written notice is given to the Owner and Engineer. These policies shall be written to cover the Contractor and Owner jointly. The Certificate of Insurance form is included in Section 00650.

10. OWNERS INDEMNITY

Refer to General Conditions 5.03 through 5.04 and 6.20.

- A. The Contractor shall obtain, maintain and furnish to the Owner during the life of this Contract, full Owner's Protective Liability Insurance that will protect him against all losses or claims which may arise from operations under the Contract Documents.
- B. To the fullest extent permitted by law, the CONTRACTOR shall indemnify, defend, and hold harmless the OWNER, the ENGINEER, and their officers, agents, and employees, against and from all claims and liability arising under or by reason of the Contract or any performance of the WORK, but not from the sole negligence or willful misconduct of the OWNER and/or the ENGINEER. Such indemnification by the CONTRACTOR shall include but not be limited to the following:
 - 1. Liability or claims resulting directly or indirectly from the negligence or carelessness of the CONTRACTOR or its agents in the performance of the WORK, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the CONTRACTOR or its agents;
 - 2. Liability or claims arising directly or indirectly from or based on the violation of any law, ordinance, regulation, order, or decree, whether by the CONTRACTOR or its agents;
 - 3. Liability or claims arising directly or indirectly from the use or manufacture by the CONTRACTOR, its agents, or the OWNER in the performance of this Contract of any copyrighted composition, secrete process, patented or unpatented invention, article, or appliance, unless otherwise specifically stipulated in this Contract;
 - 4. Liability or claims arising directly or indirectly from the breach of any

warranties, whether express or implied, made to the OWNER or any other parties by the CONTRACTOR or its agents;

5. Liabilities or claims arising directly or indirectly from the willful misconduct of the CONTRACTOR or its agents; and

6. Liabilities or claims arising directly or indirectly from any breach of the obligations assumed herein by the CONTRACTOR.

C. The CONTRACTOR shall reimburse the OWNER, and the ENGINEER for all costs and expenses, (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs) incurred by said OWNER, and the ENGINEER in enforcing the provisions of this Paragraph.

D. The indemnification obligation under this Paragraph shall not be limited in any way by any limitation of the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any such subcontractor or other person or organization under worker's compensation acts, disability benefit acts, or other employees benefit acts.

11. PROPERTY INSURANCE

Refer to General Conditions 5.06.

A. The Contractor shall, at his own expense, obtain and maintain property insurance and furnish to the Owner during the life of this Contract the full insurable value of the project. This insurance shall include the interests of the Owner, the Contractor and Subcontractors in the work shall insure against the perils of Fire, Extended Coverage, Vandalism and Malicious Mischief.

B. The Owner and Contractor waive all rights against each other for damages cause by fire or other perils to the extent covered by insurance provided under this Article, except such rights as they may have to the proceeds of such insurance. The Contractor shall require similar waivers by Subcontractors.

12. SALES TAX

Refer to General Conditions 6.10.

The Contractor shall familiarize himself with the requirements and procedures as applicable of the State of Florida pertaining to the exemption from State Sales Tax as it may apply to the Owner.

13. INDEMNITY

Refer to General Conditions 5.01.

The Bid Items for Payment and Performance Bond premium and consideration for indemnification to Owner and Engineer are included in the Schedule of Prices and must be completed by the Bidder in order to comply with Florida Statute 725.06.

14. PERMITS

Refer to General Conditions 6.08.

The Contractor will be required to obtain all required permits, including a permit from the Town of Cutler Bay Public Works Department, Miami-Dade Public Works Department, and Florida Department of Transportation, prior to the start of construction. The Contractor will be required to comply with all permitted drawings.

15. LAWS AND REGULATIONS

Refer to General Conditions 6.09

- A. The Contractor shall obey all applicable Federal, State and local laws including but not limited to the ones listed below.
- B. The Contractor shall comply with Executive Order No. 11246, entitled "Equal Opportunity Employment," as amended by Executive Order No. 11275, and as supplemented in Department of Labor Regulations (No. 41 CFR, Chapter 60).
- C. The Copeland "Anti-Kickback" Act (18 U.S.C. Section 874), as supplemented in U.S. Department of Labor Regulations (29 CFR, Chapter 60).
- D. All applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (40 U.S.C. Section 1857 et. seq.) as amended and the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) as amended.
- E. The Florida State Statute 446.101 Apprentice and Training Employment Regulations.
- F. Florida Industrial Code No. 8C as amended and especially 8C-29 (CB-1958), Florida Department of Commerce, Bureau of Workmen's Compensation.
- G. The requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1.
- H. Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.
- I. The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).
- J. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise).

16. REVIEW OF APPLICATIONS FOR PROGRESS PAYMENTS

Refer to General Conditions 14.02

Owner shall, within thirty (30) days of presentation to him of the Application for Payment with Engineer's recommendation pay Contractor the amount recommended. This is in lieu of 20

days.

17. PARTIAL AND FINAL PAYMENT PROCEDURES

Refer to General Conditions 14.02 and 14.07

- A. If the work progresses according to this Contract, the Contractor will be paid each month, 90 percent of the value of the work completed during the preceding month. For the purpose of preparing a monthly estimate for partial payment, the Contractor will make an approximate estimate of the value of all work done and materials furnished as of the last day of each calendar month, and will deduct 10 percent thereof and all previous payments and charges, and the balance will be paid by the Owner to the Contractor on or about sixty days after the submittal to the Owner. The Owner's Engineer shall review, revise and correct, if necessary, and then approve the estimate for partial payment before it is submitted by the Owner's Engineer to the Owner. The 10 percent which is deducted each month is reserved by the Owner as a partial guaranty to it of the faithful execution of this Contract. As a consideration of such payment of 90 percent, the Owner shall have the right to enter upon and put into proper service any or all parts of the work which may be in condition for use; however, such use shall not be construed as the final acceptance and the commencement of the one year guarantee bond period for any or all parts of the work, unless final acceptance is made for the complete project at that time. No claim or charge is to be made by the Contractor for such use, nor is such use to be construed as an acceptance by the Owner of any part of the work so used.
- B. Upon receipt of written notice from the Contractor that the work has been completed in conformity with the Drawings and Specifications and any approved changes thereto, the Owner's Engineer shall promptly examine the work and, making such tests as he may deem proper and using all of the care and judgment normally exercised in the examination of completed work by a properly qualified and experienced professional engineer, shall satisfy himself that the Contractor's statement appears to be correct. He shall then inform the Owner in writing that he has examined the work and that it appears to conform to the Contract Drawings, Specifications and any approved Change Orders and that therefore he recommends acceptance and final payment to the Contractor. However, it is agreed by the Owner and the Contractor that such statement by the Owner's Engineer does not in any way relieve the Contractor from his responsibility to deliver a completed job in good and workmanlike condition, and does not render the Engineer or the Owner liable for any faulty work done or materials used by the Contractor.
- C. The Owner's Engineer will then make a final estimate of the value of all work done and will deduct therefrom all previous payments which have been made. The Owner's Engineer will report such estimate to the Owner together with his recommendation as to the acceptance of the work or his findings as to any deficiencies therein. Such recommendation as to the acceptance of the work by the Owner's Engineer will be made to his best knowledge and behalf. After receipt and acceptance by the Owner of the properly executed Affidavit and the Release of Lien and within 60 days after approval of the Engineer's estimate and recommendation by the Owner, the amount of the estimate, less any charges or damages herein provided for, will be paid. Upon such final payment, the Owner shall be released by the Contractor from all liability whatever growing out of this Contract, except for the balance, if any, of such amount as may have been retained to cover charges, claims or damages, as specified; and if the Owner is satisfied that no such charges, claims or damages exist or will arise, no such amount will be retained. All prior estimates are subject to correction in the final

are subject to correction in the final estimate.

- D. Each monthly request for a partial payment shall be submitted on an Application for Payment Form shown on Page 00800-8 & 9 which shall be accompanied by an executed copy of the Certification of Contractor shown on Page 00800-10, and by a progress report.
- E. Measurement and payment for work items for which direct payment is provided will be achieved as required by the Technical Specifications. When no direct payment for work or materials is required in General Conditions, the Special Conditions, the Proposal, the sections of the Technical Specifications or in other parts of the Contract Documents or shown, indicated or noted on the Drawings, compensation therefor shall be included in the Contract Unit or Lump Sum Prices for the several pay items under this Contract and shown and listed in the Proposal.
- F. When the work has been completed, the Contractor shall execute a Final Release of Lien and an Affidavit declaring that all bills have been paid in full.
- G. These documents will be furnished to the Owner in a form similar to those which appear on the following pages:

18. MEDIATION

Any claim or dispute arising out of or related to this agreement shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceeding by either party. Both parties waive the right to arbitration. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in the circuit court for the 11th Judicial Circuit for the State of Florida.

19. ATTORNEY'S FEES

In the event of any dispute and/or legal action arising from an interpretation and/or the performance of any of the documents and/or contracts in this Manual, Owner and Contractor hereby agree that the prevailing party shall be awarded reasonable attorney's fees and costs, including but not limited to, the cost of paralegals, accountants and attorney's fees and costs of appellate proceedings, if applicable.

20. INDEMNIFICATION AND HOLD HARMLESS

Notwithstanding anything to the contrary in this Supplementary Condition, the general conditions and/or any other documents in this Manual, and in consideration of the sum of \$10.00 paid by Owner to Contractor, the Contractor hereby agrees to indemnify and hold Owner harmless from any costs, expenses, damages and/or liability to the Owner arising from Contractor's Work.

21. EXPRESS WARRANTIES

Notwithstanding any provisions to the contrary under this Supplemental Conditions, the general conditions and/or any other document in this Manual, Contractor expressly warrants all labor and materials used in the Work for a period of one (1) year from the date Final Payment is received by the Contractor.

22. PROHIBITED MATERIALS

Pursuant to Chapter 83-174, Laws of Florida, the use of asbestos or asbestos-based materials is strictly prohibited.

23. RECORDS RETENTION

Refer to General Conditions 6.12. The Contractor shall retain all relevant project records for three years after receiving final payment from the Owner.

24. 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.

25. WORK PERFORMED BY EQUIPMENT-RENTAL AGREEMENT

The limitations set forth in 8-1, concerning the amount of work that may be sublet, do not apply to work performed by equipment-rental agreement. However, for any work proposed to be performed by equipment-rental agreement, notify the Engineer in writing of such intention before using the rented equipment, and indicate whether the equipment will be rented on an operator non-operated basis. Include with the written notice a listing and description of the equipment and a description of the part of the work to be performed with such equipment. As an exception to the above requirements, the Department will not require written notice for equipment to be rented (without operators) from an equipment dealer or from a firm whose principal business is the renting or leasing of equipment.

The operators of all rented equipment, whether rented on an operated or a non-operated basis are operators are subject to all wage rate requirements applicable to the project. When renting equipment without operators, the Contractor shall carry the operators on his own payroll. For equipment that is rented on an operated basis, and when required by the Contract or requested by the Engineer, furnish payrolls from the lessor with the names of the operators shown thereon.

When a lessor provides rentals of equipment on an operated basis that exceed \$10,000, such lessor is subject to any Equal Employment Opportunity requirements that are applicable to the project.

26. 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 melting 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, prestressed 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 of \$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.

27. CONTRACTOR PURCHASED EQUIPMENT

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- (b) States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.
- (c) Use.
 - (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.
 - (2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.
 - (3) Notwithstanding the encouragement in Sec. 18.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to

provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

- (4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.
- (d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:
- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
 - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
 - (5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:
- (1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
 - (2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agent's share of the equipment.
 - (3) In cases where the grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.
- (f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:
- (1) Title will remain vested in the Federal Government.
 - (2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.
 - (3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instruction from the Federal agency.
- (g) Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

- (1) The property shall be identified in the grant or otherwise made known to the grantee in writing.
- (2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instruction within the 120 calendar-day period the grantee shall follow Sec. 18.32(e).
- (3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property

2.8 HIRING PREFERENCE

No construction work shall be performed by convict labor at the work site or within the limits of any Federal-aid highway construction project from the time of award to the contract or the start of work on force account until final acceptance of the work by the STD unless it is labor performed by convicts who are on parole, supervised release, or probation.

No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.

The selection of labor to be employed by the contractor on any Federal-aid project shall be by the contractor without regard to race, color, religion, sex, national origin, age, or handicap and in accordance with 23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246(Sept. 24, 1965), 3 CFR 339 (196401965), as amended.

Pursuant to 23 U.S.C. 140(d), it is permissible for STD's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in paragraph (e) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a contractor be compelled to layoff or terminate a permanent core-crew employee to meet a preference goal.

(e) Projects eligible for Indian employment preference consideration are projects located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads" in 23 U.S.C. 101 and regulations issued thereunder. The terminus of a road "providing access to" is that point at which it intersects with a road functionally classified as a collector or higher classification (outside the reservation boundary) in both urban and rural areas. In the case of an Interstate highway, the terminus is the first interchange outside the reservation.

The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

2.9 CONVICT LABOR AND INDIAN PREFERENCES ON FEDERAL-AID PROJECTS

Title 23 CFR PART 635 Section 117 is incorporated here and shall apply to this contract.

TITLE 23--HIGHWAYS

CHAPTER I--FEDERAL HIGHW ADMINISTRATION, DEPARTMENT OF

TRANSPORTATION

PART 635—CONSTRUCTION AND MAINTENANCE—Table of Contents

Subpart A—Contract Procedures

Sec. 635.117 Labor and employment.

- (a) No construction work shall be performed by convict labor at the work site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the SHA unless it is labor performed by convicts who are on parole, supervised release, or probation.
- (b) No procedures or requirements shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.
- (c) The selection of labor to be employed by the contractor or any Federal-aid project shall be by the contractor without regard to race, color, religion, sex, national origin, age, or handicap and in accordance with 23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246 (Sept. 24, 1965), 3 CFR 339 (1964-1965), as amended.
- (d) Pursuant to 23 U.S.C. 140(d), it is permissible for SHA's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in paragraph (e) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a contractor be compelled to layoff or terminate a permanent core-crew employee to meet a preference goal.
- (e) Projects eligible for Indian employment preference consideration are projects located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads" in 23 U.S.C. 101 and regulations issued thereunder. The terminus of a road "providing access to" is that point at which it intersects with a road functionally classified as a collector or higher classification (outside the reservation boundary) in both urban and rural areas. In the case of an Interstate highway, the terminus is the first interchange outside the reservation.
- (f) The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

30. PUBLICLY-OWNED EQUIPMENT

Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local public agency for highway construction purposes may be warranted or justified. A proposal by any STD for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be cost effective to do so under the conditions peculiar to the individual project or locality.

Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the following conditions are met:

- (1) The proposed use of such equipment is clearly set forth in the Plans, Specifications and Estimate (PS&E) submitted to the Division Administrator for approval.
- (2) The advertised specifications specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged, and the points of availability or delivery of the equipment; and
- (3) The advertised specifications include a notification that the successful bidder has the option either of renting part or all of such equipment from the State or local public agency or otherwise providing the equipment necessary for the performance of the contract work.

In the rental of publicly owned equipment to contractors, the State or local public agency shall not profit at the expense of Federal funds.

Unforeseeable conditions may make it necessary to provide publicly owned equipment to the contractor at rental rates agreed to between the contractor and the State or local public agency after the work has started. Any such arrangement shall not form the basis for any increase in the cost of the project on which Federal funds are to participate.

When publicly owned equipment is used on projects constructed on a force account basis, costs may be determined by agreed unit prices or on an actual cost basis. When agreed unit prices are applied the equipment need not be itemized nor rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the STD shall submit to the Division Administrations for approval the schedule of rates proposed to be charged, exclusive of profit, for the publicly owned equipment made available for use.

31. SALVGE CREDITS

Salvage credit to Federal-aid projects is governed by State procedures. If the State has procedures that do not require credit to the project, then credit to a Federal-aid project is also not required. However, if a State does not have procedures addressing salvage credit, then salvage credit is required unless one of the following circumstances are met:

- a. the salvaged item has a value less than \$5,000.
- b. the salvaged item becomes the contractor's property by virtue of the contract provisions,
or
- c. the salvaged item will be reused in future projects eligible under title 23 U.S.C. until its useful life is expended.

The disposition of salvaged items on demonstration projects for which project funds are designated by amount and location should be determined in consultation with the appropriate program office in headquarters.

When salvage is required, careful attention should be given to the contract provisions for salvage to ensure that the cost of the operation (i.e. removal or salvage), does not exceed the value of the item(s) to be salvaged. Items to be salvaged may be unused construction materials, salvaged highway appurtenances, or other equipment or material for which the

useful life is greater than one year.

32. STATE PREFERENCE

No requirement shall be imposed and no procedure shall be enforced by any State transportation department in connection with a project which may operate:

- (a) To require the use of or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or
- (b) To prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Transportation as evidenced by requirements and procedures prescribed by the FHWA Administrator to carry out such policies.

Date: _____

APPLICATION FOR PAYMENT NO. _____

Project No. _____

To: _____ (OWNER)
From: _____ (CONTRACTOR)
Contract for: _____

For Work accomplished through the date of: _____, 19__.

SUMMARY OF CONTRACT AMOUNTS

- | | | |
|----|--|-----------------|
| 1. | Original Contract Price: | \$ _____ |
| 2. | Change Orders No. through: | \$ _____ |
| 3. | Contract Price with all approve Change Orders: | \$ _____ |
| 4. | Work completed to date: | \$ _____ |
| 5. | Less (10%) Retainage: | \$ _____ |
| 6. | Amount due to date: | \$ _____ |
| 7. | Less previous payments (or applications): | \$ _____ |
| 8. | AMOUNT DUE THIS APPLICATION: | \$ _____ |

Note: This application must be accompanied with the Certification of Contractor Form and worksheet for completed items as shown on page 00800-10.

Accompanying Documentation: _____

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated: _____, 19__.

Corzo Castella Carballo Thompson Salman, P.A. (ENGINEER)
Engineers / Architects / Planners

By: _____
Project Manager

CERTIFICATION OF CONTRACTOR

According to the best of my knowledge and belief, I certify that all items and amounts shown on Application for Payment No. _____ are correct, that all work has been performed and/or materials supplied in full accordance with the terms and conditions of this Contract, dated _____, 20____, between _____(Owner) and _____(Contractor);

I further certify that all just and lawful bills against the undersigned and his subcontractors and suppliers for labor, material and equipment employed in the performance of this Contract have been paid in full accordance with their terms and conditions; that all taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged; and that there are no Vendor's, Mechanic's or other Liens or rights to liens or conditional sales contracts which should be satisfied or discharged before such payment is made.

Date: _____

Contractor: _____

STATE OF FLORIDA)

ss

COUNTY OF _____)

Personally appeared before me this _____ day of _____, 20____, _____ known (or made known) to me as the _____

(Owner) (Partner)(Corporate Officer)- Give Title of _____ Contractor(s), who subscribed and swore to the above instrument in my presence.

Notary Public - (Type Name)
State of Florida-at-Large
My Commission Expires: _____

The Contractor shall execute this Certificate and attach it to each Application For Payment.

AFFIDAVIT

STATE OF FLORIDA)

COUNTY OF)^{ss}

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared _____, who, after being first duly sworn, upon oath deposes and says that all lienors contracting directly with, or directly employed by (him, them, it) and that all taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act) as amended, have been paid and discharged, and that all bill, wages, fees, claims and other charges incurred by _____ in connection with the construction of _____ have been paid in full.

SIGNED: _____

By: _____

WITNESSES:

SWORN AND SUBSCRIBED TO BEFORE ME THIS ____day____,20__AD.

Notary Public
State of Florida-at-Large

My Commission Expires: _____

FINAL RELEASE OF LIEN

KNOW ALL MEN BY THESE PRESENTS, that _____
_____ for and in consideration of the sum of
_____ Dollars
(\$ _____) paid to _____ by the _____, receipt of
which is hereby acknowledged, do(es) hereby release and quitclaim to the Town of Cutler Bay, the
Owner, its successors or assigns, all liens, lien rights, claims or demands of any kind whatsoever
which _____ now has (have) or might have against the property, building,
and/or for any incidental expense for the construction of:

thereon or in otherwise improving said property situated as above described.

IN WITNESS WHEREOF _____ have (has) hereunto set _____ hand and seal
this _____ day of _____, 20____, A.D.

WITNESS:

_____ (Seal)

SWORN AND SUBSCRIBED TO BEFORE ME THIS _____ day of _____, 20____ A.D.

Notary Public State of Florida
at-Large
My Commission Expires: _____

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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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:
 - a. 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.
 - b. 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:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. 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.
 - a. 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.

- b. 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.)
 - c. 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:
- a. 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.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. 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.
 - d. 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:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

- b. 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.
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. 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:
- a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - b. 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.
 - c. 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.
- a. 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.
 - b. 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.)

1. General:

- a. 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.

- b. 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.
- c. 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.

2. Classification:

- a. 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.
- b. 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.
- c. 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.
- d. 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.
- e. 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.

3. Payment of Fringe Benefits:

- a. 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.
- b. 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.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. 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.

b. 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.

c. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.)

1. 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.

2. Payrolls and Payroll Records:

- a. 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.
- b. 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.

- c. 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.
- d. 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.
- e. 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.
- f. 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.

- g. 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

1. In 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:
 - a. 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.
 - b. 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.
 - c. 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.
2. 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

1. 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).
 - a. "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.

- b. "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.
2. 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.
 3. 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.
 4. 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

1. 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.
2. 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).

3. 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:

1. 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.
2. 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.
3. 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.
4. 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

1. **Instructions for Certification - Primary Covered Transactions:**
(Applicable to all Federal-aid contracts - 49 CFR 29)
 - a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
 - b. 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.
 - c. 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.

- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. 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.
- j. 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

1. 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.
2. 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.

2. 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)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. 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.

- c. 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.
- d. 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.
- e. 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.
- f. 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.
- 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 List.
- 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 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:

1. 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.
2. 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:
 - 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 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.
 - 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 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.

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

the U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "Hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

SECTION 01000

SPECIAL CONDITIONS

1.1 SCOPE

- A. This project consists of improvements to Old Cutler road within the Town of Cutler Bay, as shown on project manual and plans prepared by Corzo Castella Carballo Thompson Salman, P.A., Project No. 00359-003.01. This project is being federally funded through the American Recovery and Reinvestment Act of 2009.

1.2 NOTICES

- A. In conformance with the requirements of Article 1.04 Notice and Service of the General Conditions all notices or other papers required to be delivered by the Contractor to the Owner shall be delivered to the office of the Owner's Engineer, at an address provided to the Contractor at the preconstruction conference.

1.3 COORDINATION OF PLANS, SPECIFICATIONS AND SPECIAL PROVISIONS

- A. In case of discrepancy, computed dimensions shall govern over scaled dimensions; supplemental specifications shall govern over Standard Specifications; and Special Conditions shall govern over; Drawings, Supplemental and Standard Specifications.

1.4 LAYING OUT THE WORK

- A. The Contractor shall be responsible for establishing all lines and grades together with all reference points as required by the various trades. All layout work shall be done using competent and experienced personnel under the supervision of a Land Surveyor registered in the State of Florida.
- B. The Contractor shall provide all labor, instruments and stakes, templates, and other materials necessary for marking and maintaining all lines and grades. The lines and grades shall be subject to any checking the Owner or Engineer may decide necessary.
- C. No separate cost item is provided for laying out the work, the cost of which is considered incidental to the work and shall be included in the unit prices for items in the Proposal.
- D. The Contractor shall safeguard all existing and known Property corners, monuments and marks adjacent to but not related to the work and shall bear the cost of re-establishing them if disturbed or destroyed. He shall also safeguard all points, stakes, grade marks, monuments and bench marks made or established on the work, bear the cost of re-establishing them if disturbed and bear the cost of rectifying work improperly installed due to not maintaining or protecting or to removing without authorization such established points, stakes and marks.

1.5 PRECONSTRUCTION CONFERENCE

- A. In addition to the provisions of the General Conditions, Article 1.03.9, the following parties will be asked to attend the Preconstruction Conference: BellSouth Telephone

Company, Comcast Cable TV, Florida Power & Light Company, Town of Cutler Bay Public Works, City Gas Company of Florida, Miami-Dade Water and Sewer Department, and Miami-Dade County Public Works Department. At the preconstruction meeting, the Contractor shall present a construction phasing plan for the Engineers approval.

1.6 PERMITS AND LICENSES

- A. Before starting work, the Contractor shall obtain and pay for all required licenses and permits. The Town of Cutler Bay will waive the fees for such permits it normally issues.

1.7 CONTRACTOR'S OFFICE

- A. The Contractor shall provide and maintain an office with telephone facilities where he or a responsible representative of his organization may be reached at any time while work is in progress. Such office may be at any location the Contractor considers desirable within Miami-Dade or Broward County.

1.8 USE OF EXPLOSIVES

- A. No blasting shall be done.

