

ATTACHMENT I

**STANDARD SPECIFICATIONS
GENERAL REQUIREMENTS AND COVENANTS**

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SECTION 1

DEFINITIONS AND TERMS

1-1 General.

These Specifications are written to the Bidder, prior to award of the Contract, and to the Contractor. Within these specifications, sentences that direct the Contractor to perform work are written in the active voice-imperative mood. These directions to the Contractor are written as commands. In the imperative mood, the subject “the Bidder” or “the Contractor” is understood.

Division II of the specifications is written in active voice-imperative mood. All other requirements to be performed by others, with the exception of the Method of Measurement and the Basis of Payment Articles, have been written in the active voice, but not in the imperative mood. Sentences written in the active voice identify the party responsible for performing the action. For example, “The Engineer will determine the density of the compacted material.” Certain requirements of the Contractor may also be written in the active voice, rather than active voice-imperative mood.

Division III of the Specifications (Materials) is written in the passive voice.

1-2 Abbreviations.

The following abbreviations, when used in the Contract Documents, represent the full text shown.

AAN	American Association of Nurserymen, Inc.
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	The Associated General Contractors of America, Inc.
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects.
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
EASA	Electrical Apparatus Service Association
EPA	Environmental Protection Agency of the United States Government
FDOT	Florida Department of Transportation
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
ISO	International Organization for Standards

MASH	AASHTO Manual for Assessing Safety Hardware
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NIST	National Institute for Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
OSHA	Occupational Safety and Health Administration
SAE	Society of Automotive Engineers
SI	International System of Units
SSPC	Society of Protective Coatings
UL	Underwriters' Laboratories

Each of the above abbreviations, when followed by a number or letter designation, or combination of numbers and letters, designates a specification, test method, or other code or recommendation of the particular authority or organization shown.

1-3 Definitions.

The following terms, when used in the Contract Documents, have the meaning described.

Advertisement.

The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished, usually issued as “Notice to Contractors,” or “Notice to Bidders.”

Article.

The numbered prime subdivision of a Section of these Specifications.

Bidder.

An individual, firm, or corporation submitting a proposal for the proposed work.

Bid Proposal.

A technical proposal and a sealed price proposal submitted by each Bidder.

Bridge.

A structure, including supports, erected over a depression or over an obstruction such as water, highway, or railway, or for elevated roadway, for carrying traffic or other moving loads, and having a length, measured along the center of the roadway, of more than 20 feet between the inside faces of end supports. A multiple-span box culvert is considered a bridge, where the length between the extreme ends of the openings exceeds 20 feet.

Calendar day.

Every day shown on the calendar, ending, and beginning at midnight.

Contract.

The term “Contract” means the entire and integrated agreement between the parties thereunder and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents form the Contract between the Department and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work and the basis of payment.

Contract Claim (Claim).

A written demand submitted to the Department by the Contractor in compliance with 5-12.3 seeking additional monetary compensation, time, or other adjustments to the Contract, the entitlement or impact of which is disputed by the Department.

Contract Documents.

The term “Contract Documents” includes: Advertisement, Request for Proposal (RFP), Scope of Services, Technical Proposal, Certification as to Publication and Notice of Advertisement for Proposal, Appointment of Agent by Nonresident Contractors, Non-Collusion Affidavit, Warranty Concerning Solicitation of the Contract by Others, Resolution of Award of Contract, Executed Form of Contract, Performance Bond and Payment Bond, Specifications, Plans (including revisions thereto issued during construction), Design Standards, Addenda, or other information mailed or otherwise transmitted to the prospective Bidders prior to the receipt of bids, work orders and supplemental agreements, all of which are to be treated as one instrument whether or not set forth at length in the form of Contract. “Contract Documents” are further defined in the Scope of Services.

Contract Bond.

The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and pays all legal debts pertaining to the maintenance of the project.

Contract Letting.

The date that the Department opened the Bid Proposals.

Contract Time.

The number of calendar days allowed for completion of the Contract work, including authorized time extensions.

Contractor.

The individual, firm, joint venture, or company Contracting with the Department to perform the work.

Controlling Work Items.

The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.

Culverts.

Any structure not classified as a bridge that provides an opening under the roadway.

Delay.

Any unanticipated event, action, force, or factor which extends the Contractor's time of performance of any controlling work item under the Contract. The term "delay" is intended to cover all such events, actions, forces, or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance", or otherwise, which are beyond the control of and not caused by the Contractor, or the Contractor's subcontractors, materialmen, suppliers, or other agents. This term does not include "extra work".

Department.

State of Florida Department of Transportation.

Engineer.

The Director, Office of Maintenance, acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.

Note: In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be done, if, as, or, when, or where "acceptable, accepted, approval, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established, given, indicated, insufficient, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable, or unsatisfactory," it shall be understood as if the expression were followed by the words "by the Engineer," "to the Engineer," or "of the Engineer."

Contractor's Engineer of Record.

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or Cost Savings Initiative Proposal, or for repair designs and details of the permanent work. The Contractor's Engineer of Record may also serve as the Specialty Engineer.

The Contractor's Engineer of Record must be an employee of a pre-qualified firm. The firm shall be pre-qualified in accordance with the Rules of the Department of Transportation, Chapter 14-75. Any Corporation or Partnership offering engineering services must hold a Certificate of Authorization from the Florida Department of Business and Professional Regulation.

As an alternate to being an employee of a pre-qualified firm, the Contractor's Engineer of Record may be a Department-approved Specialty Engineer. For items of the permanent work declared by the District Structures Maintenance Office to be "major" or "structural", the work performed by a Department-approved Specialty Engineer must be checked by another Department-approved Specialty Engineer. An individual Engineer may become a Department-approved Specialty Engineer if the individual meets the Professional Engineer experience requirements set forth within the individual work groups in Chapter 14-75, Rules of the Department of Transportation, Florida Administrative Code. Department-approved Specialty Engineers are listed on the State Construction Website.

Equipment.

The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, and all other tools and apparatus necessary for the acceptable completion of the work.

Extra Work.

Any “work” which is required by the Engineer to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions, or otherwise. This term does not include a “delay”.

Federal, State, and Local Rules and Regulations.

The term “Federal, State and Local Rules and Regulations” includes any and all Federal, State, and Local laws, bylaws, ordinances, rules, regulations, orders, permits, or decrees including environmental laws, rules, regulations, and permits.

Highway, Street, or Road.

A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

Holidays.

Days designated by the State Legislature or Cabinet as holidays, which include, but are not limited to, New Year’s Day, Martin Luther King’s Birthday, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day and the following Friday, and Christmas Day.

Inspector.

An authorized representative of the Engineer, assigned to make official inspections of the materials furnished and of the work performed by the Contractor.

Laboratory.

The official testing laboratory used by the Department.

Major Item of Work.

Any item of work having an original Contract value in excess of 5% of the original Contract amount.

Materials.

Any substances to be incorporated in the work under the Contract.

Median.

The portion of a divided highway or street separating the traveled ways for traffic moving in opposite directions.

Plans.

The approved Plans, including reproductions thereof, showing the location, character, dimensions, and details of the work.

Proposal (Bid, Bid Proposal).

The offer of a Bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

Price Proposal.

The Bidder's submittal, on the prescribed form, in response to the price requirements set forth in the Department's Request for Proposal.

Proposal Form.

The official form on which the Department requires formal bids to be prepared and submitted for the work.

Proposal Guaranty

The security furnished by the Bidder as guaranty that the Bidder will enter into the Contract for the work if the Department accepts the proposal.

Request for Proposal (RFP).

Package, including subsequent addendums, to be provided to Bidders defining requirements of the Contract and the functions and responsibilities of the Contractor and Department. The Criteria for Scope of Work and Service, and all other documents attached thereto together set forth the criteria for work to be provided to complete this Contract.

Right-of-Way.

The land that the Department has title to, or right of use, for the road and its structures and appurtenances, and for material pits furnished by the Department.

Roadbed.

The portion of the roadway occupied by the subgrade and shoulders.

Roadway.

The portion of a highway within the limits of maintenance.

Secretary.

Secretary of Transportation, State of Florida Department of Transportation, acting directly or through an assistant or other representative authorized by him; the chief officer of the Department of Transportation.

Section.

A numbered prime division of these Specifications.

Special Event.

Any event, including but not limited to, a festival, fair, run or race, motorcade, parade, civic activity, cultural activity, charity or fund drive, sporting event, or similar activity designated in the Contract Documents.

Special Provisions.

See definition for Specifications.

Specialty Engineer.

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing preparation of components, systems, or installation methods and equipment for specific temporary portions of the project work or for special items of the permanent works not fully detailed in the Plans and required to be furnished by the Contractor. The Specialty Engineer may also provide designs and details, repair designs and details, or perform Engineering Analyses for items of the permanent work declared by the State Construction Office to be “minor” or “non-structural”.