1.9 USE OF PUBLIC STREETS

- A. The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other traffic. Certain elements of the work will be conducted off peak hours as specified in the Contract Documents. Any earth or other excavated material spilled from trucks shall be removed immediately by the Contractor and the streets cleaned to the satisfaction of the Owner.

1.10 CARE OF TREES, SHRUBS AND GRASS

- A. The Contractor shall be fully responsible for maintaining in good condition all cultivated grass plots, trees and shrubs. Where maintained shrubbery, grass strips or area must be removed or destroyed incident to the construction operation, the Contractor shall, after completion of the work, replace or restore to the original condition all destroyed or damaged sod, shrubbery or grass areas. Tree limbs which interfere with equipment operation and are approved for pruning shall be neatly trimmed and the tree cut coated with a tree paint. The cost for restoration shall be included in the total Bid amount, no separate pay item for this work provided.

1.11 OBSTRUCTIONS

- A. All water pipes, storm drains, force mains, gas or other piping, telephone or power cables or conduits, and all other obstructions, whether or not shown, shall be temporarily removed from or supported across pipeline excavations. Before disconnecting any pipes or cables, the Contractor shall obtain permission from the owner, or shall make suitable arrangements for their disconnection by the owner. The Contractor shall be responsible for any damage to any such pipes, conduits or cables, and shall restore them to service promptly as soon as the work has progressed past the point involved. Approximate locations of known water, sanitary, drainage, power and telephone installations along route of new pipelines or in vicinity of the work are shown, but must be verified in the field by the Contractor. The Contractor shall

uncover these pipes, ducts, cables, etc., carefully, by hand, to verify location and depth of cover. Any discrepancies or differences found shall be brought to the attention of the Owner and Engineer of Record in order that necessary changes may be made. These conditions are supplemental to general requirements elsewhere in these specifications. Where fences, walls or other man-made obstructions exist illegally in the public right-of-way, the Owner will have them removed upon adequate prior notice by the Contractor.

1.12 DAMAGE TO EXISTING STRUCTURES AND UTILITIES

- A. The Contractor shall be responsible for and make good all damage to pavement and driveways beyond the limits of the work zone, to buildings, telephone or other cables, water pipes, sanitary pipes, or other structures which may be encountered, whether or not shown on the Drawings.
- B. Information shown on the Drawings as to the location of existing utilities has been prepared from the most reliable data available to the Engineer. This information is not guaranteed, however, and it shall be this Contractor's responsibility to determine the location, character and depth of any existing utilities. He shall assist the utility companies, by every means possible to determine said locations. Extreme caution shall be exercised to eliminate any possibility of any damage to utilities resulting from his activities.

1.13 NOTIFICATION TO UTILITY COMPANIES

- A. The excavators shall comply with Florida Statute 553.851 regarding notification of existing gas and oil pipeline company owners and shall also notify "SUNSHINE STATE ONE CALL FOR FLORIDA, INC." at 1-(800)432-4770 prior to excavating. Evidence of such notice shall be furnished to the City prior to excavating.

1.14 TESTS

- A. The Contractor will pay for all required tests. Generally, tests will be compaction and density tests, limerock quality tests, concrete quality tests (cylinder breaks). On asphaltic concrete and pipe, the manufacturer's or supplier's certificate that the material meets the requirements of the specification will be accepted subject to verification by the Owner's Engineer. Any and all tests which have to be repeated because of the failure of the tested material to meet specifications shall be paid for by the Contractor and the costs of any such tests shall be deducted from payments due the Contractor. Water required for leakage tests shall be furnished by the Contractor.

B. Testing Frequencies

Concrete: Perform one (1) test per 50 C.Y., or at least one (1) per day if less than 50 C.Y.
One test shall consist of one (1) slump, temperature read and one (1) set of five (5) cylinders for compressive strength.

Roadway: For sub-grade perform one (1) density test every 500 L.F. each lane (100% T-99). Sample for proctor test.
For stabilized sub-grade, perform one (1) density test every 500 L.F. each lane (98% T-180). Sample for proctor test, and L.B.R.
For Limerock Base, perform one (1) density test every 500 L.F. each

lane (98% T-180). Use Pit Proctor.
For Curb Pad, perform one (1) density test every 1000 L.F. (98% T-180).

Drainage: For trenches, perform one (1) density test every 1000 L.F.

1.15 RECORD AS-BUILT DRAWINGS

- A. During the entire construction operation, the Contractor shall maintain records of all deviations from the Drawings and Specifications and shall prepare therefrom "record" drawings showing correctly and accurately the locations of all improvements to reflect the work as it was actually constructed. The locations of all improvements shall be as surveyed and certified by a Land Surveyor licensed in the State of Florida and shall include edge of pavement and back of sidewalk elevations taken at 50 foot intervals and at high and low points, rim and invert elevations on all storm water inlets and manholes, trench bottom elevations on all trench drains taken at 25-foot intervals and top of pipe elevations on all storm sewers taken at 25-foot intervals. These drawings shall consist of reproducibles and shall conform to recognized standards of drafting, shall be neat and legible. One set of reproducibles and one set of blue line prints shall be submitted to the Owner. Final acceptance of the project will be withheld until delivery of the set of "record" drawings is made to the Owner.

1.16 SUBSURFACE INVESTIGATION

- A. The Contractor shall be responsible for having determined to his satisfaction, prior to the submission of his bid, the nature and location of the work, the conformation of the ground, the character and quality of the substrata, the types and quantity of materials to be encountered, the nature of the ground water conditions, the character of equipment and facilities needed preliminary to and during the execution of the work, the general and local conditions and all other matters which can in any way affect the work under this contract. The prices established for the work to be done will reflect all costs pertaining to the work. Any claims for extras based on substrata or ground water table conditions will not be allowed.

1.17 SUSPENSION OF WORK

- A. Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction because of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine to compensate for time lost by such delay, with such determination to be set forth in writing.

1.18 PAYMENT FOR UTILITIES

- A. The Contractor shall obtain the necessary utility service by making application for the service and paying such fees and charges required by the utility companies.

1.19 MAINTENANCE OF TRAFFIC

- A. General:
 - 1. The Contractor shall be responsible for the proper maintenance control and

detour of traffic in the area of construction, during the course of construction. All traffic control and maintenance procedures shall be in accordance with the requirements of the Florida Department of Transportation and Miami-Dade County traffic engineering and the Town of Cutler Bay. It shall be the Contractor's responsibility, as Bidder, prior to submitting his Bid, to determine the requirements of these agencies so that his Proposal reflects all costs to be incurred, including the costs to hire off-duty police officers as required. No claims for additional payment will be considered for costs incurred in the proper maintenance, control, detour and protection of traffic.

2. Traffic shall be maintained at all times where practical and as more particularly specified hereinafter. No traffic shall be detoured without prior knowledge and approval of the respective traffic control agency having jurisdiction. The Contractor shall notify such agencies 48 hours in advance of such time he proposes to detour traffic.
3. The Contractor shall keep all law enforcement, fire protection and ambulance agencies informed, in advance, of his construction schedules, and shall notify all such agencies, 48 hours in advance, in the event of detour of any roadway.
4. All traffic control signs and devices, barricades, flashers, flambeaus and similar devices shall be furnished and maintained by the Contractor.
5. Excavated or other material stored adjacent to or partially upon a roadway pavement shall be adequately marked for traffic and pedestrian safety at all times. Necessary access to adjacent property shall be provided at all times.
6. The work shall be conducted in a manner to cause the least possible interruption to traffic. Where traffic must cross excavations, the Contractor shall provide suitable bridges at street intersections and driveways.
7. The Contractor shall notify all businesses in the area that will be affected by the proposed detour or lane closure, 48 hours in advance of proposed work.
8. The Contractor shall provide access to all private property and driveways at all times.

1.20 BARRICADES AND PROTECTION OF WORK

- A. The Contractor shall protect his work throughout its length by the erection of suitable barricades and handrails, where required. He shall further indicate this work at night by the maintenance of suitable lights or flares, especially along or across through-fares. Wherever it is necessary to cross a public walk, he shall provide suitable safe walkways with hand railings. He shall also comply with all laws or ordinances covering the protection of such work and the safety measures to be employed therein. The Contractor shall carry out his work so as not to deny access to private property. All utility access manholes, valves, fire hydrants and letter boxes shall be kept accessible at all times.

END OF SECTION

SECTION 01010

SUMMARY OF WORK

PART 1 - GENERAL

1.1 DESCRIPTION

A. Work included: Listing of Significant Items:

1. Work Sequence
2. Contractor Use of Sites
3. Owner Use of Facilities
4. Coordination

1.2 WORK COVERED BY CONTRACT DOCUMENTS

- ###### A.
- Work for this contract comprises work to be performed on the project entitled: Old Cutler Road Resurfacing Improvements, Town of Cutler Bay, Florida, as shown, described, and detailed within this project manual and on the project plans and specifications. The improvements include asphalt resurfacing, sidewalk repairs and improvements, and pavement markings.

1.3 WORK SEQUENCE

- ###### A.
- Construct Work in phases to accommodate Owner's Service requirements during construction period.
- ###### B.
- Coordinate construction schedule and operations with Engineer.

1.4 CONTRACTOR USE OF SITES

- ###### A.
- Limit use of sites for Work and for construction operations, to allow for:
1. Owner servicing areas with municipal services.
 2. Work by other contractors.
 3. Public and Florida Power and Light access to adjacent properties.
- ###### B.
- Limit access to construction area.
- ###### C.
- Coordinate use of sites under direction of Engineer.

1.5 OWNER USE OF FACILITIES

- ###### A.
- Owner will require use of roadway during entire period of construction.
- ###### B.
- Cooperate with Owner to minimize conflict, and to facilitate Owner's servicing of area's municipal service needs.

END OF SECTION

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 - GENERAL

1.1 DESCRIPTION

- A. The Contractor shall receive and accept the compensation provided in the Proposal and the Contract as full payment for furnishing all materials, labor, tools and equipment, for performing all operations necessary to complete the work under the Contract, and also in full payment for all loss or damages arising from the nature of the work, or from any discrepancy between the actual quantities of work and quantities herein estimated by the Engineer/Architect, or from the action of the elements or from any unforeseen difficulties which may be encountered during the prosecution of the work until the final acceptance by the Owner.
- B. The prices stated in the proposal include all costs and expenses for taxes, labor, equipment, materials, commissions, transportation charges and expenses, patent fees and royalties, labor for handling materials during inspection, together with any and all other costs and expenses for performing and completing the work as shown on the Drawings and specified herein.
- C. The Contractor's attention is again called to the fact that the quotations for the various items of work are intended to establish a total price for completing the work in its entirety. Should the Contractor feel that the cost for any item of work has not been established by the Bid Form or Payment Items, he shall include the cost for that work in some other applicable bid item, so that his proposal for the project does reflect his total price for completing the work in its entirety.

1.2 MEASUREMENT

- A. The quantities for payment under this Contract shall be determined by measurements of the completed items, in place, ready for service and accepted by the Owner.

1.3 PAYMENT ITEMS

- A. Basis of Payment

Contract prices for the various work items are intended to establish a total price for completing the project in its entirety. The Contractor shall include in the Bid price any work item and materials for which a separate pay item has not been included in the Bid Form. All work and incidental costs shall be included for payment under the several scheduled items of the overall contract, and no separate payment will be made therefor.

END OF SECTION

SECTION 01340

SUBMITTALS AND SUBSTITUTIONS

PART 1 GENERAL

1.1 SECTION INCLUDES:

- A. Work included: Make submittals required by the Contract Documents, and revise and resubmit as necessary to establish compliance with the specified requirements.

1.2 RELATED SECTIONS:

- A.. Documents affecting work of this Section include, but are not necessarily limited to, General Conditions, Supplementary Conditions, and Sections in Division 1 of these Specifications.
- B. Individual requirements for submittals also may be described in pertinent Sections of these Specifications.
- C. Work not included:
 - 1. Submittals which are not required will not be reviewed by the Engineer.
 - 2. The Contractor may require his subcontractors to provide drawings, setting diagrams, and similar information to help coordinate the Work, but such data shall remain between the Contractor and his subcontractors and will not be reviewed by the Engineer.

1.3 SUBMITTALS FOR REVIEW

- A. Make submittals of Shop Drawings, Samples, substitution requests, and other items in accordance with the provisions of this Section.

1.4 QUALITY ASSURANCE

- A. Coordination of submittals:
 - 1. Prior to each submittal, carefully review and coordinate all aspects of each item being submitted.
 - 2. Verify that each item and the submittal for it conform in all respects with the specified requirements.
 - 3. By affixing the Contractor's signature to each submittal, certify that this coordination has been performed.
- B. Substitutions:
 - 1. The Contract is based on the standards of quality established in the Contract Documents. Substitutions will be considered only when listed at time of bidding, on the Contractors letterhead and when substantiated by the Contractor's submittal of required data within 10 calendar days after the bid opening.
 - 2. The following products do not require further approval except for interface within the Work:
 - a. Products specified by reference to standard specifications such as ASTM and similar standards.
 - b. Products specified by manufacturer's name and catalog model

number.

3. Do not substitute materials, equipment, or methods unless such substitution has been specifically approved in writing for this Work by the Engineer.

C. "Or Equal":

1. Where the phrase "or equal," or "or equal as approved by the Architect/Engineer," occurs in the Contract Documents, do not assume that the materials, equipment, or methods will be approved as equal unless the item has been specifically so approved for this Work by the Engineer.
2. The decision of the Engineer shall be final.

PART 2 PRODUCTS

2.1 SHOP DRAWINGS

- A. Scale and measurements: Make Shop Drawings accurately to a scale sufficiently large to show all pertinent aspects of the item and its method of connection to the Work.
- B. Types of prints required:
 1. Submit Shop Drawings in the form of three blueline or blackline prints of each sheet.
 2. Blueprints alone will not be acceptable.
- C. Review comments of the Engineer will be shown on the blueline or blackline when it is returned to the Contractor. The Contractor may make and distribute such copies as are required for his purposes.

2.2 MANUFACTURER'S LITERATURE

- A. Where contents of submitted literature from manufacturers includes data not pertinent to the submittal, clearly show which portions of the contents is being submitted for review.
- B. Submit the number of copies which are required to be returned, plus one copy which will be retained by the Engineer.

2.3 SAMPLES (**ONLY IF REQUIRED IN OTHER SECTIONS**)

- A. Provide Sample of Samples identical to the precise article proposed to be provided. Identify as described under "Identification of submittals" below.
- B. Number of Samples required:
 1. Unless otherwise specified, submit Samples, in the quantity which is required to be returned, plus one which will be retained by the Engineer.
 2. By prearrangement in specific cases, a single Sample may be submitted for review and, when approved, be installed in the Work at a location agreed upon by the Engineer.

PART 3 EXECUTION

3.1 IDENTIFICATION OF SUBMITTALS

- A. Consecutively number all submittals.
 1. When material is resubmitted for any reason, transmit under a new letter of

- transmittal and with a new transmittal number.
2. On resubmittals, cite the original submittal number for reference.
- B. Accompany each submittal with a letter of transmittal showing all information required for identification and checking.
 - C. On at least the first page of each submittal, and elsewhere as required for positive identification, show the submittal number in which the item was included.
 - D. Maintain an accurate submittal log for the duration of the Work, showing current status of all submittals at all times. Make the submittal log available to the Engineer for his review upon request.

3.2 GROUPING OF SUBMITTALS

- A. Unless otherwise specified, make submittals in groups containing all associated items to assure that information is available for checking each item when it is received.
 1. Partial submittals may be rejected as not complying with the provisions of the Contract.
 2. The Contractor may be held liable for delays so occasioned.

3.3 TIMING OF SUBMITTALS

- A. Make submittals far enough in advance of scheduled dates for installation to provide time required for reviews, for securing necessary approvals, for possible revisions and resubmittals, and for placing orders and securing delivery.
- B. In scheduling, allow at least ten working days for review by the Engineer following his receipt of the submittal.

3.4 ENGINEER'S REVIEW

- A. Review by the Engineer does not relieve the Contractor from responsibility for errors which may exist in the submitted data.
- B. Revisions:
 1. Make revisions required by the Engineer.
 2. If the Contractor considers any required revision to be a change, he shall so notify the Engineer within ten calendar days in writing. If after the review of the Engineer it is determined that the required revisions are in fact a legitimate change in work or time the procedures set forth in Articles 10, 11, & 12 of the General Conditions shall be followed.
 3. Make only those revisions directed or approved by the Engineer.
- C. Reimbursement of Engineer's costs:
 1. In the event substitutions are proposed to the Engineer after the Contract has been awarded, the Engineer will record all time used by him and by his consultants in evaluation of each such proposed substitution.
 2. Whether or not the Engineer approves a proposed substitution, the Contractor promptly upon receipt of the Engineer's billing shall reimburse the Engineer at the rate of three times the direct cost to Engineer and his consultants for all time spent by them in evaluating the proposed substitution.

END OF SECTION

SECTION 01550

MAINTENANCE OF TRAFFIC

PART 1 - GENERAL

1.1 DESCRIPTION

- A. The Contractor shall furnish all equipment, supplies, personnel, labor and services to accomplish maintenance of traffic at all locations required to complete this project and as authorized by the Engineer.
- B. The intent is to maintain safe and expeditious movement of traffic around every work area where the public may be exposed to the potential hazards of the contract operations.
- C. The term "Maintenance of Traffic" as used in the contract drawings or in these Specifications shall mean the maintenance of traffic movement through and/or around any work site within a public right-of-way in a manner such as to provide minimum disruption and maximum safety to both the public and project personnel and equipment.

1.2 QUALITY ASSURANCE

- A. Maintenance of Traffic in the public rights-of-way shall be in strict accordance with the manual of uniform traffic control devices (M.U.T.C.D.).
- B. Maintenance of Traffic on F.D.O.T. roads shall be as indicated on the contract drawings and as specified in F.D.O.T. index 600.
- C. All traffic control and warning devices so specified; which are not on F.D.O.T. roadways, shall unless otherwise specified by the Department of Traffic and Transportation, be furnished, installed according to the Miami-Dade County Public Works Manual, part I, Standard Details (No. R-19 series), and maintained by the contractor involved.
- D. When required by the Town of Cutler Bay, supervision of traffic control and safety by a Uniformed Police Officer shall be furnished by the Contractor without cost to the Village. The Contractor is required to retain the services of the Town of Cutler Bay Police Officers for the supervision. Further, any and all additional traffic measures deemed necessary by such officers shall be carried out by the Contractor without cost to the Town.

1.3 ADDITIONAL REQUIREMENTS

- A. All open trenches and holes adjacent to roadway or walkways shall be properly marked and barricaded to assure the safety of both vehicular and pedestrian traffic.
- B. No trenches or holes near walkways, in roadways or their shoulders are to be left open during night-time hours without express permission of the Town of Cutler Bay, Public Works Department and the Engineer, in writing. Trenches shall be backfilled or covered with steel plates.

END OF SECTION

SECTION 01640

PRODUCT HANDLING

PART 1 GENERAL

1.1 SECTION INCLUDES:

- A. Work included: Protect products scheduled for use in the Work by means including, but not necessarily limited to, those described in this Section.

1.2 RELATED SECTIONS:

- A. Documents affecting work of this Section include, but are not necessarily limited to, General Conditions, Supplementary Conditions, and Sections in Division 1 of the Specifications.
- B. Additional procedures also may be prescribed in other Sections of these Specifications.

1.3 QUALITY ASSURANCE

- A. Include within the Contractor's quality assurance program such procedures as are required to assure full protection of work and materials.

1.4 MANUFACTURER'S RECOMMENDATIONS

- A. Except as otherwise approved by the Engineer determine and comply with manufacturer's recommendations on product handling, storage, protection and installation.

1.5 PACKAGING

- A. Deliver products to the job site in their manufacturer's original container with labels intact and legible.
 - 1. Maintain packaged materials with seals unbroken and labels intact until time of use.
 - 2. Promptly remove damaged material and unsuitable items from the job site, and promptly replace with material meeting the specified requirements, at no additional cost to the Owner.
- B. The Engineer may reject as non-complying such material and products that do not bear identification satisfactory to the Engineer as to manufacturer, grade, quality, and other pertinent information.

1.6 PROTECTION

- A. Protect finished surfaces, including jambs and soffits of openings used as passageways, through which equipment and materials are handled.
- B. Provide protection for finish floor surfaces in traffic areas prior to allowing equipment or materials to be moved over such surfaces.
- C. Maintain finished surfaces clean, unmarred, and suitably protected until accepted by

the Owner.

1.7 REPAIRS AND REPLACEMENTS

- A. In the event of damage, promptly make replacements and repairs to the approval of the Engineer and at no additional cost to the Owner.
- B. Additional time required to secure replacements and to make repairs will not be considered by the Engineer to justify an extension in the Contract Time of Completion.

END OF SECTION

SECTION 02010

SUBSURFACE INVESTIGATION

PART 1 - GENERAL

1.1 DESCRIPTION

- A. Bidders should visit the site and acquaint themselves with existing conditions.
- B. Prior to bidding, bidders may make their own subsurface investigation to satisfy themselves as to site and subsurface conditions, but such investigations may be performed only under time schedules and arrangements approved in advance by the Engineer.

1.2 QUALITY ASSURANCE

- A. Readjust work performed that does not meet technical or design requirements, but make no deviation from the Contract Documents without specific and written approval from the Engineer.

END OF SECTION

SECTION 02151

SHORING AND BRACING OF EXCAVATIONS

PART 1 - GENERAL

1.1 DESCRIPTION

- A. Work included: Provide shoring at excavations and else where as required to protect workmen, materials, other properties, and the public.
- B. Related Work:
 - 1. Documents affecting work of this Section include, but are not necessarily limited to, General Conditions, Supplementary Conditions, and Sections in Division 1 of these Specifications.
 - 2. As established in the General Conditions of the Contract, the Contractor is solely responsible for means and methods of construction and for the sequences and procedures to be used.

1.2 QUALITY ASSURANCE

- A. Use adequate numbers of skilled workmen who are thoroughly trained and experienced in the necessary crafts and who are completely familiar with the specified requirements and the methods needed for proper performance of the work of this Section.
- B. Employ a professional engineer registered in the State of Florida, who is qualified to design the shoring system and to inspect and report on the quality of its construction. All plans must bear the signature and seal of this engineer.
- C. Comply with pertinent requirements of governmental agencies having jurisdiction, and with the Florida Trench Safety Act (See Section 00665).

1.3 SUBMITTALS

- A. Comply with pertinent provisions of Section 01340.
- B. Prior to submitting shoring design for approval of governmental agencies having jurisdiction, submit the design to the Engineer for review.
 - 1. Should changes in the shoring design be required subsequent to the Engineers review, coordinate all such changes with the Engineer and secure the Engineer approval of changes in space allocations.
- C. Upon completion of construction of this portion of the Work, submit to the Engineer two copies of a letter signed by the approved shoring design engineer stating that, to the best of the shoring design engineer's knowledge, the shoring system was constructed in accordance with the arrangement reviewed by the Engineer.

PART 2 - PRODUCTS

2.1 DESIGN

- A. Design a shoring system which will safely and adequately prevent collapse of adjacent materials and which will permit construction of the Work to the arrangement shown on

shown on the Drawings.

- B. Secure all needed approvals, including those of governmental agencies having jurisdiction and of adjacent property owners if required, at no additional cost to the Owner.

2.2 MATERIALS

- A. Provide materials of all kinds as required for execution of the approved shoring system.

PART 3 - EXECUTION

3.1 SURFACE CONDITIONS

- A. Examine the areas and conditions under which work of this Section will be performed. Correct conditions detrimental to timely and proper completion of the Work. Do not proceed until unsatisfactory conditions are corrected.

3.2 INSTALLATION

- A. Construct and install the shoring system in strict accordance with the design approved by the governmental agencies having jurisdiction, and in strict accordance with the space arrangement approved by the Engineer.

END OF SECTION

SECTION 02201

EARTHWORK FOR UTILITY STRUCTURES

PART 1 - GENERAL

1.1 DESCRIPTION

- A. Work included: Excavation, backfilling and compaction for the installation of utility structures and related construction.
- B. Related Work:
 - 1. Documents affecting work of this Section include, but are not necessarily limited to, General Conditions, Supplementary Conditions, and Sections in Division 1 of these Specifications.

1.2 QUALITY ASSURANCE

- A. Codes and Standards: Perform excavation work in compliance with applicable requirements of authorities having jurisdiction.
- B. Testing and Inspection Services: Contractor shall employ and pay for a qualified independent geotechnical testing laboratory to perform soil testing and inspection service during earthwork operations.
- C. Testing Laboratory Qualifications: To qualify for acceptance, the geotechnical testing laboratory must demonstrate to the Engineer's satisfaction, based on evaluation of laboratory-submitted criteria conforming to ASTM E 699, that it has the experience and capability to conduct required field and laboratory geotechnical testing without delaying the progress of the Work.