For items of work not specifically covered by the Rules of the Department of Transportation, a Specialty Engineer is qualified if he has the following qualifications:

1. Registration as a Professional Engineer in the State of Florida.
2. The education and experience necessary to perform the submitted design as required by the Florida Department of Business and Professional Regulation.

Specifications.

The directions, provisions, and requirements contained herein, together with all stipulations contained in the Contract Documents, setting out or relating to the method and manner of performing the work, or to the quantities and qualities of materials and labor to be furnished under the Contract.

Standard Specifications: “Standard Specifications for Road and Bridge Construction” an electronic book, applicable to all Department Contracts containing adopted requirements, setting out or relating to the method or manner of performing work, or to the quantities and qualities of materials and labor.

Supplemental Specifications: Approved additions and revisions to the Standard Specifications, applicable to all Department Contracts.

Special Provisions: Specific clauses adopted by the Department that add to or revise the Standard Specifications or supplemental specifications, setting forth conditions varying from or additional to the Standard Specifications applicable to a specific project.

Technical Special Provisions: Specifications, of a technical nature, prepared, signed, and sealed by an Engineer registered in the State of Florida other than the State Specifications Engineer or his designee, that are made part of the Contract as an attachment to the Contract Documents.

Developmental Specification: A specification developed around a new process, procedure, or material.

Standard Specifications.

See definition for Specifications.

State.

State of Florida.

Subarticle.

A headed and numbered subdivision of an Article of a Section of these Specifications.

Subgrade.

The portion of the roadbed immediately below the base course or pavement, including below the curb and gutter, valley gutter, shoulder, and driveway pavement. The subgrade limits ordinarily include those portions of the roadbed shown in the Plans to be constructed to a design bearing value or to be otherwise specially treated. Where no limits are shown in the Plans, the subgrade section extends to a depth of 12 inches below the bottom of the base or pavement and outward to 6 inches beyond the base, pavement, or curb and gutter.

Substructure.

All of that part of a bridge structure below the bridge seats, including the parapets, backwalls, and wingwalls of abutments.

Superintendent.

The Contractor's authorized representative in responsible charge of the work.

Superstructure.

The entire bridge structure above the substructure, including anchorage and anchor bolts, but excluding the parapets, backwalls, and wingwalls of abutments.

Supplemental Agreement.

A written agreement between the Contractor and the Department, and signed by the surety, modifying the Contract within the limitations set forth in these Specifications.

Supplemental Specifications

See definition for Specifications.

Surety.

The corporate body that is bound by the Contract Bond with and for the Contractor and responsible for the performance of the Contract and for payment of all legal debts pertaining thereto.

Technical Proposal.

The Bidder's submittal in response to the technical requirements set forth in the Department's Request for Proposal and associated Scope of Services.

Technical Special Provisions.

See definition for Specifications.

Traveled Way.

The portion of the roadway providing for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Unilateral Payment.

A payment of money made to the Contractor by the Department pursuant to Section 337.11(12), Florida Statutes (2015), for sums the Department determines to be due to the Contractor for work performed on the project, and whereby the Contractor by acceptance of such payment does not waive any rights the Contractor may otherwise have against the Department for payment of any additional sums the Contractor claims are due for the work.

Work.

All labor, materials and incidentals required to execute and complete the requirements of the Contract including superintendence, use of equipment and tools, and all services and responsibilities prescribed or implied.

Work Order.

When pertaining to a Structure or Bridge, a Work Order is a written task identified by a structure inspector and determined by the Feasible Action Review Committee (FARC) as necessary to be done to a structure, which may include bridges, culverts, traffic signal mast arms, high mast light poles, or overlane sign structures. The task will be recorded in the Department's Maintenance Management System and completed by a specified deadline in accordance with the priority assigned by the FARC and Department procedure.

When pertaining to Traffic Operations, a Work Order is a written task assigned to the Contractor as described within the "TRAFFIC OPERATIONS WORK ORDERS" subsection of the Scope of Services.

Working Day.

Any calendar day on which the Contractor works or is expected to work in accordance with the approved work progress schedule.

SECTION 2 PROPOSAL REQUIREMENTS AND CONDITIONS

2-1 Contractor Experience.