1.3 SUBMITTALS

- A. Test Report: Submit the following reports directly to the Engineer from the testing services, with a copy to the Contractor:
 - 1. Verification of suitability of each footing sub-grade material, in accordance with specified the requirements.
 - 2. Field reports; in-place soil density tests.
 - 3. Report of actual unconfined compressive strength and/or results of bearing tests of each strata tested.

1.4 PROJECT CONDITIONS

- A. Site Information:
 - 1. Test borings and exploratory operations may be performed by Contractor, at the Contractor's option; however, no change in the Contract Sum will be authorized for such exploration.
- B. Existing Utilities: Locate existing underground utilities in areas of excavation of work. If utilities are indicated to remain in place, provide adequate means of support and protection during earthwork operations.
 - 1. Should uncharted, or incorrectly charted, piping or other utilities be encountered during excavation, consult Engineer immediately for directions.

- Cooperate with Owner and utility companies in keeping respective services and facilities in operation. Repair any damaged utilities to the satisfaction of utility owner.
2. Do not interrupt existing utilities serving facilities occupied by owner or others, during occupied hours, except when permitted in writing by the Engineer; and then only after acceptable temporary utility services have been provided.
 3. Provide a minimum of 48-hour notice to the Engineer, and receive written notice to proceed before interrupting any utility.
- C. Use of Explosives: Use of explosives is not permitted.
- D. Protection of Persons and Property: Barricade open excavations occurring as part of this work and post with warning lights.
1. Operate warning lights as recommended by authorities having jurisdiction.
 2. Protect building structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by earthwork operations.
 3. Perform excavation by hand within dripline of large trees to remain. Protect root systems from damage or dry-out to the greatest extent possible. Maintain moist conditions for root system and cover exposed roots with moistened burlap.

PART 2 - PRODUCTS

2.1 SOIL MATERIALS

- A. Satisfactory soil materials are defined as those complying with ASTM D2487 soil classification groups GW, GP, GM, SM, SW, and SP.
- B. Unsatisfactory soil materials are defined as those complying with ASTM D3487 soil classification groups GC, SC, ML, MH, CL, CH, OL, OH, and PT.
- C. Sub-base Material: Naturally or artificially graded mixture of natural or crushed gravel, crushed stone, crushed slag, crushed limerock and natural or crushed sand.
- D. Backfill and Fill Materials: Satisfactory soil materials free of clay, rock or gravel larger than 2 inches in any dimension, debris, waste, frozen materials, vegetation and other deleterious matter.

PART 3 - EXECUTION

3.1 EXCAVATION

- A. Excavation is unclassified and includes excavation to subgrade elevations indicated, regardless of character of materials and obstructions encountered. the Work. Do not proceed until unsatisfactory conditions are corrected.
- B. Excavation Classifications: The following classifications of excavation will be made when rock is encountered:
 1. Earth Excavation includes excavation of pavements and other obstructions visible on surface; underground structures, utilities, and other items indicated to be demolished and removed; together with earth and other materials encountered that are not classified as rock or unauthorized excavation.

2. Rock excavation for trenches and pits includes removal and disposal of materials and obstructions encountered that cannot be excavated with a track mounted power excavator, equivalent to Caterpillar Model No. 215CLC, and rated at not less than 115 HP flywheel power and 32,000-pound drawbar pull and equipped with a short stick and a 42-inch wide, short tip radius rock bucket rated at 0.81 cubic yard (heaped) capacity. Trenches in excess of 10 feet in width and pits in excess of 30 feet in either length or width are classified as open excavation.
3. Rock excavation in open excavations includes removal and disposal of materials and obstructions encountered that cannot be dislodged and excavated with modern, track-mounted, heavy-duty excavating equipment is defined as Caterpillar Model No. 973 or equivalent track-mounted loader, rated not less than 210 HP flywheel power and developing minimum of 45,000-pound breakout force (measured in accordance with SAE J732).
 - a. Typical of materials classified as rock are (boulders 1/2 cu. yd. or more in volume, solid rock, rock in ledgers, and rockhard cementitious aggregate deposits.
 - b. Intermittent drilling, or ripping performed to increase production and not necessary to permit excavation of material encountered will be classified as earth excavation.

3.2 STABILITY OF EXCAVATIONS

- A. General: Comply with local codes, ordinances, and requirements of agencies having jurisdiction.
- B. Slope sides of excavations to comply with local codes, ordinances, and requirements of agencies having jurisdiction. Shore and brace where sloping is not possible because of space restrictions or stability of material excavated. Maintain sides and slopes of excavations in safe condition until completion of backfilling.
- C. Shoring and Bracing: Provide materials for shoring and bracing, such as sheet piling, uprights, stringers, and shoring and bracing in excavations regardless of time period excavations will be open. Extend shoring and bracing as excavation progresses.

3.3 DEWATERING

- A. Prevent surface water and subsurface or ground water from flowing into excavations and from flooding project site and surrounding area.
 1. Do not allow water to accumulate in excavations. Remove water to prevent softening of foundation bottoms, undercutting structure bases, and soil changes detrimental to stability of subgrades and foundations. Provide and maintain pumps, well points, sumps, suction and discharge lines, and other dewatering system components necessary to convey water away from excavations.
 2. Establish and maintain temporary drainage ditches and other diversions outside excavation limits to convey rain water and water removed from excavations to collecting or runoff areas. Do not use trench excavations as temporary drainage ditches.

3.4 STORAGE OF EXCAVATED MATERIALS

- A. Stockpile excavated materials acceptable for backfill and fill where directed. Place,

grade, and shape stockpiles for proper drainage.

- B. Dispose of excess excavated soil material and materials not acceptable for use as backfill or fill.

3.5 EXCAVATION FOR STRUCTURES

- A. Conform to elevations and dimensions shown within a tolerance of plus or minus 0.10 foot, and extending a sufficient distance from footings and foundations to permit placing and removal of concrete formwork, installation of services, and other construction and for inspection.
 - 1. Excavations for footings and foundations: Do not disturb bottom of excavation. Excavate by hand to final grade just before concrete reinforcement is placed. Trim bottoms of required lines and grades to leave solid base to receive other work.

3.6 BACKFILL AND FILL

- A. General: Place soil material in layers to the required subgrade elevations, for each area classification listed below, using materials specified in Part 2 of this Section.
- B. Backfill excavations as promptly as work permits, but not until completion of the following:
 - 1. Acceptance of construction below finish grade including where applicable, damp proofing, waterproofing, and perimeter insulation.
 - 2. Removal of concrete formwork.
 - 3. Removal of shoring and bracing, and backfilling of voids with satisfactory materials. Cut off temporary sheet piling driven below bottom of structures and remove in a manner to prevent settlement of the structure or utilities, or leave in place if required.
 - 4. Removal of trash and debris from excavation.
 - 5. Permanent or temporary horizontal bracing is in place on horizontally supported walls.

3.7 PLACEMENT AND COMPACTION

- A. Ground Surface Preparation: Remove vegetation, debris, unsatisfactory soil materials, obstructions, and deleterious materials from ground surface prior to placement of fills. Plow, strip, or break up sloped surfaces steeper than 1 vertical to 4 horizontal so that fill material will bond with existing surface.
 - 1. When existing ground surface has a density less than that specified under "Compaction" for a particular area classification, break up the ground surface, pulverize, moisture-condition to optimum moisture content, and compact to the required depth and percentage of maximum density.
- B. Place backfill and fill materials in layers not more than 6 inches in loose depth for material compacted by heavy compaction equipment, and not more than 4 inches in loose depth for material compacted by hand-operated tampers.
- C. Before compaction, moisten or aerate each layer as necessary to provide optimum moisture content. Compact each layer to the required percentage of maximum dry density or relative dry density for each area classification. Do not place backfill or fill material on surfaces that are muddy.

- D. Place backfill and fill materials evenly adjacent to structures, piping, or conduit to the required elevations. Prevent wedging action of backfill against structures or displacement of piping or conduit by carrying material uniformly around structure, piping, or conduit to approximately same elevation in each lift.
- E. Control soil and fill compaction, providing a minimum percentage of density as specified for each area classification indicated below. Correct improperly compacted areas or lifts as directed by the Engineer if soil density tests indicate inadequate compaction.
 - 1. Percentage of Maximum Density Requirements: Compact soil to not less than the following percentages of maximum density, in accordance with AASHTO T-1800:
 - a. Under structures, (and pavements, compact top 12 inches of subgrade and each layer of backfill or fill material at 98 percent minimum density.
 - 2. Moisture Control: Where subgrade or a layer of soil material must be moisture conditioned before compaction, uniformly apply water to surface of the subgrade or layer of soil material. Apply water in minimum quantities as necessary to prevent free water from appearing on the surface during or subsequent to compaction operations.
 - a. Remove and replace, or scarify and air dry, soil material that is too wet to permit compaction to specified density.
 - b. Stockpile or spread soil material that has been removed because it is too wet to permit compaction. Assist drying by harrowing, or pulverizing until moisture content is reduced to a satisfactory value.

3.8 GRADING

- A. Uniformly grade areas within limits of grading under this section, including adjacent transition areas. Smooth finished surface within specified tolerances, compact with uniform levels or slopes between points where elevations are indicated or between such points and existing grades.
- B. Grade areas adjacent to building lines to drain away from structures and to prevent ponding. Finish surfaces free from irregular surface changes and as follows:
 - 1. Pavement: Shape surface of areas under pavement to line, grade, and cross-section, with the finished surface not more than 1/2 inch above or below the required subgrade elevation.
- C. Grading surface of fill under building slabs: Grade smooth and even, free of voids, compacted as specified, and to the required elevation. Provide final grades within a tolerance of 1/2 inch when tested with a 10-foot straight edge.
- D. Compaction: After grading, compact subgrade surfaces to the depth and indicated percentage of maximum or relative density for each area classification.

3.9 FIELD QUALITY CONTROL

- A. Quality Control Testing During Construction: Allow testing service to inspect and approve each subgrade and fill layer before further backfill or construction work is performed.
 - 1. Perform field density tests in accordance with ASTM D 1556 (sand cone method) or ASTM D 2167 (rubber balloon method), as applicable.
 - a. Field density tests may also be performed by the nuclear method in accordance with ASTM D 2922, providing that calibration curves are

periodically checked and adjusted to correlate to tests performed using ASTM D 1556. In conjunction with each density calibration check, check the calibration curves furnished with the moisture gages in accordance with ASTM D 3017.

- b. If field tests are performed using nuclear methods, make calibration checks of both density and moisture gages at the beginning of the work, on each different type of material encountered, and at intervals as directed by the Engineer.
2. Foundation Subgrade: For each strata of soil on which footings will be placed, perform at least one test to verify required design bearing capacities. Subsequent verification and approval of each foundation subgrade may be based on a visual comparison of each subgrade with related tested strata when acceptable to the Engineer.
3. Paved Areas: In each compacted fill layer, perform one field density test for every 500 L.F. of overlaying or paved area, but in no case fewer than three tests.
4. Foundation Wall Backfill: Perform at least two field density tests at locations and elevations as directed.
5. If in the opinion of the Engineer, based on the testing service reports and inspections, subgrade or fills that have been placed are below the specified density, perform additional compaction and testing until the specified density is obtained.

3.10 EROSION CONTROL:

- A. Provide erosion control methods in accordance with requirements of authorities having jurisdiction.

3.11 MAINTENANCE

- A. Protection of Graded Areas: Protect newly graded areas from traffic and erosion. Keep free of trash and debris.
- B. Repair and reestablish grades in settled, eroded, and rutted areas to specified tolerances.
- C. Reconditioning Compacted Areas: Where completed compacted areas are disturbed by subsequent construction operations or adverse weather, scarify surface, reshape, and compact to the required density prior to further construction.
- D. Settling: Where settling is measurable or observable at excavated areas during the general project warranty period, remove surface (pavement, lawn, or other finish), add backfill material, compact, and replace surface treatment. Restore appearance, quality, and condition of surface or finish to match adjacent work, and eliminate evidence of restoration to the greatest extent possible.

3.12 DISPOSAL OF EXCESS AND WASTE MATERIAL

- A. Removal to Designated Areas on Owner's Property: Transport acceptable excess excavated material to designated soil storage areas on Owner's property. Stockpile soil or spread as directed by the Engineer.
- B. Removal from Owner's Property: Remove waste materials, including unacceptable excavated material, trash, and debris, and dispose of it off Owner's property.

END OF SECTION

SECTION 02221

TRENCHING, BEDDING, AND BACKFILL FOR PIPE

PART 1 - GENERAL

1.1 DESCRIPTION

- A. Work included: The Contractor shall furnish all labor, equipment, and incidentals necessary to perform all excavation, backfill, fill, grading and slope protection required to complete the piping work shown on the Drawings and specified herein. The work shall include, but not necessarily be limited to: manholes, vaults, duct conduit, pipe, roadways and paving; all backfilling, fill and required borrow; grading; disposal of surplus and unsuitable materials; and all related work such as sheeting, bracing, and water handling.
- B. Related Work:
 - 1. Documents affecting work of this Section include, but are not necessarily limited to, General Conditions, Supplementary Conditions, and Sections in Division 1 of these Specifications.
 - 2. Section 02150: Shoring and Bracing
 - 3. Section 02201: Earthwork for Utility Structures
 - 4. Section 02576: Paving and Resurfacing

1.2 TRENCH PROTECTION

- A. A Contractor shall construct and maintain sheeting and bracing as required to support the sides of excavations, to prevent any movement which could in any way diminish the width of the excavation below that necessary for proper construction, and to protect adjacent structures, existing piping and/or foundation material from disturbance, undermining, or other damage. Care shall be taken to prevent voids outside of the sheeting, but if voids are formed they shall be immediately filled and rammed.
- B. For pipe trench sheeting, no sheeting is to be withdrawn if driven below mid-diameter of any pipe, and no wood sheeting shall be cut off at a level lower than 1 foot above the top of any pipe unless otherwise directed by the Engineer. If during the progress of the work the Engineer decides that additional wood sheeting should be left in place, he may direct the Contractor in writing. If steel sheeting is used for trench sheeting, removal shall be as specified above unless written approval is given by the Engineer for an alternate method of removal.
- C. All sheeting and bracing not left in place shall be carefully removed in such a manner as not to endanger the construction or other structures, utilities, existing piping, or property. All voids left or caused by withdrawal of sheeting shall be immediately refilled with sand by ramming with tools especially adapted to that purpose by watering or otherwise as may be directed.
- D. The right of the Engineer to order sheeting and bracing left in place shall not be construed as creating any obligation on his part to issue such orders, and his failure to exercise his right to do so shall not relieve the Contractor from liability for damages to persons or property occurring from or upon the work occasioned by negligence or otherwise, growing out of a failure on the part of the Contractor to leave in place sufficient sheeting and bracing to prevent any caving or moving of the ground.

ground.

1.3 JOB CONDITIONS

- A. The Contractor shall examine the site and review the available test borings or undertake his own soil borings prior to submitting his bid, taking into consideration all conditions that may affect his work. The Owner and Engineer will not assume responsibility for variations of sub-soil quality or conditions at locations other than places shown and at the time the investigations was made. Boring log data and soil samples are available for examination after signing a release at the office of the Engineer.
- B. Existing Utilities: Locate existing underground utilities in the areas of work. If utilities are to remain in place, provide adequate means of protection during earthwork operations.
 - 1. Should uncharted, or incorrectly charted, piping or other utilities be encountered during excavation, consult the Engineer and the Owner for such piping or utility immediately for directions.
 - 2. Cooperate with Owner and utility companies in keeping respective services and facilities in operation. Repair damaged utilities to satisfaction of utility owner.
- C. Protection of Persons and Property: Barricade open excavations occurring as part of this work and post with warning lights. Operate warning lights as recommended by authorities having jurisdiction.
 - 1. Protect structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout and other hazards created by earthwork operations.

1.4 SUBMITTALS

- A. The Contractor shall furnish the Engineer, for approval, a representative sample of fill material obtained from onsite sources weighing approximately 50 pounds, at least ten calendar days prior to the date of anticipated use of such material.
- B. For each material obtained from other than onsite sources, the Contractor shall notify the Engineer of the source of the material and shall furnish the Engineer, for approval, a representative sample weighing approximately 50 pounds, at least ten calendar days prior to the date of anticipated use of such material.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. General:
 - 1. Materials for use as base, fill and backfill shall be as described below:
 - a. Satisfactory soil materials are defined as those complying with American Association of State Highway and Transportation Officials (AASHTO) M-145, soil classification Groups A-1, A-2-4, A-2-5, and A-3.
 - b. Unsatisfactory soil materials are those defined in ASSHTO M-145 soil classification Groups A-2-6, A-2-7, A-6, and A-7 along with peat and other highly organic soils.

- B. Structural Fill:
 - 1. Structural fill material shall be satisfactory soil material consisting of a minimum of 60 percent clean medium to fine grain sized quartz sand, free of organic, deleterious and/or compressible material. Rock in excess of 2-1/2 inches in diameter shall not be used in the fill material. Structural fill shall not contain hardpan, stones, rocks, cobbles or other similar materials.
- C. Common Fill:
 - 1. Common fill material shall be satisfactory soil material containing no more than 20 percent by weight finer than No. 200 mesh sieve. It shall be free from organic matter, much, marl, and rock exceeding 2-1/2 inches in diameter. Common fill shall not contain broken concrete, masonry, rubble or other similar materials.
 - 2. Material falling within the above specification, encountered during the excavation, may be stored in segregated stockpile for reuse. All material which, in the opinion of the Engineer, is not suitable for reuse shall be spoiled as specified herein for disposal of unsuitable materials.
- D. Rock Bedding:
 - 1. Rock bedding shall be 3/8" to 3/4" washed and graded limerock. This rock shall be graded so that 99% will pass a 3/4" screen and 80% will be retained on a No. 8 screen.

PART 3 - EXECUTION

3.1 GENERAL

- A. All excavation, backfill and grading necessary to complete the work shall be made by the Contractor and the cost thereof shall be included in the contract price.
- B. Material shall be furnished as required from off site sources and hauled to the site.
- C. The Contractor shall take all the necessary precautions to maintain the work area in a safe and workable condition.
- D. The Contractor shall protect his work at all times by flagging, marking, lighting and barricading. It shall also be the Contractor's responsibility to preserve and protect all above and underground structures, pipe lines, conduits, cables, drains or utilities which are existing at the time he encounters them. Failure of the Drawings to show the existence of these obstructions shall not relieve the Contractor from this responsibility. The cost of repair of any damage which occurs to these obstructions during or as a result of construction shall be borne by the Contractor without additional cost to the Owner.

3.2 TRENCH EXCAVATION

- A. Excavation for all trenches required for the installation of pipes and electrical ducts shall be made to the depths indicated on the Drawings. Excavate trench to provide a minimum of 20 inch clear cover over the pipe bell unless otherwise noted on the Drawings. Excavate in such manner and to such widths as will give suitable room for laying the pipe or installing the ducts within the trenches, for bracing and supporting and for pumping and drainage facilities. The trench width at the top of the pipe shall not exceed the allowable as determined by the depth of cut and indicated on the

indicated on the Drawings.

- B. Rock shall be removed to a minimum 8-inches clearance around the bottom and sides of all the pipe or ducts being laid.
- C. Where pipe or ducts are to be laid in limerock bedding or encased in concrete the trench may be excavated by machinery to or just below the designated subgrade provided that the material remaining in the bottom of the trench is no more than slightly disturbed.
- D. Where the pipes or ducts are to be laid directly on the trench bottom, the lower parts of the trenches shall not be excavated to the trench bottom by machinery. The last of the material being excavated shall be done manually in such a manner that will give a flat bottom true to grade so that pipe or duct can be evenly and uniformly supported along its entire length on undisturbed material or bedding rock. Bell holes shall be made as required manually so that there is no bearing surface on the bells and pipes are supported along the barrel only.

3.3 PIPE INTERFERENCES AND ENCASEMENT

- A. The Contractor shall abide by the following schedule of criteria concerning interferences with other facilities.
 - 1. In no case shall there be less than 0.3 feet between any two pipe lines or between pipe lines and structures.
 - 2. Class I Concrete Encasement: Wherever there is more than 0.3 feet but less than 1.5 feet clearance between sewers, sewer house laterals, force mains and water mains or water services, then a concrete encasement shall be provided in accordance with the typical detail as shown on the Drawings.
 - 3. Class II Concrete Encasement: Wherever there is more than 0.3 feet but less than 1.0 feet clearance between any two pipe lines, or between pipe lines and structures, then a concrete encasement shall be provided in accordance with the typical detail as shown on the Drawings.
- B. The Engineer shall have full authority to direct the placement of the various pipes and structures in order to facilitate construction, expedite completion and to avoid conflicts.

3.4 BACKFILLING

- A. Backfilling over pipes shall begin as soon as practicable after the pipe has been laid, jointed, and inspected and the trench filled with suitable compacted material to the mid-diameter of the pipe.
- B. Backfilling over ducts shall begin not less than three days after placing concrete encasement.
- C. All backfilling shall be prosecuted expeditiously and as detailed on the Drawings.
- D. Any space remaining between the pipe and sides of the trench shall be packed full by hand shovel with selected earth, free from stones having a diameter greater than 2-inches and thoroughly compacted with a tamper as fast as placed, up to a level of one foot above the top of the pipe. Compact to 95% maximum density in layers not to

to exceed 4 inches up to the centerline of the pipe from the trench bottom and in layers not to exceed 4 inches up to the centerline of the pipe from the trench bottom and in layers not to exceed 6 inches from the pipe centerline to 12 inches above the pipe.

- E. The filling shall be carried up evenly on both sides with at least one many tamping for each man shoveling material into the trench.
- F. The remainder of the trench above the compacted Backfill, as just described above, shall be filled and thoroughly compacted with common fill by rolling, ramming, or puddling, as the Engineer may direct. Compact common fill in 6-inch layers to 98% maximum density.
- G. The bedding rock in much areas shall consists of at least 6 inches of washed and graded limerock placed in the trench to the proposed elevation of the centerline of the pipe prior to any pipe lying. This bedding shall not be used under any circumstances as a drain for ground water. The Contractor shall take all precautions necessary to maintain the bedding in a compacted state and to prevent washing, erosion or loosening of this bed.
- H. In location where pipes pass through building walls, the Contractor shall take the following precautions to consolidate the refill up to an elevation of at least 1 foot above the bottom of the pipes:
 - 1. Place structural fill in such areas for a distance of not less than 3 feet on either side of the center line of the pipe in level layers not exceeding 6-inches in depth.
 - 2. Wet each layer to the extent directed and thoroughly compact each layer with a power tamper to the satisfaction of the Engineer.

3.5 GRADING

- A. Grading shall be performed at such places as are indicated on the Drawings, to the lines, grades, and elevations shown or as directed by the Engineer and shall be made in such a manner that the requirements for formation of embankments can be followed. All unacceptable material encountered, of whatever nature within the limits indicated, shall be removed and disposed of as directed. During the process of excavation, the grade shall be maintained in such condition that it will be well drained at all times. When directed, temporary drains and drainage ditches shall be installed to intercept or divert surface water which may affect the prosecution or condition of the work.
- B. If at the time of excavation it is not possible to place any material in its proper section of the permanent structure, it shall be stockpiled in approved areas for later use. No extras will be considered for stockpiling or double handling of excavating material.
- C. The right is reserved to make minute adjustments or revisions in lines or grades if found necessary as the work progresses, due to discrepancies on the Drawings or in order to obtain satisfactory construction.
- D. Stones or rock fragments larger than 2-1/2 inches in their greatest dimensions will not be permitted in the top 6 inches of the subgrade line of all dikes, fills or embankments.
- E. All fill slopes shall be uniformly dressed to the slope, cross-section and alignment

shown on the Drawings, or as directed by the Engineer.

- F. In cuts, all loose or protruding rocks on the back slopes shall be barred loose or otherwise removed to line or finished grade of slope. All cut and fill slopes shall be uniformly dressed to the slope, cross-section and alignment shown on the Drawings or as directed by the Engineers.
- G. No grading is to be done in areas where there are existing pipe lines that may be uncovered or damaged until such lines which must be maintained are relocated, or where lines are to be abandoned, all required valves are closed and drains plugged at manholes.
- H. The Contractor shall replace all pavement cut or otherwise damaged during the progress of the work as specified elsewhere herein.

3.6 DISPOSAL OF UNSUITABLE AND SUPPLY MATERIAL

- A. All surplus and/or unsuitable excavated material shall be disposed of in one of the following ways as directed by the Engineer.
 - 1. Transport to soil storage area on Owner's property and stockpile or spread as directed by the Engineer.
 - 2. Transport from Owner's property and legally dispose of. Any permit required for the hauling and disposing of this material beyond Owner's property shall be obtained prior to commencing hauling operations.
- B. Suitable excavated material may be used for fill if it meets the specifications for common fill and is approved by the Engineer. Excavated material so approved may be neatly stockpiled at the site where designated by the Engineer provided there is an area available where it will not interfere with the operation of the facility nor inconvenience traffic or adjoining property owners.

END OF SECTION

**SECTION 00334
HOT MIX ASPHALT FOR LOCAL AGENCIES**

334-1 Description.

334-1.1 General: Construct a Hot Mix Asphalt (HMA) pavement based on the type of work specified in the Contract and the Asphalt Work Categories as defined below. Meet the applicable requirements for plants, equipment, and construction requirements as defined below. Use a HMA mix that meets the requirements of this specification.

334-1.2 Asphalt Work Mix Categories: Construction of Hot Mix Asphalt Pavement will fall into one of the following work categories:

334-1.2.1 Asphalt Work Category 1: Includes the construction of bike paths.

334-1.2.2 Asphalt Work Category 2: Includes the construction of new HMA turn lanes, paved shoulders and other non-mainline pavement locations.

334-1.2.3 Asphalt Work Category 3: Includes the construction of new mainline HMA pavement lanes, milling and resurfacing.

334-1.3 Mix Types: Use the appropriate HMA mix as shown in Table 334-1.

Table 334-1 HMA Mix Types		
Asphalt Work Category	Mix Types	Traffic Level
1	Type SP-9.5 , or equivalent as determined by the Engineer	A
2	Type SP-9.5, SP-12.5, or equivalent as determined by the Engineer	B or C
3	Type SP-9.5, SP-12.5	C

A Type SP mix one traffic level higher than the traffic level specified in the Contract may be substituted, at no additional cost (i.e. Traffic Level B may be substituted for Traffic Level A, etc.).

334-1.4 Gradation Classification: HMA mixes are classified as either coarse or fine, depending on the overall gradation of the mixture. Coarse and fine mixes are defined in 334-3.2.2. Use only fine mixes.

The equivalent AASHTO nominal maximum aggregate size Superpave mixes are as follows:

Type SP-9.5..... 9.5 mm

Type SP-12.5..... 12.5 mm

334-1.5 Thickness: The total pavement thickness of the HMA Pavement will be based on a specified spread rate or plan thickness as shown in the Contract Documents. Before paving, propose a spread rate or thickness for each individual layer meeting the requirements of this specification, which when combined with other layers (as applicable) will equal the plan spread rate or thickness. When the total pavement thickness is specified as plan thickness, the plan thickness and individual layer thickness will be converted to spread rate using the following equation:

$$\text{Spread rate (lbs/yd}^2\text{)} = t \times G_{\text{mm}} \times 43.3$$

where: t = Thickness (in.) (Plan thickness or individual layer thickness)
 G_{mm} = Maximum specific gravity from the mix design

For target purposes only, spread rate calculations shall be rounded to the nearest whole number.

334-1.5.1 Layer Thicknesses: Unless otherwise called for in the Contract Documents, the allowable layer thicknesses for HMA mixtures are as follows:

Type SP-9.5.....3/4 - 1 1/2 inches

Type SP-12.5.....1 1/2 - 2 1/2 inches

334-1.5.2 Additional Requirements: The following requirements also apply to HMA mixtures:

1. When construction includes the paving of adjacent shoulders (\leq feet wide), the layer thickness for the upper pavement layer and shoulder shall be the same and paved in a single pass, unless otherwise called for in the Contract Documents.

2. For overbuild layers, use the minimum and maximum layer thicknesses as specified above unless called for differently in the Contract Documents. On variable thickness overbuild layers, the minimum allowable thickness may be reduced by 1/2 inch, and the maximum allowable thickness may be increased by 1/2 inch, unless called for differently in the Contract Documents.

334-1.6 Weight of Mixture: The weight of the mixture shall be determined as provided in 320-2.2 of the Florida Department of Transportation (FDOT) specifications.

334-2 Materials.

334-2.1 Superpave Asphalt Binder: Unless specified elsewhere in the Contract or in 334-2.3.3, use a PG 67-22 asphalt binder from the Department's Qualified Products List (QPL).

334-2.2 Aggregate: Use aggregate capable of producing a quality pavement. For Category 2 and 3 projects, require the aggregate supplier to certify that the material meets FDOT requirements.

334-2.3 Reclaimed Asphalt Pavement (RAP) Material:

334-2.3.1 General requirements: RAP may be used as a component of the asphalt mixture if approved by the Engineer. Usage of RAP is subject to the following requirements:

1. Limit the amount of RAP material used in the mix to a maximum of 50 percent by weight of total aggregate.

2. Do not use RAP material in any friction course mixes.

3. Provide stockpiled RAP material that is reasonably consistent in characteristics and contains no aggregate particles which are soft or conglomerates of fines.

4. Provide RAP material having a minimum average asphalt content of 4.0 percent by weight of total mix. The Engineer may sample the stockpile to verify that this requirement is met.

5. Use a grizzly or grid over the RAP cold bin, in-line roller crusher, screen, or other suitable means to prevent oversized RAP material from showing up in the completed recycle mixture. If oversized RAP material appears in the completed recycle mix,

take the appropriate corrective action immediately. If the appropriate corrective actions are not immediately taken, stop plant operations.

334-2.3.2 Material Characterization: Assume responsibility for establishing the asphalt binder content, gradation, viscosity and bulk specific gravity (G_{sb}) of the RAP material based on a representative sampling of the material.

334-2.3.3 Asphalt Binder for Mixes with RAP: Select the appropriate asphalt binder grade based on Table 334-2. Maintain the viscosity of the recycled mixture within the range of 4,000 to 12,000 poises.

Table 334-2 Asphalt Binder Grade for Mixes Containing RAP	
Percent RAP	Asphalt Binder Grade
<20	PG 67-22
20 – 29	PG 64-22
≥ 30	Recycling Agent

334-3 Composition of Mixture.

334-3.1 General: Compose the asphalt mixture using a combination of aggregates, mineral filler, if required, and asphalt binder material. Size, grade and combine the aggregate fractions to meet the grading and physical properties of the mix design. Aggregates from various sources may be combined.

334-3.2 Mix Design:

334-3.2.1 General: Design the asphalt mixture in accordance with AASHTO R35-04, except as noted herein. Submit the proposed mix design with supporting test data indicating compliance with all mix design criteria to the Engineer. Prior to the production of any asphalt mixture, obtain the Engineer’s conditional approval of the mix design. If required by the Engineer, send representative samples of all component materials, including asphalt binder to a laboratory designated by the Engineer for verification. The Engineer will consider any marked variations from original test data for a mix design or any evidence of inadequate field performance of a mix design as sufficient evidence that the properties of the mix design have changed, and at his discretion, the Engineer may no longer allow the use of the mix design.

334-3.2.2 Mixture Gradation Requirements: Combine the aggregates in proportions that will produce an asphalt mixture meeting all of the requirements defined in this specification and conform to the gradation requirements at design as defined in AASHTO M323-04, Table 3. Aggregates from various sources may be combined.

334-3.2.2.1 Mixture Gradation Classification: Plot the combined mixture gradation on an FHWA 0.45 Power Gradation Chart. Include the Control Points from AASHTO M323-04, Table-3, as well as the Primary Control Sieve (PCS) Control Point from AASHTO M323-04, Table 4. Fine mixes are defined as having a gradation that passes above or through the primary control sieve control point. Use only fine mixes

334-3.2.3 Gyrotory Compaction: Compact the design mixture in accordance with AASHTO T312-04. Use the number of gyrations as defined in AASHTO R35-04, Table 1.

334-3.2.4 Design Criteria: Meet the requirements for nominal maximum aggregate size as defined in AASHTO M323-04, as well as for relative density, VMA, VFA, and dust-to-binder ratio as specified in AASHTO M323-04, Table 6.

334-3.2.5 Moisture Susceptibility: Test 4 inch specimens in accordance with FM 1-T 283. Provide a mixture having a retained tensile strength ratio of at least 0.80 and a minimum tensile strength (unconditioned) of 100 psi. If necessary, add a liquid anti-stripping agent from the FDOT's Qualified Products List, or hydrated lime in order to meet these criteria.

In lieu of moisture susceptibility testing, add a liquid anti-stripping agent from the Department's Qualified Products List. Add 0.5% liquid anti-stripping agent by weight of binder.

334-3.2.6 Additional Information: In addition to the requirements listed above, provide the following information on each mix design:

1. The design traffic level and the design number of gyrations (N_{design}).
2. The source and description of the materials to be used.
3. The FDOT source number and the FDOT product code of the aggregate components furnished from an FDOT approved source (if required).
4. The gradation and proportions of the raw materials as intended to be combined in the paving mixture. The gradation of the component materials shall be representative of the material at the time of use. Compensate for any change in aggregate gradation caused by handling and processing as necessary.
5. A single percentage of the combined mineral aggregate passing each specified sieve. Degradation of the aggregate due to processing (particularly material passing the No. 200 sieve) should be accounted for and identified.
6. The bulk specific gravity (G_{sb}) value for each individual aggregate and RAP component.
7. A single percentage of asphalt binder by weight of total mix intended to be incorporated in the completed mixture, shown to the nearest 0.1 percent.
8. A target temperature at which the mixture is to be discharged from the plant and a target roadway temperature. Do not exceed a target temperature of 330°F for modified asphalts and 315°F for unmodified asphalts.
9. Provide the physical properties achieved at four different asphalt binder contents. One shall be at the optimum asphalt content, and must conform to all specified physical requirements.
10. The name of the Mix Designer.
11. The ignition oven calibration factor.

334-4 Contractor Quality Control.

Assume full responsibility for controlling all operations and processes such that the requirements of these Specifications are met at all times. Perform any tests necessary at the plant and roadway for quality control purposes.

334-5 General Construction Requirements.

334-5.1 Weather Limitations: Do not transport asphalt mix from the plant to the roadway unless all weather conditions are suitable for the laying operations.

334-5.2 Limitations of Laying Operations:

334-5.2.1 General: Spread the mixture only when the surface upon which it is to be placed has been previously prepared, is intact, firm, and properly cured, and is dry.

334-5.2.2 Air Temperature: Spread the mixture only when the air temperature in the shade and away from artificial heat is at least 40°F for layers greater than 1 inch (100 lb/yd²) in thickness and at least 45°F for layers 1 inch (100 lb/yd²) or less in thickness (this includes

leveling courses). The minimum temperature requirement for leveling courses with a spread rate of 50 lb/yd² or less is 50°F.

334-5.3 Mix Temperature: Heat and combine the ingredients of the mix in such a manner as to produce a mixture with a temperature at the plant and at the roadway, within a range of $\pm 30^\circ\text{F}$ from the target temperature as shown on the mix design. Reject all loads outside of this range.

334-5.4 Transportation of the Mixture: Transport the mixture in vehicles previously cleaned of all foreign material. After cleaning, thinly coat the inside surface of the truck bodies with soapy water or an asphalt release agent as needed to prevent the mixture from adhering to the beds. Do not allow excess liquid to pond in the truck body. Do not use diesel fuel or any other hazardous or environmentally detrimental material as a coating for the inside surface of the truck body. Cover each load at all times.

334-5.5 Preparation of Surfaces Prior to Paving:

334-5.5.1 Cleaning: Clean the surface of all loose and deleterious material by the use of power brooms or blowers, supplemented by hand brooming where necessary.

334-5.5.2 Patching and Leveling Courses: Where the HMA is to be placed on an existing pavement which is irregular, wherever the plans indicate, or if directed by the Engineer, bring the existing surface to proper grade and cross-section by the application of patching or leveling courses.

334-5.5.3 Application over Surface Treatment: Where an asphalt mix is to be placed over a surface treatment, sweep and dispose of all loose material from the paving area.

334-5.5.4 Tack Coat: Apply a tack coat on existing pavement structures that are to be overlaid with an asphalt mix and between successive layers of all asphalt mixes, unless directed otherwise by the Engineer. Use a tack coat product meeting FDOT specifications. Use an emulsified tack coat spread rate of 0.02 to 0.08 gal/sy or as specified by the Engineer.

334-5.6 Paving:

334-5.6.1 Alignment of Edges: With the exception of pavements placed adjacent to curb and gutter or other true edges, place all pavements by the stringline method to obtain an accurate, uniform alignment of the pavement edge. Control the unsupported pavement edge to ensure that it will not deviate more than ± 1.5 inches from the stringline.

334-5.6.2 Rain and Surface Conditions: Immediately cease transportation of asphalt mixtures from the plant when rain begins at the roadway. Do not place asphalt mixtures while rain is falling, or when there is water on the surface to be covered. Once the rain has stopped and water has been removed from the tacked surface to the satisfaction of the Engineer and the temperature of the mixture caught in transit still meets the requirements as specified in 334-5.3, the Contractor may then place the mixture caught in transit.

334-5.6.3 Checking Depth of Layer: Check the depth of each layer at frequent intervals, and make adjustments when the thickness exceeds the allowable tolerance. When making an adjustment, allow the paving machine to travel a minimum distance of 32 feet to stabilize before the second check is made to determine the effects of the adjustment.

334-5.6.4 Hand Spreading: In limited areas where the use of the spreader is impossible or impracticable, spread and finish the mixture by hand.

334-5.6.5 Spreading and Finishing: Upon arrival, dump the mixture in the approved paver, and immediately spread and strike-off the mixture to the full width required, and to such loose depth for each course that, when the work is completed, the required weight of

mixture per square yard, or the specified thickness, is secured. Carry a uniform amount of mixture ahead of the screed at all times.

334-5.6.6 Thickness of Layers: Construct each course of Type SP mixtures in layers of the thickness shown in 334-1.5.1.

334-5.7 Leveling Courses:

334-5.7.1 Patching Depressions: Before spreading any leveling course, fill all depressions in the existing surface more than 1 inch deep by spot patching with leveling course mixture, and compact thoroughly.

334-5.7.2 Spreading Leveling Courses: Place all courses of leveling with an asphalt paver or by the use of two motor graders, one being equipped with a spreader box. Other types of leveling devices may be used upon approval by the Engineer.

334-5.7.3 Rate of Application: When using Type SP-9.5 (fine graded) for leveling, do not allow the average spread of a layer to be less than 50 lb/yd² or more than 75 lb/yd². The quantity of mix for leveling shown in the plans represents the average for the entire project; however, the Contractor may vary the rate of application throughout the project as directed by the Engineer. When leveling in connection with base widening, the Engineer may require placing all the leveling mix prior to the widening operation.

334-5.8 Compaction: For each paving or leveling train in operation, furnish a separate set of rollers, with their operators.

When density testing for acceptance is required (Asphalt Work Category 3), select equipment, sequence, and coverage of rolling to meet the specified density requirement. Regardless of the rolling procedure used, complete the final rolling before the surface temperature of the pavement drops to the extent that effective compaction may not be achieved or the rollers begin to damage the pavement.

When density testing for acceptance is not required (Asphalt Work Categories 1 and 2), use a rolling pattern approved by the Engineer.

Use hand tamps or other satisfactory means to compact areas which are inaccessible to a roller, such as areas adjacent to curbs, headers, gutters, bridges, manholes, etc.

334-5.9 Joints.

334-5.9.1 Transverse Joints: Construct smooth transverse joints, which are within 3/16 inch of a true longitudinal profile when measured with a 15 foot manual straightedge.

334-5.9.2 Longitudinal Joints: For all layers of pavement except the leveling course, place each layer so that longitudinal construction joints are offset 6 to 12 inches laterally between successive layers. Do not construct longitudinal joints in the wheelpaths. The Engineer may waive these requirement where offsetting is not feasible due to the sequence of construction.

334-5.10 Surface Requirements: Construct a smooth pavement with good surface texture and the proper cross-slope.

334-5.10.1 Texture of the Finished Surface of Paving Layers: Produce a finished surface of uniform texture and compaction with no pulled, torn, raveled, crushed or loosened portions and free of segregation, bleeding, flushing, sand streaks, sand spots, or ripples. Correct any area of the surface that does not meet the foregoing requirements in accordance with 334-5.10.4.

334-5.10.2 Cross Slope: Construct a pavement surface with cross slopes in compliance with the requirements of the Contract Documents.

334-5.10.3 Pavement Smoothness: Construct a smooth pavement meeting the requirements of this Specification. Furnish a 15 foot manual and a 15 foot rolling straightedge meeting the requirements of FM 5-509. Make them available at the job site at all times during paving operations for Asphalt Work Category 3 and make them available upon request of the Engineer for Asphalt Work Categories 1 and 2.

334-5.10.3.1 Asphalt Work Category 3:

334-5.10.3.1.1 Acceptance Testing: Straightedge the final Type SP structural layer and friction course layer with a rolling straightedge. Test all pavement lanes where the width is constant using a rolling straightedge and document all deficiencies on a form approved by the Engineer. Notify the Engineer of the location and time of all straightedge testing a minimum of 48 hours before beginning testing.

334-5.10.3.1.2 Rolling Straightedge Exceptions: Testing with the rolling straightedge will not be required in the following areas: intersections, tapers, crossovers, parking lots and similar areas. In addition, testing with the rolling straightedge will not be performed on the following areas when they are less than 50 feet in length: turn lanes, acceleration/deceleration lanes and side streets. However, correct any individual surface irregularity in these areas that deviates from the plan grade in excess of 3/8 inch as determined by a 15 foot manual straightedge, and that the Engineer deems to be objectionable, in accordance with 334-5.10.4. The Engineer may waive or modify straightedging requirements if no milling, leveling, overbuild or underlying structural layer was placed on the project and the underlying layer was determined to be exceptionally irregular.

334-5.10.3.1.3 Final Type SP Structural Layer: Straightedge the final Type SP structural layer with a rolling straightedge behind the final roller of the paving train. Correct all deficiencies in excess of 3/16 inch in accordance with 334-5.10.4.2, and retest the corrected areas.

334-5.10.3.1.4 Friction Course Layer: At the completion of all paving operations, straightedge the friction course. Correct all deficiencies in excess of 3/16 inch in accordance with 334-5.10.4.3. Retest all corrected areas.

334-5.10.3.2 Asphalt Work Categories 1 and 2: If required by the Engineer, straightedge the final structural layer with a rolling straightedge, either behind the final roller of the paving train or as a separate operation. Correct all deficiencies in excess of 5/16 inch in accordance with 334-5.10.4.2. Retest all corrected areas. If the Engineer determines that the deficiencies on a bicycle path are due to field geometrical conditions, the Engineer will waive corrections with no deduction to the pay item quantity.

334-5.10.4 Correcting Unacceptable Pavement:

334-5.10.4.1 General: Correct all areas of unacceptable pavement at no additional cost.

334-5.10.4.2 Structural Layers: Correct deficiencies in the Type SP structural layer by one of the following methods:

- a. Remove and replace the full depth of the layer, extending a minimum of 50 feet on either side of the defective area for the full width of the paving lane.
- b. Mill the pavement surface to a depth and width that is adequate to remove the deficiency. (This option only applies if the structural layer is not the final surface layer.)

334-5.10.4.3 Friction Course: Correct deficiencies in the friction course layer by removing and replacing the full depth of the layer, extending a minimum of 50 feet on

either side of the defective area for the full width of the paving lane. Corrections may be waived if approved by the Engineer.

334-6 Acceptance of the Mixture.

334-6.1 General: The asphalt mixture will be accepted based on the Asphalt Work Category as defined below:

- 1) Asphalt Work Category 1 – Certification by the Contractor as defined in 334-6.2.
- 2) Asphalt Work Category 2 – Certification and quality control testing by the Contractor as defined in 334-6.3
- 3) Asphalt Work Category 3 – Quality control testing by the Contractor and acceptance testing by the Engineer as defined in 334-6.4.

334-6.2 Certification by the Contractor: On Asphalt Work Category 1 construction, the Engineer will accept the mix on the basis of visual inspection. Submit a Notarized Certification of Specification Compliance letter on company letterhead to the Engineer stating that all material produced and placed on the project was in substantial compliance with the Specifications. The Engineer may run independent tests to determine the acceptability of the material.

334-6.3 Certification and Quality Control Testing by the Contractor: On Asphalt Work Category 2 construction, submit a Notarized Certification of Specification Compliance letter on company letterhead to the Engineer stating that all material produced and placed on the project was in substantial compliance with the Specifications, along with supporting test data documenting all quality control testing as described in 334-6.3.1. If so required by the Contract, utilize an Independent Laboratory as approved by the Engineer for the quality control testing. The mix will also require visual acceptance by the Engineer. In addition, the Engineer may run independent tests to determine the acceptability of the material.

334-6.3.1 Quality Control Sampling and Testing Requirements: Perform quality control testing at a frequency of once per day. Obtain the samples in accordance with FDOT Method FM 1-T 168. Test the mixture at the plant for gradation (P₈ and P₂₀₀) and asphalt binder content (P_b). Test the mixture on the roadway for density using six-inch diameter roadway cores obtained at a frequency of three cores per day.

Determine the asphalt content of the mixture in accordance with FM 5-563. Determine the gradation of the recovered aggregate in accordance with FM 1-T 030. Determine the roadway density in accordance with FM 1-T 166. The minimum roadway density will be based on the percent of the maximum specific gravity (G_{mm}) from the approved mix design. If the Contractor or Engineer suspects that the mix design G_{mm} is no longer representative of the asphalt mixture being produced, then a new G_{mm} value will be determined from plant-produced mix with the approval of the Engineer. Roadway density testing will not be required in certain situations as described in 334-6.4.1. Assure that the asphalt content, gradation and density test results meet the criteria in Table 334-3.

Table 334-3 Quality Control and Acceptance Values	
Characteristic	Tolerance
Asphalt Binder Content (percent)	Target ± 0.55
Passing No. 8 Sieve (percent)	Target ± 6.00
Passing No. 200 Sieve (percent)	Target ± 2.00

Roadway Density (average of three cores)	91.5% Gmm
Roadway Density (any single core)	90.0 % Gmm

334-6.4 Quality Control Testing by the Contractor and Acceptance Testing by the Engineer: On Asphalt Work Category 3, perform quality control testing as described in 334-6.3.1. In addition, the Engineer will accept the mixture at the plant with respect to gradation (P_{.8} and P_{.200}) and asphalt binder content (P_b). The mixture will be accepted on the roadway with respect to density. The Engineer will sample and test the material as described in 334-6.3.1. The Engineer will randomly obtain at least one set of samples per day. Assure that the asphalt content, gradation and density test results meet the criteria in Table 334-3. Material failing to meet these acceptance criteria will be addressed as directed by the Engineer.

334-6.4.1 Acceptance Testing Exceptions: When the total quantity of any mix type in the Project is less than 500 tons, or on Asphalt Work Category 1 construction, the Engineer will accept the mix on the basis of visual inspection. The Engineer may run independent tests to determine the acceptability of the material.

Density testing for acceptance will not be performed on widening strips or shoulders with a width of 5 feet or less, variable thickness overbuild courses, leveling courses, first lift of asphalt base course placed on subgrade, miscellaneous asphalt pavement, or any course with a specified thickness less than 1 inch or a specified spread rate less than 100 lbs/sy. In addition, density testing for acceptance will not be performed on the following areas when they are less than 1,000 feet in length: crossovers, intersections, turning lanes, acceleration lanes, deceleration lanes, or ramps. Compact these courses in accordance with a standard rolling procedure approved by the Engineer. In the event that the rolling procedure deviates from the approved procedure, placement of the mix will be stopped.

334-7 Method of Measurement.

For the work specified under this Section, the quantity to be paid for will be the weight of the mixture, in tons.

The bid price for the asphalt mix will include the cost of the liquid asphalt or the asphalt recycling agent and the tack coat application as specified in 334-5.5.4. There will be no separate payment or unit price adjustment for the asphalt binder material in the asphalt mix.

334-8 Basis of Payment.

334-8.1 General: Price and payment will be full compensation for all the work specified under this Section.

END OF SECTION

SECTION 03250

CAST-IN-PLACE CONCRETE SIDEWALKS, CURBS, CURBS & GUTTERS, CROSSWALKS AND MISCELLANEOUS CONCRETE

PART 1 - GENERAL

1.1 DESCRIPTION

- A. Work included: Provide cast-in-place concrete, sidewalks, curbs, curbs and gutters, crosswalks and miscellaneous concrete, where shown on the Drawings as specified herein, and as needed for a complete and proper installation.
- B. Related Work:
 - 1. Documents affecting work of this Section include, but are not necessarily limited to, General Conditions, Supplementary Conditions, and Sections in Division 1 of these Specifications.

1.2 QUALITY ASSURANCE

- A. Use adequate numbers of skilled workmen who are thoroughly trained and experienced in the necessary crafts and who are completely familiar with the specified requirements and the methods needed for proper performance of the work of this Section. The concrete curb and sidewalk contractor/sub-contractor shall have a minimum of 5 years experience in the construction of urban and decorative sidewalks.
- B. Quality control:
 - 1. See requirements for testing as stated in part 3 of this Section.