The Department does not require a Contractor to have a certificate of qualification if Bidding Maintenance contracts. Maintenance contracts may require potential Bidders to have and document certain experience in the type of work required for the Contract. If this requirement is applicable to a Contract, detailed experience requirements will be listed in the advertisement and a form will be included with the bid package to document such experience. The form must be fully and accurately completed by the potential Bidder and received by the Department before or at the opening of the bids.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit the following:

1. A bid on a Contract to provide any goods or services to a public entity.
2. A bid on a Contract with a public entity for the construction or repair of a public building or public work.
3. Bids on leases of real property to a public entity.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime 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 F.S., for Category Two. All restrictions apply for a period of 36 months from the date of placement on the convicted vendor list.

2-2 Proposals.

2-2.1 Obtaining Proposal Forms: Obtain Proposal Forms under the conditions stipulated in the Advertisement. The Advertisement states the location and description of the work to be performed; the estimate of the various quantities (if applicable); the pay items of work to be performed (if applicable); the Contract Time; the amount of Proposal Guaranty; and the date, time, and place of the opening of Proposals.

The Plans, Specifications and other documents designated in the Advertisement are part of the Proposal, whether attached or not.

Upon advertising, the Department will make the Proposal Forms available for download as an electronic file from the Online Ordering System or provide the Proposal Forms on portable electronic media as stipulated in the Advertisement. This file contains the information to be used by the Bidder, who has ordered and obtained the Proposal Forms, to submit the Proposal.

The Department is not responsible for loss of or damage to the portable electronic media after it has been received by or delivered to the Bidder. If loss or damage occurs, the Bidder may order replacement Proposal Forms.

If the Bidder requests replacement Proposal Forms, the Department will attempt to provide the replacement by overnight delivery or by electronic transmittal of the files.

The Department will not be held responsible if the Bidder cannot complete and submit a bid due to failure or incomplete delivery of the files.

Unless otherwise indicated in the Advertisement, the Bidder has the option to submit a bid either as an Internet Bid Submittal in accordance with 2-2.3 or as a Hard Copy Bid Submittal in accordance with 2-2.4. When an Internet bid submittal is used, the hard copy will not be considered.

2-2.2 Department Modifications to Contract Documents: Notification of modifications to any Contract Documents will be posted on the Department's website at the following URL address:

https://www.fdot.gov/contracts/Lettings/Letting_Project_Info.shtm

and will also be transmitted to the Bidder. The email address provided by the Bidder at the time of registration for Online Ordering will be used to transmit notification of modifications. Follow the instructions provided in the notification of modifications to access the amendment files.

The Bidder shall take responsibility for downloading the revised information per the instructions included in the notification of modifications.

2-2.3 Internet Bid Submittals: Unless otherwise indicated in the Advertisement, the Bidder shall use the Department's bid software to prepare a bid for Internet submittal. The Department will accept, as the official bid, the set of Proposal Forms generated from the Department's bid software along with a complete Proposal package, submitted via the Internet in accordance with 2-5 and 2-8. A Digital ID is required to submit a bid via the Internet. Digital IDs may be obtained as outlined in the Advertisement.

The Department will not be responsible for any communications or machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of Proposals as required above either at the Bidder's transmitting location, at the Department's receiving location, or anywhere between these locations. Receipt or non-receipt of Proposals will not be considered grounds for a bid protest. The Department will not be held responsible if the Bidder cannot complete or submit a bid due to failure or incomplete delivery of the files submitted via the Internet.

2-2.4 Hard Copy Bid Submittals: Unless otherwise indicated in the Advertisement, the Bidder shall use the Department's bid software to prepare a bid for hard copy submittal.

The Department will accept, as the official bid, this set of Proposal Forms generated from the Department's bid software along with a complete Proposal package, delivered to the Department in hard copy in accordance with the instructions listed below and the requirements of 2-5 and 2-8.

Print and submit bid item sheets generated from the Department's bid software on letter size paper. Ensure that all computer-generated sheets are legible. Do not submit computer generated sheets using a font size smaller than 9 point.

Return the Department's bid software generated Proposal as the official bid, with the Proposal labeled with the Bidder's Name, Vendor Number, Letting Date, Revision Date (if applicable) and the Proposal ID.

2-3 Interpretation of Estimated Quantities.
(Not included)

2-4 Examination of Plans, Specifications, Special Provisions, and Site of Work.

Examine the Contract Documents and the site of the proposed work carefully before submitting a Proposal for the work contemplated. Investigate the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished and as to the requirements of all Contract Documents.

The Department does not guarantee the details pertaining to borings, as shown in the Plans, to be more than a general indication of the materials likely to be found adjacent to holes bored at the site of the work, approximately at the locations indicated. The Bidder shall examine boring data, where available, and make their own interpretation of the subsoil investigations and other preliminary data and shall base their bid solely on their own opinion of the conditions likely to be encountered.