1.3 SUBMITTALS

- A. Comply with pertinent provisions of Section 01340.

1.4 PRODUCT HANDLING

- A. Comply with pertinent provisions of Section 01640.

PART 2 - PRODUCTS

2.1 CONCRETE MIXES

- A. Provide a mix design prepared by the approved testing agency, based on strengths of the approved materials, and meeting the requirements stated on the Drawings, and Specifications.
 - 1. Secure the Engineers approval of each mix design, including new mix designs required to be prepared should there occur a change in materials being used.

2.2 CONCRETE QUALITY

- A. Concrete shall be Class I normal weight, and shall attain a 28-day compressive strength of a minimum of 3000 psi.

1. The maximum water-cement ratio shall be 0.65.
2. The minimum cement content for concrete shall be five bags per cubic yard.
3. Concrete shall contain a water reducing admixture capable of increasing workability and reducing the amount of mixing water, conforming to ASTM C494-82, Type A. Other admixtures may be used if approved by the Engineer. Admixtures shall be added to the mix in accordance with the manufacturer's specifications, and at a controlled rate.

2.3 COLORING

- A. Integral Colored Concrete mixture shall be Class I concrete, as described above. Concrete shall be supplied with the color admixture added. Admixture coloring, as specified in drawings, shall be plant mixed and shall be manufactured by the Lambert Corporation or an approved equal.

PART 3 - EXECUTION

3.1 SURFACE CONDITIONS

- A. Examine the areas and conditions under which work of this Section will be performed. Correct conditions detrimental to timely and proper completion of the Work. Do not proceed until unsatisfactory conditions are corrected.

3.2 SUBGRADE PREPARATION

- A. All roots, vegetation and other deleterious materials shall be removed from the area of the proposed sidewalk. Roots, when present, shall be removed to a depth of 12". Existing rock shall be removed to at least 1" below proposed subgrade elevation. Fill materials, where required, shall be clean limerock or mixture of limerock and sand acceptable to the Engineer. Subgrade shall be compacted to a minimum field density of 95% of the maximum density as determined by AASHTO Method, Designation T180-74, Method D.

3.3 FORMS

- A. General: Steel forms shall be used for all work except at sidewalk radii where wood forms (1/4" min. thickness) may be used and which shall be bent to a smooth uniform curve. Wood forms shall not be used for Curb or Curb & Gutter work. Forms shall be as follows: (a) externally secured and braced where feasible; (b) substantial and unyielding; (c) of adequate strength to contain the concrete without building between supports and without apparent deviation from the neat lines, contours and shapes shown in the plans. They shall be designed to withstand the additional forces of vibration without apparent deviation from the desired shape or position. Assembled forms shall be mortar tight and, shall be constructed to render a concrete surface of smooth, uniform finish. Provisions shall be made for the removal of forms without injury to concrete surfaces. Blocks and bracing shall be removed from the forms and in no case shall any portion of the forms be left in the concrete.

The Contractor where practical may use asphalt abutting the sidewalk in lieu of form work. The asphalt must be saw cut in such a manner that the edge of the sidewalk where it abuts the asphalt is true to grade and alignment.

The form shall be set plumb, properly aligned, and with their bottom in full and continuous contact with the subgrade. Forms shall be cleaned and lightly oiled before

before concrete is placed.

- B. Form Alignment, Bracing and These: Forms shall be constructed in such manner that they may be adequately secured for alignment, shape and grade. Bracing systems, ties and anchorages used for this purpose shall be substantial and sufficient to insure against apparent deviation from shape, alignment and grade. Nails driven into existing concrete shall not be used for this purpose. Bracing systems, ties anchorages shall not be used which will unnecessarily deface or mark, or have an injuries or undesirable effect on surfaces which will be a part of the finished surface.
- C. Preparation and Cleaning: The condition of the forms shall meet the following requirements at the time concrete casting is begun: (a) All forms shall be treated with an approved form-release agent before placing concrete. Material which will adhere to, or disorder the concrete shall not be used. (b) The forms shall be cleaned of all dirt, sawdust, shavings and other debris. (c) All inspection and cleanout holes shall be closed and secured.

3.4 CONCRETE MIXING

- A. Job mixed concrete shall not be permitted.
- B. Ready-mixed concrete shall be mixed and delivered in accordance with the requirements of the Standard Specification for Ready-Mixed Concrete, ASTM C94-85.
- C. No concrete shall be retempered after it has taken an initial set nor shall any batch or portion thereof be deposited in forms more than one and one-half hours after the mixing of that particular batch has commenced.
- D. No water shall be added at the job site to concrete delivered by truck as ready for use without the approval of the Engineer, and then, only when slump tests are made and the concrete so delivered is known to be of less than the slump specified.
- E. Concrete consistency:
 - 1. Use the amount of water established by the approved mix design.
 - a. Do not exceed the maximum quantity specified for the grade of concrete.
 - b. Use the minimum amount of water necessary to produce concrete of the workability required by the Engineer.
 - c. Do not supplement the predetermined amount of water with additional water for any reason.
 - 2. Measure concrete consistency by ASTM C143 method.
 - a. As part of the routine testing and inspecting, test twice each day or partial day's run of the mixer.
 - b. Maintain a complete and accurate record of tests.
 - 3. Provide a 3" maximum concrete slump.
- F. Miscellaneous provisions:
 - 1. Provide strengths of concrete as shown on the Drawings.
 - 2. Provide concrete dense and free from honeycomb and other defects.
 - 3. Place and finish members to conform to the shapes and dimensions indicated, with all surfaces true to line, plumb, and level.

3.5 CONCRETE REINFORCEMENT

- A. Provide reinforcement as detailed on Drawings and Specifications.

3.6 CONVEYING AND PLACING CONCRETE

- A. Inspection: No concrete shall be placed until inspected for depth, forming and reinforcement. Proper finishing tools shall be on the jobsite at time of inspection. Failure to obtain required inspection shall be sufficient cause for rejection. Such inspection and approval shall not relieve the contractor of the responsibility of obtaining satisfactory concrete surfaces, free from warping, bulging or other objectionable defects. Special attention shall be paid to the ties and bracing. Where the forms appear to be insufficiently braced or unsatisfactorily built, the progress of the work shall be stopped until the defects have been corrected to the satisfaction of the Engineer.

B. Preparation:

1. Remove all laitance, oil, and loose particles from concrete and concrete surfaces, and thoroughly clean the forms with water under stiff pressure.
2. Remove laitance after concrete has hardened partially (not less than two hours nor more than four hours after place in) by brushing with stiff bristles, or by directing a stream of water from a 1/4" nozzle, or by other method approved by the Engineer, to expose the clean top surface of the coarse aggregate.
3. Where cleaning is not satisfactory to the Engineer sandblast the surface and then wash again.

C. Method of Depositing

1. Concrete shall be deposited as nearly as practical in its final position to avoid segregation due to handling or flowing. The concrete shall be carried on at such a rate that the concrete is at all times plastic and flows readily. No concrete that has been contaminated by foreign materials shall be deposited on the work.
2. When concreting is started, it shall be carried on as a continuous operation until the placing of the panel or section is completed. The top surface shall be generally level.
3. All concrete shall be thoroughly compacted by suitable means during the operation of placing, and shall be thoroughly worked, into corners.
4. Place concrete only under the degree of inspection described elsewhere in these Specifications, and as required by governmental agencies having jurisdiction.
5. Do not place concrete outside of regular working hours unless required inspection authorities have been notified properly and are present.
6. Concrete shall be pump-mix.
7. Deposit concrete so that the surface is kept level throughout, a minimum being permitted to flow from one position to another, and place as rapidly as practicable after mixing.
8. Do not use in this Work any concrete not placed within 30 minutes after leaving the mixer.

D. Adverse Weather:

1. The Contractor shall assume all risks connected with the placing of concrete during adverse weather conditions, and permission given to place concrete

under such conditions will in no way relieve the Contractor of the responsibility for satisfactory results. Should concrete placed under such conditions, prove unsatisfactory, it shall be removed, disposed of and replaced at the Contractor's expense.

3.7 FINISHING

- A. Exposed work shall have a steel trowelled finish after which it shall be lightly broomed to eliminate a slick finish. After forms have been removed from exposed areas, all voids shall be filled and rubbed where necessary using color compound to give the face a finished look. All laitance and slopover shall be thoroughly removed from any adjacent surfaces before the final finishing process is completed.

3.8 EDGES AND JOINTS

- A. Edges of all sidewalks shall be finished with one-quarter inch (1/4") radius joint and edging tools. Edges of curbs shall be to the radius shown on typical section.
- B. Joints in sidewalks shall be spaced uniformly equal to width of sidewalk except where sidewalk exceeds six feet (6') in which case the uniform spacing shall be one-half width with a longitudinal joint at mid-width. All such joints shall be formed with tool having a bit depth of one and one-half inches (1-1/2") as approved by the City and shall have a minimum tooled radius of one-quarter inch (1/4") each side.

At spacing of twenty feet (20') maximum (or nearest multiple of required joint spacing) there shall be an open joint one-quarter inch (1/4"), minimum, wide and full depth of sidewalk which may be formed with removable spline but having edges tooled to a one-quarter inch radius. Expansion joints or saw cutting can only be used where approved in writing.

An open joint shall be provided where new sidewalk abuts existing. A longitudinal joint parallel to curb poured monolithic with the sidewalk shall be tooled to a minimum depth of one-quarter inch and with a one-quarter inch radius each side. Joints in curbs or curbs and gutters shall be at a maximum spacing of ten feet (10') or a minimum spacing of four feet (4') and formed with a one-quarter inch thick steel template of proper contour and with exposed edges tooled to a one-quarter inch radius.

- C. Expansion material must be used between the back of curb (or curb and gutter) and sidewalk, between concrete driveway and sidewalk, between any existing vertical surface (except existing sidewalk) and sidewalk and between root barriers and sidewalk. Expansion joints shall be a maximum of 1/2" thick and the expansion material shall be cut one-eighth inch (1/8") below the surface at the proposed sidewalk curb or gutter.
- D. When specified on the plans or requested by the Contractor and approved by this department, sawcutting of sidewalks, curb or gutter shall be done as follows:
 - 1. All joints shall be formed (at wearing surface) with tool having a bit of at least one-half inch (1/2") deep and radius of one-quarter (1/4") each side.
 - 2. Open joints where required shall be saw cut the full depth of sidewalk, curb or gutter.
 - 3. Intermediate joints at spacing required shall be saw cut a minimum depth of one and one-half inch (1-1/2").

4. Saw blades used shall not be less than one-eighth inch (1/8") nor more than one-quarter (1/4") thick and shall not be allowed to deviate from a straight line, but such joints shall be clean cut and uniform in width with tooled edges at surface remaining undamaged.
 5. Open joints shall be saw cut within forth-eight(48) hours and intermediate joints with twenty-four (24) hours after finishing.
- E. Concrete sidewalks which are part of driveways and approaches shall have joint spacing to match adjoining sidewalk.

3.9 CURING

- A. Concrete shall be cured by use of a clear compound compatible with the coloring compound and in accordance with manufacturer's recommendations. Submit the proposed material and method for approval prior to use.
- B. Care shall be used in the use of water or plastic membranes as their use may have an adverse effect on the coloring compound and/or finish.

3.10 DEFECTIVE CONCRETE

- A. The following concrete will be deemed to be defective, and shall be removed promptly from the job site.
 1. Concrete which is not formed as indicated, is not true to intended alignment, is not plumb or level where so intended, is not true to intended grades and levels;
 2. Has voids or honeycomb that have been cut, resurfaced, or filled, unless with the approval of the Architect;
 3. Has sawdust, shavings, wood, or embedded debris;
 4. Or does not conform fully to provisions of the Contract Documents.
- B. Repairs and replacement
 1. Defective concrete may be cut out and repaired with gunite, or other approved methods, when and as directed by the Engineer.
 2. Where defective concrete is found after removal of the forms, cut out the defective concrete, if necessary, and make the surfaces match adjacent surfaces.
 3. Work uneven surfaces and angles of concrete to a surface matching adjacent concrete surfaces.

3.11 TESTING

- A. The Engineer shall have the right to order tests on any material entering into concrete or reinforced concrete to determine its suitability for the proposed purpose. To order reasonable tests of the concrete from time to time to determine whether the materials and methods in use are such as to produce concrete of the necessary quality; and to order the test under load of any portion of the structure, when conditions have been such as to leave doubt as to the adequacy of the structure to serve the purpose for which it is intended.
- B. Tests of materials and of concrete shall be in accordance with the requirements of the American Society for Testing Materials. Test shall be made by a testing laboratory approved by the Engineer. Test reports shall be submitted to the Engineer. The

Engineer. The costs of such tests resulting from construction related problems shall be assumed by the Contractor.

- C. Tests on concrete used in construction shall be made by an approved testing laboratory, and reports submitted to the Engineer. The costs of such tests shall be assumed by the Contractor.
 - 1. Not less than three specimens shall be made for each standard test, nor less than one test for each 50 cubic yards of concrete used on the project.
 - 2. Specimens shall be made and cured in accordance with the Standard Method of Making and Curing Concrete Compression and Flexure Test Specimens in the Field, ASTM C31-84.
 - 3. Specimens shall be tested in accordance with the Standard Method of Test for Compression Strength of Molded Concrete Cylinders, ASTM C39-84. Reports to the Engineer shall be submitted for each test performed.
 - 4. Test cylinders taken off truck-mixed concrete shall be taken at the approximate one-quarter point and the three-quarter point of the load.

- D. The age for strength tests of concrete shall be 28 days. Strength tests for an earlier age shall be submitted if the Engineer has approved concrete in the structure to receive its full working loads at such earlier time. Seven day tests may be used with the approval of the Engineer, provided that the relation between the seven and 28-day strengths of the concrete is established by tests for the materials and proportions used.

- E. To conform to the requirements of these specifications, the average strength of the laboratory cured cylinders representing each class of concrete as well as the average of any five consecutive strength tests representing each class of concrete shall be equal to or greater than the specified strength and not more than one strength test in ten shall have an average value of less than 90 percent of the specified strength.

- F. When there is a question as to the quality of the concrete in the structure, the Engineer shall have the right to require core tests in accordance with the Standard Method of Obtaining and Testing Drilled Cores and Sawed Beams of Concrete, ASTM C42-84a, to order load tests on that portion of the structure where the questionable concrete has been placed, or to require other reasonable tests to evaluate the strength of the structure.

END OF SECTION

FORMS

(Supplemental Town Bid Document Forms)

TOWN OF CUTLER BAY

CONE OF SILENCE

- I. Notwithstanding any other provision in the specifications, the provisions of Section 2-11.1 Conflict of Interest and Code of Ethics Ordinance, as set forth in subsection (t) “Cone of Silence,” of the Miami-Dade County Code are applicable to this transaction. The “Cone of Silence” prohibits the following activities:
 - A. Any communication regarding this RFP, RFQ or Bid between a potential vendor, service provider, bidder, lobbyist or consultant and the Town’s professional staff, including, but not limited to, the Town Manager and his or her staff;
 - B. Any communication regarding this RFP, RFQ or Bid between the Mayor, Town Council members and any member of the Town’s professional staff, including but not limited to, the Town Manager and his or her staff;
 - C. Any communication regarding this RFP, RFQ or Bid between potential vendor, service provider, bidder, lobbyist or consultant and any member of a selection committee;
 - D. Any communication regarding this RFP, RFQ or Bid between the Mayor, Town Council members and any member of the selection committee therefore;
 - E. Any communication regarding a particular RFP, RFQ or bid between any member of the Town’s professional staff and any member of the selection committee; and
 - F. Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant and the Mayor or Town Council.
- II. These prohibitions do not apply to communications with the Town Attorney and his or her staff.
- III. The “Cone of Silence” is imposed upon this RFP, RFQ or Bid after advertisement of said RFP, RFQ or Bid. The “Cone of Silence” shall terminate at the time that the Town Manager makes his or her recommendation to the Town Council, unless the Council refers the Manager’s recommendation back to the Manager or staff for further review.
- IV. The “Cone of Silence” shall NOT apply to:
 - A. Oral communications at pre-bid conferences;
 - B. Oral presentations before publicly noticed selection committee meetings;
 - C. Contract negotiations during any duly noticed public meeting;
 - D. Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;
 - E. Emergency procurement of goods or services;
 - F. Communications regarding a particular RFP, RFQ or bid between any person and the Town’s procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited

strictly to matters of process or procedure already contained in the corresponding solicitation document; or

- G. Communications regarding a particular RFP, RFQ or bid between the Town's procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.
 - H. Communications in writing at any time with any Town employee, official or member of the Town Council unless specifically prohibited by the RFP, RFQ or Bid.
 - I. Communications between the Town Manager and the Chairperson of the selection committee about a particular selection committee recommendation, only after the selection committee has submitted an award recommendation to the Town Manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the Town Manager with the Town Clerk and be included in any recommendation memorandum submitted by the Town Manager to the Town Council.
 - V. Any questions, explanations or other requests desired by a bidder regarding this RFP, RFQ or Bid must be requested in writing to the Town Clerk: Erika Gonzalez-Santamaria, CMC, Town Clerk, 10720 Caribbean Boulevard, Suite 105, Cutler Bay, Florida, 33189 or via facsimile at 305-234-4251 or e-mail at esantamaria@cutlerbay-fl.gov. Bidders must file copies of all written communications with the Town Clerk.
- VI. Please contact the Town Attorney with any questions concerning the "Cone of Silence" compliance.
- VII. Upon imposition of the Cone of Silence for a particular RFP, RFQ or Bid, the Town Manager shall:
- A. issue a written notice to affected Town departments;
 - B. file a copy of the Notice required by subsection (1) with the Town Clerk with a copy to the Mayor and Town Council; and
 - C. include in the public solicitation for goods and services a statement disclosing the requirements of the Cone of Silence as follows:

Pursuant to subsection (t) "Cone of Silence" of Section 2-11.1 "Conflict of Interest and Code of Ethics Ordinance" of Miami-Dade County, public notice is hereby given that a "Cone of Silence" is imposed concerning this purchase. The "Cone of Silence" prohibits communications concerning RFP's , RFQ's or Bids, until such time as the Town Manager makes a written recommendation to the Town Council concerning the transaction. Procedures regarding the Cone of Silence can be found in the Request for Proposal, or Request for Qualifications.

TOWN OF CUTLER BAY

ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA }
 } SS:
COUNTY OF MIAMI-DADE }

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the Town of Cutler Bay, its elected officials, and _____ or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Title: _____

Sworn and subscribed before this

_____ day of _____, 20____

Notary Public, State of Florida

(Printed Name)

My commission expires: _____

END OF SECTION

TOWN OF CUTLER BAY

SWORN STATEMENT ON PUBLIC ENTITY CRIMES
SECTION 287.133(3)(a), FLORIDA STATUTES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Town of Cutler Bay

by _____
[print individual's name and title]

for _____
[print name of entity submitting sworn statement]

whose business address is

and (if applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, include the Social Security Number of the individual

signing this sworn statement: _____)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)9g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
- a. A predecessor or successor of a person convicted of a public entity crime; or
 - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a “person” as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.
6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. **[Indicate which statement applies.]**

____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

____ This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **[attach a copy of the final order]**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND HAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Signature of Entity Submitting Sworn Statement

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

Personally known _____

OR produced identification _____ Notary Public – State of _____

(type of identification) My commission expires _____

(Printed, typed or stamped Commissioned name notary public)

END OF SECTION

Campaign Finance Restrictions on Vendors: Ordinance 06-11; Town Code Chapter 8A. Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor.

Vendors' Campaign Contribution Disclosure:

1. General requirements:

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten (10) days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

2. Disqualification

(A) As per Section 7.6 of the Town Charter, if a Vendor of products or services who directly or through a member of the person's immediate family or through a political action committee or through any other person makes a campaign contribution to a Town candidate and fails to disclose it then he/she/it shall be barred from selling any product or service to the town for a period of two years following the swearing in of the subject elected official.

Lobbyist Registration: Proposers must also comply with all Town Charter sections and Code provisions that pertain to lobbyists, including Section 7.6 of the Town Charter and implementing ordinance(s), including Sec. 2-11(s) of the Town Code and Ordinance 07-02. Please contact the Town Clerk at (305) 234-4262 for additional information.

APPENDIX

OLD CUTLER ROAD RESURFACING IMPROVEMENTS

FDOT-WPA Item/Segment No. 426429-1



Old Cutler Road (between SW 87th Avenue and SW 184th Street)



Old Cutler Road (between SW 225^h Street and SW 97th Avenue)

NOTE: All work shall be performed within the limits of existing state/local right of way, and all improvements shall be constructed and installed within said limits

Typical pavement width = 2 lanes @ 12' = 24'

- Provide 1" Type SP-9.5 Hot Mix asphalt Overlay over limits shown on Resurfacing Plans.
- Provide Temporary Pavement Markings (Traffic Paint), cost to be included in cost of asphalt.
- After 30 days asphalt cure period, provide final thermoplastic pavement markings.




BEGIN PROJECT
BEGIN RESURFACING

END RESURFACING
(TYPICAL)

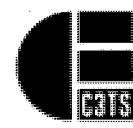
OLD CUTLER ROAD



 CORZO CASTELLA CARBALLO THOMPSON SALZMAN, P.A.
ENGINEERS-ARCHITECTS-PLANNERS
801 PONCE DE LEON BLVD., SUITE 800
CORAL GABLES, FLORIDA 33134
MIAMI (305)-448-3900 FLORIDA (800)-448-0337
FL REGISTRATIONS: EB0005022 AAC002142

TOWN OF CUTLER BAY
OLD CUTLER ROAD
RESURFACING IMPROVEMENTS

FN 426429-1 Sheet 1



CORZO CASTELLA CARBALLIDO THOMPSON SALMAN, P.A.
ENGINEERS-ARCHITECTS-PLANNERS
891 FORGE DE LEON BLVD., SUITE 900
CORAL GABLES, FLORIDA 33134
WAMI (305)-445-3900 FLORIDA (800)-445-0397
FL REGISTRATIONS: EB0005032 AAC003142

TOWN OF CUTLER BAY
OLD CUTLER ROAD
RESURFACING IMPROVEMENTS

FN 426429-1 Sheet 2



END RESURFACING
CTP/ROAD

OLD CUTLER ROAD

S.W. 212 STREET

S.W. 97 AVE.

END RESURFACING
BEGIN EXCEPTION



CORZO CASTELLA CARBALLO THOMPSON SALMAN, P.A.
ENGINEERS-ARCHITECTS-PLANNERS
801 PONCE DE LEON BLVD., SUITE 800
CORAL GABLES, FLORIDA 33134
MIAMI (305)-442-3800 FLORIDA (800)-442-0227
FL REGISTRATIONS: EB0000022 AA000142

TOWN OF CUTLER BAY
OLD CUTLER ROAD
RESURFACING IMPROVEMENTS

FN 426429-1


Sheet 3



BEGIN
RESURFACING
END
EXCEPTION




OLD CUTLER ROAD

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ENGINEERS-ARCHITECTS-PLANNERS
801 PONCE DE LEON BLVD., SUITE 900
CORAL GABLES, FLORIDA 33134
MIAMI (305)-448-2800 FLORIDA (800)-448-0827
FL REGISTRATIONS: EB0005022 AA0002142

TOWN OF CUTLER BAY
OLD CUTLER ROAD
RESURFACING IMPROVEMENTS

FN 426429-1 Sheet 4




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901 PONCE DE LEON BLVD., SUITE 900
CORAL GABLES, FLORIDA 33134
MIAMI (305)-442-2900 FLORIDA (800)-442-0227
FL REGISTRATIONS: ED0005022 AA0002142

TOWN OF CUTLER BAY
OLD CUTLER ROAD
RESURFACING IMPROVEMENTS

FN 426429-1 Sheet 5



OLD CUTLER ROAD

 CORZO CASTELLA CARBALL THOMPSON SALMAN, P.A.
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805 PONCE DE LEON BLVD., SUITE 800
CORAL GABLES, FLORIDA 33134
MIAMI (305)-448-3800 FLORIDA (800)-448-0327
FL REGISTRATIONS: EB0008032 AAC002142

TOWN OF CUTLER BAY
OLD CUTLER ROAD
RESURFACING IMPROVEMENTS

FN 426429-1 Sheet 6



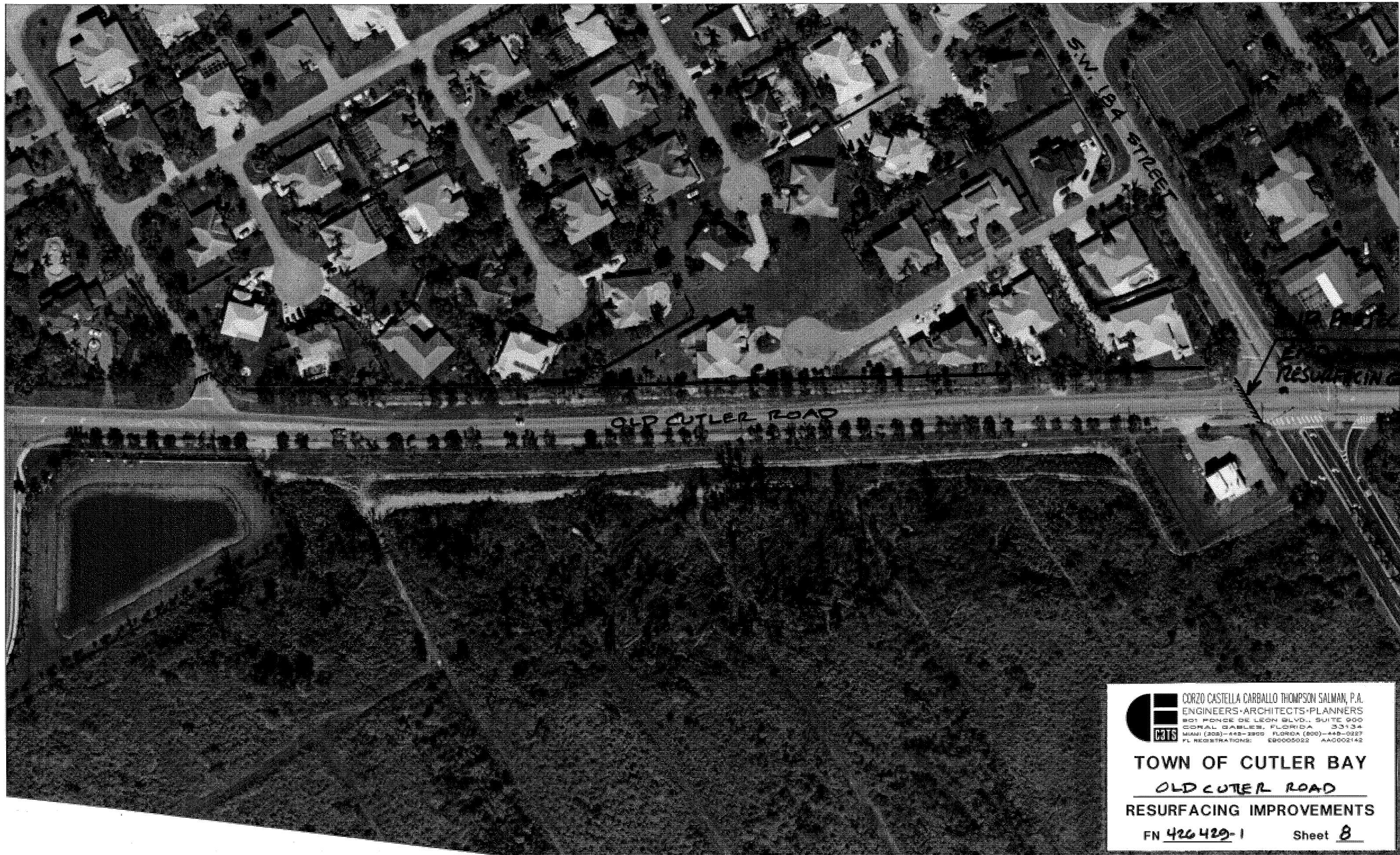
OLD CUTLER ROAD



CORZO CASTELLA CARBALLO THOMPSON SALZMAN, P.A.
ENGINEERS-ARCHITECTS-PLANNERS
801 PONCE DE LEON BLVD., SUITE 900
CORAL GABLES, FLORIDA 33134
MIAMI (305)-443-2800 FLORIDA (800)-448-0227
PL REGISTRATIONS: EB0006022 AAC002142

TOWN OF CUTLER BAY
OLD CUTLER ROAD
RESURFACING IMPROVEMENTS

FN 426429-1 Sheet 7




CORZO CASTELLA CARBALLO THOMPSON SALMAN, P.A.
 ENGINEERS-ARCHITECTS-PLANNERS
 801 PONCE DE LEON BLVD., SUITE 900
 CORAL GABLES, FLORIDA 33134
 MIAMI (305)-442-2800 FLORIDA (800)-442-0227
 FL REGISTRATIONS: EB0005022 AA0002142

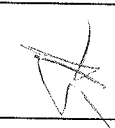
TOWN OF CUTLER BAY
OLD CUTLER ROAD
RESURFACING IMPROVEMENTS

FN 426429-1 Sheet B

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**LOCAL AGENCY PROGRAM (LAP) CHECKLIST FOR CONSTRUCTION CONTRACTS (Phase 58) -
 FEDERAL REQUIREMENTS**

Project Title: Old Cutler Road Resurfacing Improvements
 Financial Management Number: 426429-1
 Federal-Aid Project Number: _____
 County: Miami-Dade
 Local Agency: Town of Cutler Bay

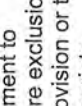

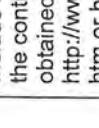
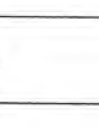
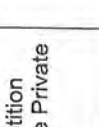
Federal-Aid Highway (yes/no): Yes
 National Highway System (NHS) (yes/no): No
 State Highway System (SHS) (yes/no): No
 Contract Amount (\$): \$248,535
 Project Status: Final Design Done

Requirement	Reference	NHS/ SHS	Non- NHS/ SHS	Non- NHS/ Non- SHS	Non- Federal- Aid Highway/ Non-SHS	Local Agency Responsibility	District Monitoring Responsibilities	Reference Construction Contract Documents (Location in Contract)	Local Agency Initial	FDOT District Initial
1. Plan, Specification & Estimates (PS&E) Submittal	LAP Agreement - Section 13.08 LAP Manual Chapter 4 Section 2	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No*	<input type="checkbox"/> No*	Submit PS&E package to FDOT for approval. Submittal also must include: Assurances that all right-of-way (ROW) clearances, utility, and railroad work have been completed, or that arrangements have been made for coordination during construction with proper notice provided in the bid proposal; Assurances that all environmental federal requirements including the NEPA process have been completed During this mandatory certification process all PS&E packages should be submitted and those on the NHS and SHS will need to be approved by FDOT.	Review/approve PS&E Assembly	N/A	N/A	N/A
2. Audits	49 CFR Subtitle A Part 90 48 CFR 31 Federal Acquisitions Regulations	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	Local Agencies are to have audits done annually using the criteria outlined in Section 5.04 of the LAP Agreement.	Review Local Agency records to ensure the annual audit is in compliance with Section 5.04 of the LAP Agreement.	Latest Cutler Bay Audit Attached		

Requirement	Reference	NHS/SHS	Non-NHS/SHS	Non-NHS/SHS	Non-Federal-Aid Highway/Non-SHS	Local Agency Responsibility	District Monitoring Responsibilities	Reference Construction Contract Documents (Location in Contract)	Local Agency Initial	FDOT District Initial
3. Bonding and Prequalification	23 CFR 635.110	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	No <input type="checkbox"/>	The Local Agency shall certify that FDOT Prequalified Contractors will be used to perform LAP projects when on the NHS or SHS. However, when the project is on the NHS or SHS, and the contract is under \$250,000, then a prequalified contractor is not required. Per FDOT Standard Specifications 2-1 Prequalification of Bidders	Review bid document for inclusion of the provision.	N/A	N/A	N/A
4. Buy America	23 CFR 635.410	Yes	Yes	Yes	Yes	Include FDOT's Supplemental Specification 6-12.2 in bid document.	Review bid document for inclusion of the specification.	Page 00800-9	SA	
5. Change Orders	23 CFR 635.120	Yes	Yes	No	No	Develop procedures outlining the conditions under which a change order is allowed and include in bid document. May use Section 7.3.11 of FDOT CPAM as part of procedure.	Review bid document for inclusion of the provision.	N/A	N/A	N/A
6. Claims	23 CFR 635.124	Yes	Yes	No	No	Develop procedures outlining the conditions under which a claim is allowed and include in bid document. May use Section 7.5 of FDOT CPAM as part of procedure.	Review bid document for inclusion of the provision.	N/A	N/A	N/A
7. Contractor Purchased Equipment for State or Local Ownership	23 CFR 140 49 CFR Part 18 49 CFR Section 18.3	Yes	Yes	Yes	Yes	Do not allow.	Review bid document to ensure exclusion of provision.	Not in contract Section 00800 Sub sec. 27	SA	
8. Suspension and Debarment	49 CFR 29	Yes	Yes	Yes	Yes	The Local Agency shall include certification in bid documents.	Review bid document for inclusion of provision.	Pages 00300-6 & 00300-07	SA	

Requirement	Reference	NHS/SHS	Non-NHS/SHS	Non-NHS/SHS	Non-Federal-Aid Highway/Non-SHS	Local Agency Responsibility	District Monitoring Responsibilities	Reference Construction Contract Documents (Location in Contract)	Local Agency Initial	FDOT District Initial
9. Disadvantaged Business Enterprise (DBE)	49 CFR 26	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<p>The Local Agency shall comply with FDOT's DBE Program Plan unless the Local Agency has a DBE Program Plan approved by the USDOT. FDOT currently has a race neutral program with an 8.1% goal.</p> <p>Establish a DBE availability goal and include in bid document.</p> <p>Include DBE special provisions in bid document.</p> <p>Use DBEs certified under the Florida Unified Certification Program Directory: http://www.bipincwebapps.com/biznet/florida/</p>	Obtain copy of the USDOT approval letter for the DBE Program Plan for highways.	Section 00645	SA	
10. Equal Employment Opportunity	23 CFR 230	Yes	Yes	Yes	Yes	<p>Include FDOT Special Provisions related to Executive Order 11246.</p>	Review bid document for inclusion of this provision.	Section 00630	SA	
11. Equipment Rental Rates	23 CFR 635.120 48 CFR 31	Yes	Yes	Yes	Yes	<p>Develop procedure based on 48 CFR 31 and include in bid document.</p>	Review bid document for inclusion of the proper payment provision for rental equipment.	Section 00800 sub-section 25	SA	
12. Foreign Contractor and Supplier Restriction	49 CFR 30	Yes	Yes	Yes	Yes	<p>Local Agency will use FDOT Supplemental Specification 6-12.2 and may choose to use FODT Form 375-020-08.</p>	Review documents to ensure compliance.	Section 00800 sub-section 26 & page 00300-1	SA	
13. Incentive/Disincentive Clauses	23 CFR 635.127(d,f)	Yes	No	No	No	<p>Develop procedure based on 23 CFR 635.127 and include in bid document (if Local Agency elects to use Incentive/Disincentive). May use Section 1.2.6 of FODT CPAM as a guide in this development.</p>	Review bid document to ensure procedure was followed, if Local Agency elects to use Incentive/Disincentive.	N/A	N/A	N/A

Requirement	Reference	NHS/SHS	Non-NHS/SHS	Non-NHS/SHS	Non-Federal-Aid Highway/Non-SHS	Local Agency Responsibility	District Monitoring Responsibilities	Reference Construction Contract Documents (Location in Contract)	Local Agency Initial	FDOT District Initial
14. Indian Preference on Federal-Aid Projects (Labor & Employment)	23 CFR 635.117	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	If utilized, must obtain FHWA approval of provision complying with 23 CFR 635.117.	Verify provisions meet federal requirements.	Not utilized	<i>SA</i>	
15. FHWA Form 1273	23 CFR 633	Yes	Yes	Yes	Yes	Must be included verbatim in all contracts and subcontracts.	Review bid document for inclusion of the provision.	Section 00850	<i>SA</i>	
16. Liquidated Damages	23 CFR 635.127	Yes	Yes	No	No	Develop rates based on 23 CFR 635.127 and include contract provisions.	Ensure that rates are included in the bid proposal.	N/A	N/A	N/A
17. Local Hiring Preference	23 CFR 635.117	Yes	Yes	Yes	Yes	The Local Agency needs to certify it does not have local hiring preferences.	Review bid document to ensure exclusion of any local hiring preference.	Not in Contract <i>Section 00800 Sub Sect. 2.0</i>	<i>SA</i>	
18. Lobbying Certification	49 CFR 20	Yes	Yes	Yes	Yes	The Local Agency shall include certification in bid documents.	Review bid document for inclusion of the provision.	Page 00300- 16 <i>9</i>	<i>SA</i>	
19. Method of Construction (or Method of Bidding)	23 CFR 635.104 & 23 CFR 114(a)	Yes	Yes	Yes	Yes	Local Agency shall certify that projects will be awarded to the lowest responsive bidder except for Design-Build as approved by the FDOT. The method of bidding shall be in the project specifications.	Review bid document to verify compliant bidding process.	Instructions to Bidders Section 00200 sub-section 7	<i>SA</i>	
20. Non-Collusion Provision	23 CFR 635.112(f)	Yes	Yes	Yes	Yes	The Local Agency shall include certification in bid documents.	Review bid document for inclusion of the provision.	Page 00300- 5 <i>5</i>	<i>SA</i>	

Requirement	Reference	NHS/ SHS <input type="checkbox"/> Yes <input type="checkbox"/> No	Non- NHS/ SHS <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Non- Federal- Aid Highway/ Non-SHS <input type="checkbox"/> Yes <input type="checkbox"/> No	Local Agency Responsibility	District Monitoring Responsibilities	Reference Construction Contract Documents (Location in Contract)	Local Agency Initial	FDOT District Initial
21. Owner Force Account/ Cost-Effective Justification	23 CFR 635B under 635.205	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	Owner Force Account contracting is not allowed without first submitting a finding of cost-effectiveness. This must be approved by the District LAP Administrator.	Review bid document to ensure exclusion of provision or that appropriate approval has been received.	Not in Contract		
22. Patented/ Proprietary Materials	23 CFR 635.411	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	Do not use unless there is a public interest finding approved by FDOT (if specified in the bid document).	If development of a public interest finding is required, ensure that the finding approved by FDOT is included in the bid document.	Not in Contract		
23. Prevailing Minimum Wage	23 USC 113 23 CFR 633A	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	Include latest Davis-Bacon wage table(s) in the contract. Current wage tables may be obtained at: http://www.dot.state.fl.us/construction/wage.shtm or http://www.wdol.gov	Review bid document for inclusion of the provision (wage table).	Section 00640		
24. Progress Payments	23 CFR 635.122	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	Develop contract language to ensure that payments are based on work completed, this may include stockpiled materials. Section 9-5 of FDOT Standard Specifications may be used for guidance.	Review bid document for inclusion of the provision.	N/A	N/A	N/A
25. Prohibition Against Convict Produced Materials	23 CFR 635.417	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	Develop contract language to prohibit the use of convict-produced materials and include in bid document.	Review bid document for inclusion of the provision.	Not in Contract <i>Section 00800 Sub. Sect. 29</i>		
26. Public Agencies in Competition with the Private Sector	23 CFR 635.112(e)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	Do not allow.	Review bid document to ensure exclusion of the provision.	Not in Contract <i>Section 00200 Sub. Sec. 11</i>		

Requirement	Reference	NHS/SHS <input type="checkbox"/> Yes	Non-NHS/SHS <input type="checkbox"/> Yes	Non-NHS/SHS <input checked="" type="checkbox"/> Yes	Non-Federal-Aid Highway/Non-SHS <input type="checkbox"/> Yes	Local Agency Responsibility	District Monitoring Responsibilities	Reference Contract Documents (Location in Contract)	Local Agency Initial	FDOT District Initial
27. Publicly-Owned Equipment	23 CFR 635.106	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	Do not allow.	Review bid document for exclusion of the provision.	Not in Contract <i>Section 00800 Sub. Sec. 30</i>	<i>SA</i>	
28. Records Retention	49 CFR 18.42 23 CFR 18.42 FHWA Form 1273 Item V.2	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	Project records must provide adequate assurance that the quantities of completed work are determined accurately and uniformly, and be maintained for a minimum of 5 years following contract completion and acceptance.	Conduct periodic reviews to ensure compliance.	Section 00500 sub-section 7.7	<i>SA</i>	
29. Salvage Credits	49 CFR 18.36	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	Do not allow.	Review bid document for exclusion of the provision.	Not in Contract <i>Section 00800 Sub. Sec. 31</i>	<i>SA</i>	
30. Standardized Changes Conditions Contract Clauses	23 CFR 635.109	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	Develop contract language to ensure that the requirements of 23 CFR 635.109 are met. Sections 4-3.2 and 5-12.6 of FDOT Supplemental Specifications and Sections 4-3 and 5-12 of FDOT Standard Specifications may be used for guidance.	Review bid document for inclusion of the provision.	Section 01000 sub-section 1.3A	<i>SA</i>	
31. Standard Specifications and Plans	23 CFR 630B	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> No	Local Agency will use FDOT's specifications when the construction project is on the SHS. Local Agency will use FDOT's pre-approved specifications when the project is off the SHS, or will seek FDOT approval for local agency specifications. http://www.dot.state.fl.us/specificationsoffice/Implemented/LAP/LapSpecs/Default.shtm	Review documents to ensure Local Agency is using FDOT approved specifications.	N/A	N/A	N/A
32. State Preference	23 CFR 635.409	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	Do not allow.	Review bid document for exclusion of state or local preferences.	Not in Contract <i>Section 00800 Sub. Sec. 32</i>	<i>SA</i>	

Requirement	Reference	NHS/ SHS <input type="checkbox"/>	Non- NHS/ SHS <input type="checkbox"/>	Non- NHS/ Non- SHS <input checked="" type="checkbox"/>	Non- Federal- Aid Highway/ Non-SHS <input type="checkbox"/>	Local Agency Responsibility	District Monitoring Responsibilities	Reference Construction Contract Documents (Location in Contract)	Local Agency Initial	FDOT District Initial
33. State/ Local Owned/ Furnished/ Designated Materials	23 CFR 635.407	Yes <input type="checkbox"/>	No <input type="checkbox"/>	No <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If utilized, must obtain FHWA approval.	Review bid document for exclusion of materials furnished by Local Agency	N/A	N/A	N/A
34. Subcontracting	23 CFR 635.116	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	No <input type="checkbox"/>	Develop contract language to meet the requirements.	Review bid document for inclusion of the provision.	N/A	N/A	N/A
35. Termination of Contract	23 CFR 635.125	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	No <input type="checkbox"/>	Develop contract language for termination for cause, convenience, and default and include in the bid document.	Review bid document for inclusion of the provision.	N/A	N/A	N/A
36. Time Extensions	23 CFR 635.121	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	No <input type="checkbox"/>	Include reasons time extensions are allowed in specifications. May use Section 8-7.3.2 of the FDOT Standard Specifications.	Review bid document for inclusion of the provision.	N/A	N/A	N/A
37. Report Jobs	American Recovery and Reinvestme nt Act of 2009	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>	Include the American Recovery and Reinvestment Act of 2009 special provision SP0070111ES.	Review bid document for inclusion of the special provision.	Section 00500 Art 7.15	N/A	N/A

Local Agency: I hereby certify that the above mentioned LAP project construction contract documents contain the provisions set forth in this checklist.



Signature

Town Manager

Position Title

Steven J. Alexander

Name (Printed)
4/15/09

Date

District LAP Administrator/Designee: I hereby certify that the above mentioned LAP project construction contract documents contain the provisions set forth in this checklist.

Signature

Position Title

Name (Printed)

Date

Central Office Statewide LAP Administrator: I hereby certify that the checklist is complete as indicated.

Signature

Position Title

Name (Printed)

Date

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
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FPN: <u>426429-1</u>	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
County No: <u>Miami-Dade</u>	Contract No: _____	Vendor No: _____

Data Universal Number System (DUNS) No: 80-939-7102
Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

THIS AGREEMENT, made and entered into this _____ day of _____, 2009 by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the Department, and Town of Cutler Bay, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189 hereinafter called the Agency.

WITNESSETH:

WHEREAS, the Agency has the authority to enter into this Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under Section 339.12, Florida Statutes, to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1.00 Purpose of Agreement: The purpose of this Agreement is to provide for the Department's participation in Old Cutler Road resurfacing improvements and as further described in Exhibit "A" attached hereto and by this reference made a part hereof, hereinafter called the "project," and to provide Department financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

1.01 Attachments: Exhibit(s) "A", "B" & "S" are attached and made a part hereof.

2.01 General Requirements: The Agency shall complete the project as described in Exhibit "A" with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part hereof as if fully set forth herein. Time is of the essence as to each and every obligation under this Agreement.

A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in charge of each project.

Removal of Any Unbilled Funds

If Agency fails to timely perform its obligations in submitting invoices and documents necessary for the close out of the project, and said failure results in a loss of the remaining unbilled funding either by Federal withdrawal of funds or loss of State appropriation authority (which may include both federal funds and state funds, if any state funds are on the project), Agency will be responsible for the remaining unbilled funds on the project. No other funds will be provided by the Department. Agency waives the right to contest such removal of funds by the Department, if said removal is directly related to Federal (FHWA) withdrawal of funds or loss of State appropriation authority due to Local Agency's failure or nonperformance. In addition to loss of funding, the Department will consider de-certification of said Agency for future LAP projects.

Removal of All Funds

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If all funds are removed from the project, including amounts previously billed to the Department and reimbursed to the Agency, and the project is off the state highway system, then the department will have to request repayment for the previously billed amounts from the Local Agency. No state funds can be used on off-system projects.

2.02 Expiration of Agreement: The Agency agrees to complete the project on or before 4/30/10. If the Agency does not complete the project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the project. The cost of any work performed after the expiration date of this Agreement will not be reimbursed by the Department.

2.03 Pursuant to Federal, State, and Local Laws: In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

2.04 Agency Funds: The Agency shall initiate and prosecute to completion all proceedings necessary, including federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the project.

2.05 Submission of Proceedings, Contracts, and Other Documents: The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the project as the Department and the Federal Highway Administration (FHWA) may require.

3.00 Project Cost:

3.01 Total Cost: The total cost of the project is \$ 271,129. This amount is based upon the schedule of funding in Exhibit "B." The Agency agrees to bear all expenses in excess of the total cost of the project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 4.00.

3.02 Department Participation: The Department agrees to participate, including contingencies, in the project cost to the extent provided in Exhibit "B." This amount includes federal-aid funds which are limited to the actual amount of federal-aid participation.

3.03 Limits on Department Funds: Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible project costs is subject to:

- a) Legislative approval of the Department's appropriation request in the work program year that the project is scheduled to be committed;
- b) Availability of funds as stated in paragraphs 3.04 and 3.05 of this Agreement;
- c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and
- d) Department approval of the project scope and budget at the time appropriation authority becomes available.

3.04 Appropriation of Funds: The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.

3.05 Multi-Year Commitment: In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

- "(a) The department, during any fiscal year, shall not expend money, incur any liability, or enter into any

contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

3.06 Notice-to-Proceed: No cost may be incurred under this Agreement until the Agency has received a written Notice-to-Proceed from the Department.

3.07 Limits on Federal Participation: Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or project costs in part or in total.

For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

4.00 Project Estimate and Disbursement Schedule: Prior to the execution of this Agreement, a project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the project, and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved schedule of funding for the project. The schedule of funding may be revised by mutual written agreement between the Department and the Agency. If revised, a copy of the revision should be forwarded to the Department's Comptroller and to the Department's Federal-aid Program Office. No increase or decrease shall be effective unless it complies with fund participation requirements of this Agreement and is approved by the Department's Comptroller.

5.00 Records:

5.01 Establishment and Maintenance of Accounting Records: Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for 5 years after the final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records of the Agency and all subcontractors performing work on the project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim or audit is started before the expiration of the 5-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

5.02 Costs Incurred for Project: The Agency shall charge to the project account all eligible costs of the project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

5.03 Documentation of Project Costs: All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

5.04 Audit Reports: Recipients of federal and state funds are to have audits done annually using the following criteria:

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The administration of resources awarded by the Department to the Agency may be subject to audits and/or monitoring by the Department, as described in this section.

Monitoring: In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, Florida Statutes, as revised (see "Audits" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department staff to the Agency regarding such audit. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the FDOT's Office of Inspector General (OIG), and the Chief Financial Officer (CFO) or Auditor General.

Audits

Part I - Federally Funded: Recipients of federal funds (i.e., state, local government or non-profit organizations as defined in OMB Circular A-133, as revised) are to have audits done annually using the following criteria:

1. In the event that the 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 provisions of OMB Circular A-133, as revised. Exhibit "1" of this Agreement indicates federal resources awarded through the Department by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1 the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$500,000 in federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than federal entities).
4. 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.

Part II - State Funded: Recipients of state funds (i.e., a non-state entity as defined by Section 215.97(2) (l), Florida Statutes) are to have audits done annually using the following criteria:

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a state single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes, applicable rules of the Executive Office of the Governor and the CFO, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit "1" to this Agreement indicates state financial assistance awarded through the Department by this Agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other non-state entities. State financial assistance does not include federal direct or pass-through awards and resources received by a non-state entity for federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2) (d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the recipient elects to have audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

Part III - Other Audit Requirements: The recipient shall follow up and take corrective action on audit findings. Preparation of a Summary Schedule of Prior Year Audit Findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

Records related to unresolved audit findings, appeals or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the Department, the Department of Financial Services, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

Part IV - Report Submission:

1. Copies of financial reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Part I of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:
 - a) The Department at each of the following address(es):

Daniel Iglesias, District LAP Administrator, Florida Department of Transportation - District 6 Office
1000 NW 111th Avenue, Miami, Florida 33172
 - b) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132
 - c) Other federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.
2. In the event that a copy of the financial reporting package required by Part I of this Agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to Section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited Schedule of Expenditures of Federal Awards directly to each of the following:

Daniel Iglesias, District LAP Administrator, Florida Department of Transportation, District 6 Office
1000 NW 111th Avenue, Miami, Florida 33172

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the financial reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any Management Letters issued by the auditor, to the Department at each of the following addresses:

Daniel Iglesias, District LAP Administrator, Florida Department of Transportation - District 6 Office
1000 NW 111th Avenue, Miami, Florida 33172

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3. Copies of the financial reporting package required by Part II of this Agreement shall be submitted by or on behalf of the recipient directly to each of the following:
 - a) The Department at each of the following address(es):
Daniel Iglesias, District LAP Administrator, Florida Department of Transportation - District 6 Office
1000 NW 111th Avenue, Miami, Florida 33172
 - b) The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450
4. Copies of reports or the Management Letter required by Part III of this Agreement shall be submitted by or on behalf of the recipient directly to:
 - a) The Department at each of the following address(es):
Daniel Iglesias, District LAP Administrator, Florida Department of Transportation - District 6 Office
1000 NW 111th Avenue, Miami, Florida 33172
5. Any reports, Management Letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted in a timely manner in accordance with OMB Circular A-133, as revised, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133, as revised, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the financial reporting package was delivered to the recipient in correspondence accompanying the financial reporting package.

Part V - Record Retention: The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least 5 years from the date the audit report is issued and shall allow the Department or its designee, the state CFO or Auditor General access to such records upon request. The recipient shall ensure that the independent audit documentation is made available to the Department, or its designee, the state CFO or Auditor General upon request for a period of at least 5 years from the date the audit report is issued, unless extended in writing by the Department.

5.05 Inspection: The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives and authorized agents of FHWA to inspect all work, workmanship, materials, payrolls, and records and to audit the books, records, and accounts pertaining to the financing and development of the project.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement (Section 287.058(1)(c), Florida Statutes).

5.06 Uniform Relocation Assistance and Real Property Statistical Report: For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

6.00 Requisitions and Payments: Requests for reimbursement for fees or other compensation for services or expenses incurred shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof (Section 287.058(1)(a), Florida Statutes).

All recipients of funds from this Agreement, including those contracted by the Agency, must submit bills for any travel expenses, when authorized by the terms of this Agreement, in accordance with Section 112.061, Florida Statutes, and Chapter 3-"Travel" of the Department's Disbursement Operations Manual, Topic 350-030-400 (Section 287.058(1)(b), Florida Statutes).

If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

7.00 Department Obligations: Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

7.01 Misrepresentation: The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof or in or with respect to any document of data furnished therewith or pursuant hereto;

7.02 Litigation: There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement or payments to the project;

7.03 Approval by Department: The Agency shall have taken any action pertaining to the project which, under this Agreement, requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

7.04 Conflict of Interests: There has been any violation of the conflict of interest provisions contained here in paragraph 12.06 or 12.07.

7.05 Default: The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

7.06 Federal Participation: The Department may suspend or terminate payment for that portion of the project which the FHWA, or the Department acting in lieu of FHWA, may designate as ineligible for federal-aid.

7.07 Disallowed Costs: In determining the amount of the payment, the Department will exclude all projects costs incurred by the Agency prior to the effective date of this Agreement or the date of authorization, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7.08 Final Invoices: The Agency must submit the final invoice on the project to the Department within 120 days after the completion of the project. Invoices submitted after the 120-day time period may not be paid.

8.00 Termination or Suspension of Project:

8.01 Termination or Suspension Generally: The Department may, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

(a) If the Department determines that the performance of the Agency is not satisfactory, the Department shall notify the Agency of the deficiency in writing with a requirement that the deficiency be corrected within thirty (30) days of such notice. Such notice shall provide reasonable specificity to the Agency of the deficiency that requires correction. If the deficiency is not corrected within such time period, the Department may either (1) immediately terminate the Agreement

as set forth in paragraph 8.(b) below, or (2) take whatever action is deemed appropriate by the Department to correct the deficiency. In the event the Department chooses to take action and not terminate the Agreement, the Agency shall, upon demand, promptly reimburse the Department for any and all costs and expenses incurred by the Department in correcting the deficiency.

(b) If the Department terminates the Agreement, the Department shall notify the Agency of such termination in writing, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

(c) If the Agreement is terminated before the project is completed, the Agency shall be paid only for the percentage of the project satisfactorily performed for which costs can be substantiated. Such payment, however, shall not exceed the equivalent percentage of the contract price. All work in progress will become the property of the Department and will be turned over promptly by the Agency.

8.02 Action Subsequent to Notice-of-Termination or Suspension: Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; (b) furnish a statement of the project activities and contracts and other undertakings the cost of which are otherwise includable as project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

9.00 Contracts of Agency:

9.01 Third Party Agreements: Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.

9.02 Compliance with Consultants' Competitive Negotiation Act: It is understood and agreed by the parties hereto that participation by the Department in a project with the Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all projects. In all cases, the Agency's attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

10.00 Disadvantaged Business Enterprise (DBE) Policy and Obligation: It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Agency and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement. Furthermore, the Agency agrees that:

(a) Each financial assistance agreement signed with a US-DOT operating administration (or a primary recipient) must include the following assurance:

"The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of

49 C.F.R. Part 26. The recipient shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 C.F.R. Part 26 and as approved by Department, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

(b) Each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

"The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

11.00 Compliance with Conditions and Laws: The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," in 49 C.F.R. Part 29, when applicable.

12.00 Restrictions, Prohibitions, Controls, and Labor Provisions:

12.01 Equal Employment Opportunity: In connection with the carrying out of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: 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. The Agency shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development of operation of the project, except contracts for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

12.02 Title VI - Civil Rights Act of 1964: The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

The Agency shall include provisions in all contracts with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.

12.03 Americans with Disabilities Act of 1990 (ADA): The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.

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

months from the date of being placed on the convicted vendor list.

12.05 Discrimination: In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, 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 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.

12.06 Suspension, Revocation, Denial of Qualification or Determination of Contractor Non-Responsibility: An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.

12.07 Prohibited Interests: Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the project or any property included or planned to be included in the project in which any member, officer or employee of the Agency or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement.

The Agency shall insert in all contracts entered into in connection with the project or any property included or planned to be included in any project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this paragraph shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

12.08 Interest of Members of, or Delegates to, Congress: No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

13.00 Miscellaneous Provisions:

13.01 Environmental Regulations: The Agency will be solely responsible for compliance with all the applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits.

13.02 Department Not Obligated to Third Parties: The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.

13.03 When Rights and Remedies Not Waived: In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

13.04 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.

13.05 Bonus or Commission: By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

13.06 State Law: Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

13.08 Plans and Specifications: In the event that this Agreement involves constructing and equipping of facilities on the State Highway System, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency a written approval with any approved portions of the project and comments or recommendations covering any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a written approval with said remainder of the project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department. The Agency will physically include Form FHWA-1273 in all its contracts and subcontracts.

13.09 Right-of-Way Certification: Upon completion of right-of-way activities on the project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to advertisement for or solicitation of bids for construction of the project, including those projects for which no right-of-way is required.

13.10 Agency Certification: The Agency will certify in writing, prior to project closeout that the project was completed in accordance with applicable plans and specifications, is in place on the Agency's facility, adequate title is in the Agency's name, and the project is accepted by the Agency as suitable for the intended purpose.

13.11 Agreement Format: All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

13.12 Execution of Agreement: This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

13.13 Restrictions on Lobbying:

Federal: The Agency agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any 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.

If any funds other than federally-appropriated funds have been paid by the Agency 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 Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this paragraph 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.

State: No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

13.14 Maintenance: The Agency agrees to maintain any project not on the State Highway System constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency will will not maintain the improvements made for their useful life.

13.15 Vendors Rights: Vendors (in this document identified as the Agency) providing goods and services to the

Department should be aware of the following time frames. Upon receipt, the Department has 5 working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days after receipt of the invoice and the receipt, inspection, and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), Florida Statutes, will be due and payable in addition to the invoice amount to the Agency. Interest penalties of less than one \$1 will not be enforced unless the Agency requests payment. Invoices which have to be returned to the Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at 850-413-5516 or by calling the State Comptroller's Hotline, 877-693-5236.

13.16 Reimbursement of Federal Funds:

The Agency shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Agency and FHWA requires reimbursement of the funds, the Agency will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement. Federal Economic Stimulus awards do not exempt the Agency from adherence to federal guidelines, procedures, and regulations.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCAL AGENCY PROGRAM AGREEMENT

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

AGENCY Town of Cutler Bay

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: Stephen J. Alexander

Name: _____

Title: Town Manager

Title: _____

Attest: *Epitika Santamaria*

Attest: _____

Title: Town Clerk

Title: _____

As to form:

As to form:

M.B.
Attorney Mitchell Bierman
Town Attorney

District Attorney

See attached Encumbrance Form for date of funding approval by Comptroller.

EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 426429-1

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation and
Town of Cutler Bay, 10720 Caribbean Boulevard, Suite 105, Cutler Bay, Florida 33189

Dated _____

PROJECT LOCATION: Town of Cutler Bay, Miami-Dade County

The project ___ is X is not on the National Highway System.

The project ___ is X is not on the State Highway System.

PROJECT DESCRIPTION: Resurfacing of Old Cutler Road (from SW 224th Street to SW 184th Street (w/exception). The project also includes pavement markings, repairs to damaged sidewalks and ADA upgrades at street corners. These proposed improvements are aimed at improving public safety and mobility by enhancing roadway rideability along the project corridor.

SPECIAL CONSIDERATIONS BY AGENCY:

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

The Agency is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department, and notify the Department prior to commencement of any right-of-way activities.

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) N/A Study to be completed by N/A.
- b) Design to be completed by 4/15/09 N/A.
- c) Right-of-Way requirements identified and provided to the Department by N/A.
- d) Right-of-Way to be certified by 4/15/09 N/A.
- e) Construction contract to be let by 7/09.
- f) Construction to be completed by 4/10.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

EXHIBIT "B"

SCHEDULE OF FUNDING

AGENCY NAME & BILLING ADDRESS Town of Cutler Bay 10720 Caribbean Boulevard, Suite 105 Cutler Bay, Florida 33189	FPN: 426429-1
--	---------------

PROJECT DESCRIPTION

Name: Old Cutler Road Resurfacing Improvements Length: 3.0
 Termini: From SW 224th Street to SW 184th Street (w/exception)

TYPE OF WORK By Fiscal Year		FUNDING		
		(1) TOTAL PROJECT FUNDS	(2) AGENCY FUNDS	(3) STATE & FEDERAL FUNDS
Planning	2006-2007			
	2007-2008			
	2008-2009			
	Total Planning Cost			
Project Development & Environment (PD&E)	2006-2007			
	2007-2008			
	2008-2009			
	Total PD&E Cost			
Design	2006-2007			
	2007-2008			
	2008-2009			
	Total Design Cost			
Right-of-Way	2006-2007			
	2007-2008			
	2008-2009			
	Total Right-of-Way Cost			
Construction	2006-2007			
	2007-2008			
	2008-2009			
	2009-2010	\$248.535		\$248.535
	Total Construction Cost	\$248.535		\$248.535
Construction Engineering and Inspection (CEI)	2006-2007			
	2007-2008			
	2008-2009			
	2009-2010	\$22.594		\$22.594
	Total CEI Cost	\$22.594		\$22.594
Total Construction and CEI Costs				
TOTAL COST OF THE PROJECT		\$271,129		\$271,129

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.

EXHIBIT "S"

**2009 AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)
JOB REPORTING**

FPN: 426429-1

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation (Department) and

Town of Cutler Bay

10720 Caribbean Boulevard, Suite 105, Cutler Bay, Florida 33189

Dated _____

SPECIAL CONSIDERATIONS BY AGENCY:

Compliance with the 2009 American Recovery and Reinvestment Act (ARRA)

This project is subject to the criteria and conditions of the 2009 American Recovery and Reinvestment Act (ARRA). The Agency will satisfy the Federal reporting requirements for the project(s), such as the monthly employment report, for both the Contractor and Subcontractor. The Agency will provide the required information on form(s) provided by the Department in the timeframe indicated in the instructions. The Agency will ensure that the reporting requirements are included in all ARRA contracts and subcontracts.

The Agency will withhold the Contractor's progress payments, project acceptance, and final payment for failure to comply with the requirements of the 2009 ARRA.

Authority of the U.S. Comptroller General

Section 902 of the 2009 ARRA provides the U.S. Comptroller General and his representatives the authority:

1. To examine any records of the Contractor or any of its Subcontractors, or any State or Local Agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
2. To interview any officer or employee of the Contractor or any of its Subcontractors, or of any State or Local Agency administering the contract, regarding such transactions.

Accordingly, the U.S. Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the 2009 ARRA with respect to this contract, which is funded with funds made available under the 2009 ARRA. Section 902 further states that nothing in this Section shall be interpreted to limit or restrict, in any way, any existing authority of the U.S. Comptroller General.

Authority of the U.S. Inspector General

Section 1515(a) of the 2009 ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this contract. The Contractor is advised that representatives of the U.S. Inspector General have the authority to examine any record and interview any employee or officer of the Contractor, its Subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this Section shall be interpreted to limit or restrict, in any way, any existing authority of the Inspector General.

TYPE 1 AND PROGRAMMATIC CATEGORICAL EXCLUSION CHECKLIST

Financial Project ID. 426429-1 FAP No. _____

Project Description: Old Cutler Road Resurfacing Improvements

	YES	NO
Will the project cause significant adverse impacts to local traffic patterns, property access, or community cohesiveness, or planned community growth or land use patterns?	___	X ___
Will the project cause significant adverse impacts to air, noise and water?	___	X ___
Will the project cause significant adverse impacts to wetlands?	___	X ___
Will the project cause significant adverse impacts to navigation?	___	X ___
Will the project cause significant impacts to floodplains in accordance with Part 2, Chapter 24?	___	X ___
Will the project cause significant impacts to endangered and threatened species or their critical habitats?	___	X ___
Will the project require acquisition of significant amount of right-of-way?	___	X ___
Will the project require relocation of a significant number of residents or businesses?	___	X ___
Are there any properties protected under Section 4(f) of the U.S. Department of Transportation Act within the project limits that will require a Section 4(f) Evaluation in accordance with Part 2, Chapter 13?	___	X ___
Are there any properties protected under Section 106 of the National Historic Preservation Act within the project limits, and if there are, will the project have A significant impact any of those properties? Projects that may involve historic Properties must meet the requirements for consultation with the SHPO (or THPO as appropriate) as outlined in Part 2, Chapter 12 of this manual.	___	X ___
Will the project have a significant involvement with contamination?	___	X ___
Will the project require a public hearing or an opportunity for a public hearing?	___	X ___

IMPORTANT If the answer to any of these questions is **Yes**, then a Type 1 or Programmatic Categorical exclusion does not apply, and additional coordination with the FHWA Transportation Engineer is required to determine the necessary level of environmental documentation.

FIGURE 2.2 Type 1 and Programmatic Categorical Exclusion Checklist (continued)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LAP CERTIFICATION

575-095-05
RIGHT OF WAY
09/07

R/W ITEM/SEGMENT NO.: _____ MANAGING DISTRICT: District 6
CONSTRUCTION ITEM/SEGMENT NO.: 426429-1 STATE ROAD: N/A
F.A.P. NO. (Construction): _____ DESCRIPTION: Old Cutler Road
COUNTY: Miami-Dade From SW 224th Street to SW 184th Street (w/exception)
LETTING DATE: July, 2009 Town of Cutler Bay

The undersigned hereby certifies as follows:

Title to all property and easements needed for the above construction project is vested in the Florida Department of Transportation (Department) or a state or local government. Sufficient authority has been obtained to construct and maintain the proposed improvements on property and easements owned by state or local governments. Further:

Acquisition

- Right of way was not acquired for this project.
 Right of way was acquired for this project in compliance with applicable state and federal law.

Relocation

- No persons or businesses were required to move or move personal property from the project right of way.
 All persons and businesses that were required to move or move personal property from the project right of way have been provided relocation assistance in compliance with applicable state and federal law.

Demolition

- No structures or improvements, including encroachments, required removal from the project right of way.
 All structures and/or improvements, including encroachments, have been removed from the project right of way in compliance with applicable state and federal law, or will be included in the construction contract.

Asbestos Abatement

- No structures or improvements requiring asbestos abatement were located on the project right of way.
 Asbestos abatement of buildings and/or structures, including those to be removed by the construction contractor, has been completed in compliance with applicable state and federal law, or will be included in the construction contract.

Submitted by Local Agency: _____

Title: Town Manager, Steven J. Alexander

Date: 4/15/09

Certified by: _____

Title: _____

Date: _____

TAB 6



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: May 13, 2009

Re: 2009 Federal Transit Administration (FTA 5307) to install new bus shelters and construct ADA compliant sidewalks to shelters

RESOLUTION

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE TOWN AND MIAMI-DADE TRANSIT AGENCY FOR FEDERAL FUNDING FOR THE INSTALLATION OF BUS SHELTERS AND ADDITIONAL ASSOCIATED ADA COMPLIANCE WORK, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND ALL FUTURE FORMS AND AGREEMENTS REQUIRED FOR THE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND

On February 17, 2009, President Barack Obama signed the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5-ARRA), which includes \$8.4 billion for transit capital improvements. Of those funds, the Miami Urbanized Area is sharing \$139,733,611 split between Miami-Dade Transit (MDT), Palm Tran (in Palm Beach County), Broward County Transit (BCT), and the South Florida Regional Transportation Authority (SFRTA).

The MDT allocation is \$69,802,389. However, the Metropolitan Planning Organization (MPO) Board approved 20% of the MDT share for use by the municipalities in Miami-Dade County, totaling \$13,960,478. The allocation was based on population, with the Town's \$ 418,027.67.

MDT must submit a single grant application to FTA for the entire \$69.8 million and will incorporate all of the projects from participating municipalities within that application. Appropriate Interlocal Agreements between MDT and each municipality will be a part of



the single FTA grant agreement. The Town's "draft" Interlocal Agreement is attached to the authorizing Resolution.

The Town's Interlocal Agreement with MDT specifically provides for type of transit capital improvements it will undertake with the funding. The Interlocal Agreement stipulates that the funding will be used for the construction of new bus shelters throughout the Town as well as the construction of ADA compliant sidewalks adjacent to those bus shelters.

Goals of the ARRA include the preservation or creation of jobs and promotion of economic recovery, as well as the investment in transportation, environmental protection and other infrastructure providing long-term economic benefits. An estimated 1,773 jobs are expected to be preserved or created from the projects submitted by MDT and the municipalities. Only capital expenditures are eligible for funding under the ARRA. Some of the eligible project areas include preventive maintenance; transit related ITS, rehabilitating buses, and overhauling of rail rolling stock.

In order to ensure receipt of these funds, the application must be submitted to FTA prior to June 1, 2009. It is expected that approximately 60 days will be required for the review and approval process prior to the obligation of funds by FTA in August or September 2009.

RECOMMENDATION

It is recommended that the Town Council approve the attached Resolution Authorizing the Town Manager to Execute the Interlocal Agreement with the Miami-Dade County Transit Agency.

RESOLUTION NO. 09-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE TOWN AND MIAMI-DADE TRANSIT AGENCY FOR FEDERAL FUNDING FOR THE INSTALLATION OF BUS SHELTERS AND ADDITIONAL ASSOCIATED ADA COMPLIANCE WORK, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND ALL FUTURE FORMS AND AGREEMENTS REQUIRED FOR THE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, Florida (the “Town”) has prepared an interlocal agreement (Exhibit “A”) with Miami-Dade Transit Agency (“MDT”) to have certain projects within the Town funded through the American Recovery and Reinvestment Act (ARRA) of 2009, recently passed by Congress and signed by the President, to be administered through Miami-Dade Transit Agency; and

WHEREAS, MDT must submit a single grant application to Federal Transit Administration for the entire \$69.8 million and will incorporate all of the projects from participating municipalities within that application; and

WHEREAS, MDT is the only designated recipient of funds in Miami-Dade County, and it will be responsible for submitting the grant application, overseeing project management, and reporting on all of the project’s progress (inclusive of the municipalities) through the life of the grant; and

WHEREAS, the Town is seeking to install new bus shelters and ADA compliant sidewalks for the bus shelters with Town’s portion of the funding received by MDT; and

WHEREAS, the Town Council desires to enter into the Interlocal Agreement with MDT and to authorize the Town Manager or his designee to execute all further documents and agreements necessary in order for the Town to receive funding; and

WHEREAS, the Town finds that this Resolution will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Agreement and Authorization. The Interlocal Agreement for Town infrastructure projects relating to the installation of bus shelters and additional associated ADA compliance work, in substantially the form attached hereto as Exhibit "A", is hereby approved by the Town Council, and the Town Manager is authorized to negotiate and execute the same on behalf of the Town. Additionally, the Town Manager is hereby authorized to sign any and all additional agreements or documents and provide any further documentation to state or federal authorities required in order for the Town to receive funding or other funding from the state of Florida for Town infrastructure projects relating to the installation of bus shelters and additional associated ADA compliance work.

Section 3. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENC
FOR THE SOLE USE OF
THE TOWN OF CUTLER
BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest S. Sochin _____

**Interlocal Agreement Between
Miami-Dade Transit Agency and the Town of Cutler Bay
For Federal Funding Pass-Through Arrangements with the American Recovery
and Reinvestment Act (ARRA) of 2009 Federal Transit Administration (FTA 5307)
for the Town to Install New Bus Shelters and Construct ADA Compliant Sidewalks
to All Shelters**

This is an Interlocal Agreement, made and entered into by and between Miami-Dade Transit, a department of Miami-Dade County, a political subdivision of the state of Florida, hereinafter referred to as "the County", and the **Town of Cutler Bay**, a municipal corporation of the state of Florida, hereinafter referred to as "the City".

WITNESSETH:

WHEREAS, Miami-Dade Transit, an Urbanized Area Formula Program grantee agrees to pass through Federal Transit Administration (FTA) 5307 the American Recovery and Reinvestment Act (ARRA) funding for the **Town of Cutler Bay**, a designated FTA funding recipient.

WHEREAS, using that funding, the **Town of Cutler Bay** will provide transportation services within the Town to benefit local residents and businesses within the Town and within sections of Miami-Dade County north of the Town; and

WHEREAS, the Town will provide the citizens of the **Town of Cutler Bay** with improved public transportation by installing bus shelters and construct ADA compliant sidewalks to all shelters operating, directly or through a transportation contractor, which will meet the local needs; and

WHEREAS, the provision of regularly scheduled transit services which may connect with existing Miami-Dade Transit (MDT) Metrobus services and help increase the use of the transit services provided by MDT; and

WHEREAS, the Town has sponsored and is willing to provide an alternative form of supplemental public transit throughout the Town and has secured and obligated the necessary funds to provide;

NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the County and the Town agree as follows:

ARTICLE 1

DEFINITIONS

- 1.1 "ADA" shall mean the Americans with Disabilities Act of 1990, as amended. The American Recovery and Reinvestment Act (ARRA).
- 1.2 "Contractor" shall mean any entity, public or private providing public circulator services as described in this Agreement under contract to the City.
- 1.3 "Circulator" shall mean fixed route or semi-fixed route public transportation Trolley bus services where at least seventy (70%) percent of the route is within the Town and said circulator service is operated by the City, directly or by contract, pursuant to this Agreement and Chapter 31 of the Code of Miami-Dade County.
- 1.4 "The County" shall include Miami-Dade County, the Miami-Dade Transit, the Miami-Dade Consumer Services Department, and authorized representatives thereof.
- 1.5 "The City" shall mean **Town of Cutler Bay** and authorized representatives thereof.
- 1.6 "FDOT" shall mean the Florida Department of Transportation and authorized representative thereof.
- 1.7 "MDT" shall mean the Miami-Dade Transit and authorized representatives thereof.
- 1.8 "USDOT" shall refer to the U.S. Department of Transportation, its rules and regulations, and representatives thereof.
- 1.9 "FTA" shall mean the Federal Transit Administration, its rules and regulations, and representatives thereof.
- 1.10 "CSD" shall mean the Consumer Services Department of Miami-Dade County and authorized representatives thereof.
- 1.11 "PTRD" shall refer to the Passenger Transportation Regulatory Division of CSD.
- 1.12 "Federal Reporting Requirements" shall mean those requirements referenced in 49 CFR Section 5335(a), as may be amended from time to time, and found in the National Transit Database Reporting Manual published by the FTA.
- 1.13 "STS", Special Transportation Service, is the component of the conventional transit system designed to provide comparable circulator service to disabled individuals as mandated in the ADA.

ARTICLE 2

GENERAL REQUIREMENTS

- 2.1 Compliance with Applicable Laws and Regulations. The Town and its contractors, if any, shall comply with all existing and future laws, statutes, ordinances, codes, rules, regulations, and procedural requirements, whether federal, state, or local, which are applicable to, or in any manner affect, the provision of **Town of Cutler Bay**. The Town shall be responsible for ensuring compliance of its employees, contractors, agents, or assigns with all applicable county, state, and federal requirements, including, but not limited to, all safety, mechanical, and vehicular standards mandated by MDT and CSD. The Town shall be responsible for obtaining copies of the appropriate laws, regulations, ordinances, and documents and complying therewith.

ARTICLE 3

TOWN OF CUTLER BAY BUS SHELTERS

- 3.1 .
- 3.2 Coordination with County Bus Routes. The installation of new bus shelters and sidewalks will complement existing County Metrobus routes and will provide the citizens of the Town of Cutler Bay with improved public transportation, which will meet local public needs. The installation of new bus shelters and sidewalks will be closely coordinated with Miami-Dade Transit.
- 3.3
- 3.5 Use of Logo. FTA has logo uniquely identifying ARRA projects such logo shall at all times be displayed on the exterior of all vehicles operation pursuant to this Agreement. The County shall allow the display of the Circulator service logo on the County's bus stop signs at all stops common to the Town and the County bus routes. The Town shall be responsible for placing the logo on the pertinent signs where space is available for such logos to be placed.
- 3.6 Bus Stop and Signposts. The Town may provide, install, and maintain bus stop signs and signposts at stops along the Miami-Dade Transit (MDT) routes, which are not also stops for Metrobus routes. If the City, its contractor, licensee, permittee, or assignee wishes to install bus stop signs at common bus stops, MDT must agree to such action

and the Town shall provide facilities that can accommodate Metrobus bus stop information. That accommodation shall be either in the form of space for Metrobus route decals or space for Metrobus signs common to all other Metrobus stop signs. If Metrobus information is to be displayed on Town bus stop signs, MDT shall provide to the Town the materials to be displayed on the bus stop sign facility, in the size and format to be specified by the County. The Town shall be responsible for installing the Metrobus stop information in the bus stop sign facility per the specification of the County. If the Town moves or discontinues the bus stop where the sign is the City's, the Town shall be responsible for the cost of moving or removing the Metrobus stop information. If the County moves or discontinues the bus stop where the sign is the County's, the County shall be responsible for the cost of moving or removing the **Town of Cutler Bay** stop information.

- 3.7 Non-Interference and Non-Disturbance. The County and the Town hereby mutually agree not to interfere with or unreasonably impede the free flow of pedestrian movement or of each other's public transit vehicular traffic or passengers accessing of Metrobus or Trolley bus service in- service vehicles.

ARTICLE 4

RECORDS AND REPORTS

- 4.1 Reporting Requirements. The Town shall collect or assure the collection of all information required for Federal and State reporting purposes, and shall provide collected and compiled information to the County no less often than monthly/quarterly as required by the County, State or FTA. The FTA through Miami-Dade County requires quarterly Financial Status Reports (FSR), Milestones, and Ridership Reports. The Town shall also report monthly ridership performance data. The Town shall annually prepare and submit audited National Transit Data Base reports as required by the USDOT and submit to the County a copy of said reports no later than ninety (90) days after the close of the County's fiscal year.
- 4.2 Additional Information. The Town shall provide additional information about the Town installing bus shelters and construct ADA compliant sidewalks to all shelters operations as requested by the County within thirty (30) days, unless a different time period is agreed upon, in writing, by the Town Manager and the County Mayor or his/her designee.
- 4.3 Administrative Fees. The Town shall pay the County a 5% fee of the FTA FY **2009** award of **\$418,027.67** totaling **\$20,901.38** for grant administration, finance, project management, and performance reporting. The County shall be entitled to an administrative fee of 5% for any and all future FTA 5307 grants awarded to the Town for which the County provides grant application, grant administration, finance, project management and performance reporting services.
- 4.4
- 4.5

ARTICLE 5

INSURANCE

The parties hereto acknowledge that the Town is self-insured governmental entity subject to the limitations of Section 768.28, F.S. The Town shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provision of Section 768.28, F.S. The Town shall collect and keep on file documentation of insurance of any and all private providers operating the **Town of Cutler Bay** service routes. In the event that the Town contracts with a private vendor for services, the Town shall require contractor to meet the insurance requirements shown in Figure 1, as a minimum. The Town shall further require the private operator to include the County as a named insured and shall provide the County with a copy of the insurance policy purchased by any contractor prior to the provision of bus service operations.

Figure 1

Insurance Check List

(Form H from **Town of Cutler Bay** Request for Proposals for Contract for Municipal Circulator Services)

- _____1. Worker's Compensation and Employer's Liability per the Statutory limits of the state of Florida.
- _____2. Commercial General Liability (occurrence form), limits of liability \$1,000,000 per occurrence for bodily injury property damage to include premises/operations; products and completed operations; independent Contractors; broad form property damage endorsement and contractual indemnity (hold harmless endorsement exactly as written in "insurance requirements" of specifications).
- _____3. Automobile Liability \$1,000,000 each occurrence owned/non-owned/hired automobiles included.
- _____4. Excess Liability -\$ _____ .00 per occurrence to follow the primary coverage.
- _____5. The Town must be named as an additional insured on the liability policies; and it must be named as an additional insured on the liability policies; and it must be stated on the certificate.
- _____6. Other Insurance as indicated:

_____ Builders Risk completed value	\$ _____
_____ Liquor liability	\$ _____
_____ Fire legal liability	\$ _____
_____ Protection and indemnity	\$ _____
_____ Employee dishonesty bond	\$ _____
_____ Other blanket fidelity bond	\$ <u>10,000.00</u>
- _____7. Thirty days written cancellation notice required.
- _____8. Best's guide rating B+: VI or better, latest edition.
- _____9. The certificate must state the bid number and title

ARTICLE 6

IDEMNIFICATION

- 6.1 The Town shall, to the extent permitted by law at all times hereafter, indemnify and hold harmless the County, and its officers, agents, employees and instrumentalities from any and all liability, claims, losses, and causes of action, including attorneys' fees and costs of defense which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kinds or nature arising out of, or relating to or resulting from the negligence of the Town and/or its officers, employees, agents or instrumentalities, during the term of this Agreement. The Town shall pay all claims and losses in connections therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and reasonable attorneys' fees which may issue thereon. The Town expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Town shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County, its officers, employees, agents or instrumentalities or any other related third party. This paragraph is subject to the limitations of Section 768.28, F.S.
- 6.2 The County shall, to the extent permitted by law at all times hereafter, indemnify and hold harmless the City, and its officers, agents, employees and instrumentalities from any and all liability, claims, losses, and causes of action, including attorneys' fees and costs of defense which the Town 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, or relating to or resulting from the negligence of the County and/or its officers, employees, agents or instrumentalities, during the term of this agreement. The County shall pay all claims and losses in connections 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 reasonable attorneys fees which may issue thereon. The County expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the County shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the Town from any liability or claim arising out of the negligent performance or failure of performance of the City, its officers, employees, agents or instrumentalities or any other related third party. This paragraph is subject to the limitations of Section 768.28, F.S.

6.3

ARTICLE 7

FINANCIAL ASSISTANCE

- 7.1 Grant Matching Funds. There are no matching funds required for this American Recovery Reinvestment Act (ARRA) FTA program.
- 7.2 Bus Shelters and Benches. The Town shall, at its sole option, provide, install, and maintain bus passenger shelters, benches and other bus stop furnishings, at bus stops along the County's bus shelters service route where the City, or its contractor, feels that there is a need for such furnishings.

- 7.3 Bus Stops and Bus Bays or Pull-outs. The Town shall, at its sole option, provide, install, and maintain bus stop sites, including bus bays or pull-outs at stops along the County's bus shelters, provided that any proposed bus bays or pull-outs and any proposed modifications or reconfigurations to existing bus bays or pull-outs shall be first reviewed and approved by the County or State, as appropriate.
- 7.4 Comparable Agreements. In the event that the County enters into an Interlocal Agreement with any other municipality for bus services, which are comparable to the services provided herein, but upon more favorable terms for the municipality than the terms provided herein, County agrees to amend this Agreement, if requested by the City, to provide substantially equivalent favorable terms to the Town as those provided in such other County/Municipal Interlocal Agreements.

ARTICLE 8

TERMS, MODIFICATIONS AND MISCELLANEOUS PROVISIONS

- 8.1 Term of Agreement. This Agreement shall commence upon approval of the Board of County Commissioners and the Council of **Town of Cutler Bay** and the execution by the County Mayor or his/her designee and authorized Town Manager.
- 8.2 Renegotiation or Modification. Any substantive changes in the level of service to be provided by the Town as set forth herein shall only be implemented after the County and the Town have entered into a written agreement describing the changed services and the provisions of the County Code have been exercised.
- 8.3 Title VI and VII Civil Rights Act of 1964. The Town and its Contractors shall not discriminate against any person because of race, color, sex religious background, ancestry or national origin in the performance of the Agreement.
- 8.4 Termination for Cause. This Agreement may be terminated for cause by either party upon no less than thirty (30) days written notice to the other party, except when bus the installation of new bus shelters and construct ADA compliant sidewalks to all shelters are

in violation of health and/or safety-related provisions of state statutes or the Code of Miami-Dade County, in which case termination shall be as determined by the County Mayor. Said notice shall be delivered by verified facsimile transmission or certified mail, return receipt requested. The noticed party shall have the opportunity to cure any stated cause for termination within a reasonable notice period, in which case the terminating party may cancel the termination notice using the same means by which the notice of termination delivered.

- 8.5 Termination without Cause. The County or the Town may terminate this Agreement without cause upon no less than sixty (60) days written notice to the other party. If the County or the Town terminates this Agreement with or without cause, the Town agrees to reimburse the County on a prorated basis for financial assistance it has received for the year.
- 8.6 Notices. All notices and other communications required to be remitted pursuant to this Agreement to either party hereto shall be in writing and shall be delivered by verified facsimile transmission or certified mail, return receipt requested, to the parties at the address indicated below:

FOR MIAMI-DADE COUNTY:

Miami-Dade Transit Agency
701 N.W. First Court, Suite 1700
Miami, FL 33136

Attention: Director, Miami-Dade Transit
Fax: 786.469.5580

FOR TOWN OF CUTLER BAY:

Town of Cutler Bay
Town Manager's Office
10720 Caribbean Blvd., Suite 105
Cutler Bay, Florida 33189
Phone: (305) 234-4262
Fax: (305) 234-4251

Attention:

- 8.7 Name of Payee. The name of the official payee to whom the County shall issue checks shall be Town of Cutler Bay.
- 8.8 Complete and Binding Agreement. This writing embodies the full and complete Agreement of the parties. No other terms, conditions or modifications shall be binding upon the parties unless in writing and signed by the parties.
- 8.9 Execution. This document shall be executed in four (4) counterparts, each of which shall be deemed an original.
- 8.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature:

ATTEST:

FOR THE COUNTY:

Miami-Dade County,
A political subdivision of the State of Florida

County Clerk

By its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
County Mayor

Date Executed: _____

Approved as to Form and Legal Sufficiency

By: _____
Assistant County Attorney

ATTEST:

FOR THE CITY:

Town of Cutler Bay
A political subdivision of the State of
Florida

By: _____
Town Clerk

By: _____
Town Manager

Date Executed: _____

Approved as to Form and Legal Sufficiency

By: _____
Town Attorney

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

I, HARVEY RUVIN, Clerk of the Circuit and County Courts, in and for Miami-Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said county, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. R- , adopted by the said Board of County Commissioners at its meeting held on , as appears of record.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 29th day of October, A.D., 2008.

HARVEY RUVIN, Clerk
Board of County Commissioners
Miami-Dade County, Florida

By: _____
Deputy Clerk

TAB 7



MEMORANDUM

To: Mayor and Town Council

From: Steven Alexander, Town Manager

Date: May 11, 2009

Re: **Off-street parking requirements**

Town Planning Staff expresses its desire to amend the requirements for off-street parking for Furniture Showrooms within the Town Code.

Comprehensive review of off-street parking requirements indicates the current code requires excessive spaces. Jurisdictions across the nation and in South Florida are promoting sustainable development actions, by providing for a lower minimum off-street parking requirement for furniture showrooms in recognition of their lower trip generation standards. Because the amount of parking is based on square footage, furniture showrooms, which provide multiple rooms replicating residential living areas, are forced to provide excessive amounts of parking. This places an extra-ordinary burden on the off-street parking counts. The current law requires 3 parking spaces for the first 2,500 sq. ft. of gross floor area.

The proposed ordinance, amending Chapter 33, Article VII. Off-Street Parking; Section 33-124, has been prepared to allow furniture showrooms to provide parking based on one parking space per 1,000 square feet of gross floor area, with a minimum of five spaces.

If in the future the property use becomes a different use type, the parking standard will change to the ratio required for that use.

RECOMMENDATION

Staff finds the reduction in parking spaces required for furniture showrooms to be beneficial for the Town and will promote open and landscaped space rather than paved parking areas. Staff recommends Town Council approve the amendment.

ORDINANCE NO. 09-_____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-124 “STANDARDS” RELATING TO OFF STREET PARKING REQUIREMENTS FOR FURNITURE STORES; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) Town staff and consultants are currently drafting new land development regulations to govern development within the Town, which include, but are not limited to, off street parking requirements; and

WHEREAS, after reviewing the Town’s current off street parking requirements for furniture stores, Town staff has determined that such regulations were in need of updating and modifications; and

WHEREAS, the Town Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed meeting on May 20, 2009, and recommended its adoption; and

WHEREAS, the Town Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

NOW, THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals Adopted. That the recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Amendment to Section 33-124 of the Town Code. The Town Council hereby amends Section 33-124 of the Town Code as follows:

Sec. 33-124. Standards.

Off-street parking shall be provided in accordance with the following minimum standards:

(h) *Commercial:*

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

(3) Furniture showrooms shall be provided ~~three (3)~~ one (1) parking spaces ~~for the first twenty five hundred (2,500) square feet per 1,000 square foot of gross floor area, or fractional part thereof, and one (1) parking space for each additional five hundred (500) square feet of gross floor area or fractional part thereof with a minimum of 5 spaces.~~ When such a use is located within any BU District, the site plan submitted to the Department shall illustrate future parking spaces based on a calculation of ~~one (1) parking space for each two hundred fifty (250) square feet of gross floor area or fractional part thereof, which shall be provided in the event the furniture use is discontinued. The lot area reserved for future parking spaces shall remain unencumbered with any structures and shall be landscaped. However, this landscaped area shall not be credited toward the minimum required open space.~~ Prior to the issuance of a Certificate of Use and Occupancy for any use other than a furniture store, the property owner must provide the required number of parking spaces for the intended use as provided elsewhere in the article.

Section 3. **Conflicts.** All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 4. **Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Inclusion in the Code.** It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____ day of _____, 2009.

PASSED and ADOPTED on second reading this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 8

ORDINANCE NO. 09-_____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATED TO LOCAL BUSINESS TELEPHONE DIRECTORIES; ALLOWING RESIDENTS TO OPT OUT OF THE RECEIPT OF LOCAL BUSINESS TELEPHONE DIRECTORIES; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES SECTION OF THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THESE SECTIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) is increasingly concerned about the adverse environmental consequences of the dissemination of unwanted non-residential telephone directories (the “Directories”) to residents of the Town; and

WHEREAS, the information contained in these Directories is already readily available on the internet, and providing paper copies to those whom do not wish to receive them is not only redundant but a misuse of resources as well; and

WHEREAS, over 500 million directories of all types are printed every year, according to the organization Yellow Pages Go Green, equating to nearly two books for every person in the United States of America; and

WHEREAS, again according to Yellow Pages Go Green, in order to produce 500 million directories, the following resources are used: 19 million trees need to be harvested, 1.6 billion pounds of paper are wasted, 7.2 million barrels of oil are misspent in their processing (not including the wasted gas used for their delivery to your doorstep), 268,000 cubic yards of landfill are taken up, and 3.2 billion kilowatt hours of electricity are used; and

WHEREAS, the Town Council of Cutler Bay finds these directories are often not the best use of resources and also use a great deal of landfill space when they are discarded; and

WHEREAS, in consultation with the State of Florida Public Service Commission (the “PSC”), the entity that regulates telephone companies and directories, Town staff has determined that the Town may require a note that allows residents to opt-out of receipt of these books, and

WHEREAS, the Town believes that it is in the best interest of the Town, the State of Florida, and the United States of America to act decisively to reduce the distribution of unwanted business telephone directories.

NOW, THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Findings. The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Amendment to the Town Code. The Town Council of the Town of Cutler Bay hereby amends the Town Code of Ordinances as follows¹:

(1) Title. This section shall be known as the “Town of Cutler Bay Telephone Local Business Telephone Directory Opt-Out Ordinance.”

(2) Definitions. The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them:

(a) “Deliver”- to physically bring to a resident by personal delivery, but does not include actions by the United States Postal Service, a commercial courier, or a commercial package delivery service that allows a customer to track the status of a shipment by destination, date, and time of delivery;

(b) “Local Business Telephone Directory” - a non-residential publication listing:
(i) the names, addresses, and telephone numbers of local businesses by type and containing advertisements promoting those businesses or the products they sell; or
(ii) the names, addresses, and telephone numbers of local businesses in alphabetical order; commonly known as the ‘Yellow Pages’;

(c) “Resident” means a person that has a mailing address in the Town of Cutler Bay that is not a post office box.

(3). Option to decline delivery.

(a) An entity that publishes and delivers Local Business Telephone Directories in the Town of Cutler Bay (the “Town”) must print in boldfaced type in 24 point font or larger on the outside front cover of each directory the following information:

(1) A statement that reads: ‘IF YOU NO LONGER WISH TO RECEIVE THIS DIRECTORY, PLEASE CALL THE FOLLOWING TOLL-FREE

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

NUMBER OR ACCESS THE FOLLOWING INTERNET WEB SITE ADDRESS:’; and

(2) A toll-free telephone number and an internet web site address that a Resident may use to contact the person delivering the Local Business Telephone Directory to provide notice that the Resident no longer wishes to receive the Local Business Telephone Directory.

(b) An entity delivering Local Business Telephone Directories in the Town must prominently and conspicuously place on the home page of the entity’s internet web site instructions describing how a Resident can provide notice to the entity via the internet web site that the Resident no longer wishes to receive the Local Business Telephone Directory.

(c) An entity delivering Local Business Telephone Directories in the Town must maintain a database of the name and address of each Resident who provides notice under this subdivision and must not remove the name unless the entity receives notice from the Resident that the residents name is to be removed from the database.

(d) A Local Business Telephone Directory must not be delivered to a Resident whose name is in the database maintained under paragraph (c) for a period of five years.

(4) Violations

(a) It shall be a violation of this Ordinance to deliver a Local Business Telephone Directory to any Resident who has notified the entity that the Resident does not wish to receive a Local Business Telephone Directory. Each Local Business Telephone Directory delivered to any Resident in violation of this section shall constitute a separate violation.

(c) Delivery of a Local Business Telephone Directory to any Resident without the opt-out notice required in section 3(a) above shall also constitute a violation of this Ordinance. Each Local Business Telephone Directory delivered that fails to include such notice shall constitute a separate violation.

Section 3. Schedule of violations and civil penalties amended. That the Town Code of the Town of Cutler Bay is hereby amended by amending Ordinance 07-09, Section 10 “Schedule of civil penalties”, to read as follows: ²

Sec. 10. Schedule of civil penalties.

TABLE INSET:

² / Proposed additions to text of Town Code are indicated by underline; proposed deletions from text of Town Code are indicated by ~~strikethrough~~.

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
***	***	***
<u>Ordinance</u>	<u>Violation of Telephone Directory Opt-Out</u>	<u>First violation \$250; Second or subsequent violation \$500.</u>
***	***	***

Section 4. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Inclusion in the Code. It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____ day of _____, 2009.

PASSED and ADOPTED on second reading this ____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 9

ORDINANCE NO. 09 - ____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-22 ENTITLED, “PURCHASING”; REVISING CONTACTS CONSIDERED PERMISSIBLE UNDER THE TOWN CONE OF SILENCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) finds that its own Cone of Silence, duly-enacted by the Town Council as a part of Town Ordinance 06-22, inhibits the Town Manager from being able to adequately explain an RFQ, RFP or bid process or award to individual members of the Town Council; and

WHEREAS, this absence of information with regard to the bid process and bid awards in advance of Town Council meetings has undermined the efficient conduct of Town Council meetings; and

WHEREAS, this absence of information with regard to the bid process and bid awards in advance of Town Council meetings has also undercut the role of the Town Council as it pertains to many critical part of the smooth functioning and operations of the Town: and

WHEREAS, the Town Council finds that this Ordinance is in the best interest of the health, safety and welfare of the residents of the Town.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. **Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

Section 2. **Amendment to Ordinance 06-22 of the Town Code.** The Town Council of the Town of Cutler Bay hereby amends Ordinance 06-22 of the Town Code of Ordinances as follows:

PURCHASING

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

X. Cone of silence.

Pursuant to section 2-11.1(t) of the Miami-Dade County Code, made applicable to the Town pursuant to Section 2-11.1(t)(4) thereof, there shall be a cone of silence in effect with respect to all competitive procurements.

(A) Definitions. "Cone of Silence", as used herein, means a prohibition on any communication regarding a particular request for proposal ("RFP"), request for qualification ("RFQ") or bid, for goods or services valued at over \$25,000, between:

- (1) A potential vendor, service provider, proposer, bidder, lobbyist, or consultant; and
- (2) The Town Council, Town's professional staff including, but not limited to, the Town Manager and his or her staff, any member of the Town's selection or evaluation committee.

(B) Restriction; notice. A cone of silence shall be imposed upon each RFP, RFQ, and bid after the advertisement of said RFP, RFQ, or bid. At the time of imposition of the cone of silence, the Town Manager or his or her designee shall provide for public notice of the cone of silence by posting a notice at the Town Hall. The Town Manager shall issue a written notice thereof to the affected departments, file a copy of such notice with the Town Clerk, with a copy thereof to each Town Councilperson, and shall include in any public solicitation for goods or services a statement disclosing the requirements of this section.

(C) Termination of cone of silence. The cone of silence shall terminate at the beginning of the Town Council meeting at which the Town Manager makes his or her written recommendation to the Town Council. However, if the Town Council refers the Manager's recommendation back to the Manager or staff for further review, the cone of silence shall be reimposed until such time as the Manager makes a subsequent written recommendation.

(D) Exceptions to applicability. The provisions of this section shall not apply to:

- (1) Oral communications at pre-bid conferences;
- (2) Oral presentations before selection or evaluation committees;
- (3) Public presentations made to the Town Council by any person during any duly noticed and agenda appropriate public meeting;
- (4) Communications in writing at any time with any Town administrative employee, unless specifically prohibited by the applicable RFP, RFQ or bid documents provided that, the bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request; distribute all such written communications to all prospective proposers for the subject RFP for whom the clerk has contact information;
- (5) Communications regarding a particular RFP, RFQ or bid between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's Purchasing Agent or Town employee designated responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
- (6) Communications with the Town Attorney and his or her staff solely regarding matters of legal process and procedure;
- (7) Duly noticed site visits by administrative staff of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;
- (8) Any emergency procurement of goods or services pursuant to Town Code;

(9) Responses to the Town's request for clarification or additional information which shall be addressed to the Town Clerk or the Town's purchasing agent or the Town employee designated responsible for administering the procurement process for such solicitation;

(10) Contract negotiations during any duly noticed public meeting;

(11) Communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff are in writing or are made at a duly noticed public meeting.

(12) Communications to enable Town Manager to answer specific questions from the Town Council at any time regarding any RFP, RFQ or bid process or award, so long as those communications comply with all applicable state and federal law provisions.

(E) Penalties. Violation of this section by a particular bidder or proposer shall render any RFP award, RFQ award or bid award to said bidder or proposer voidable by the Town Council and/or Town Manager. Any person who violates a provision of this section may be prohibited from serving on a Town selection or evaluation committee. In addition to any other penalty provided herein, violation of any provision of this section by a Town employee may subject said employee to disciplinary action.

Section 3. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2009.

PASSED AND ADOPTED on second reading this _____ day of _____, 2009.

PAUL VROOMAN

Mayor

Attest: _____
ERIKA GONZALEZ SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.
Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Edward MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____