The Bidder's submission of a Proposal is prima facie evidence that the Bidder has made an examination as described in this Article.

2-5 Preparation of Proposals.

2-5.1 General: Submit Proposals on the Proposal Form described in 2-2. Any pay item that will be provided free or at no cost to the Department shall be indicated as "free" or "\$.00". If the pay item is left blank or n/a is used, the bid may be declared irregular. Show the total of the bid on the face of the Proposal.

2-5.2 Internet Bid Submittals: The Bidder shall execute the Proposal under the Bidder's Digital ID and enter the firm's bidding office street address on the Bidders Information Tab in the Department's bid software. This Digital ID represents the firm as an individual, partnership, corporation, limited liability company, or joint venture. By entering and submitting the Digital ID the authorized parties obligate the firm to the bid. Internet Bid Submittals must acknowledge, on behalf of, the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid, by indicating such in the Proposal. The Department will not consider any bid unless such acknowledgement is included.

2-5.3 Hard Copy Bid Submittals: If the Proposal is made by an individual, either in the Bidder's own proper person or under a trade or firm name, the Bidder shall execute the Proposal under the Bidder's signature and enter the firm's bidding office street address. If the Proposal is made by a partnership, execute the Proposal by setting out in full the names of the partners, the firm name of the partnership, if any, have two or more of the general partners or authorized person sign the Proposal and enter the firm's bidding office street address. If the Proposal is made by a corporation, execute the Proposal by setting out in full the corporate name and have the president or other legally authorized corporate officer or agent sign the Proposal, affix the corporate seal, and enter the corporation's bidding office street address. If the Proposal is made by a limited liability company, execute the Proposal by setting out the company name, have the manager or authorized member sign the Proposal and enter the company's bidding office address. If the Proposal is made by a joint venture, execute the Proposal by setting out the joint venture name, have the authorized parties sign the Proposal and enter the bidding office's street address. File with the Department Form 375-020-08, contained in the Proposal, which includes an unsworn statement executed by, or on behalf of, the person, firm, association, or

corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. The Department will not consider any bid unless such form is properly completed in accordance with the requirements shown thereon.

2-6 Rejection of Irregular Proposals.

A Proposal is irregular and the Department may reject it if it shows omissions, alterations of form, additions not specified or required, conditional or unauthorized alternate bids, or irregularities of any kind or if the cost is in excess of or below the reasonable cost analysis values.

2-7 Guaranty to Accompany Proposals.

The Department will not consider any Proposal unless accompanied by a Proposal Guaranty of the character and amount indicated in the Advertisement, and unless made payable to the Florida Department of Transportation. Submit the Proposal with the understanding that the successful Bidder shall furnish a Contract Bond pursuant to the requirements of 3-5.

The Bidder's Proposal Guaranty is binding for all projects included in the Contract awarded to the Contractor pursuant to the provisions of this Subarticle.

2-8 Delivery of Proposals.

2-8.1 Internet Bid Submittals: Unless otherwise indicated in the Advertisement, the Proposal may be submitted via the Internet. The Department will not accept responsibility for Internet bids not meeting the time requirement stipulated in the Advertisement.

2-8.2 Hard Copy Bid Submittals: Unless otherwise indicated in the Advertisement, the Proposal may be submitted via hard copy. Submit the Proposal in a sealed envelope, bearing on the outside the name of the Bidder, the Bidder's address, and the Proposal ID of the project for which the Bidder submitted the bid. For Proposals that are submitted by mail, enclose the Proposal in a sealed envelope, marked as directed above. Enclose the sealed envelope in a second outer envelope addressed to the Department, at the place designated in the Advertisement. For a Proposal that is not submitted by mail, deliver the Proposal to the Contracts Office of the Department, or to the place as designated in the Advertisement. The Department will not consider Proposals received after the time set for opening bids. The Department will retain these Proposals unopened.

2-9 Withdrawal or Revision of Proposals.

2-9.1 Internet Bid Submittals: A Bidder may withdraw a Proposal any time prior to the bid submittal deadline specified in the Advertisement. The resubmission of any Proposal so withdrawn must be made as a complete Proposal, subject to the provisions of 2-8.

A Bidder may revise a Proposal any time prior to the bid submittal deadline specified in the Advertisement. Revisions may be made via Internet in accordance with 2-8.1 or by fax in accordance with 2-9.2.

The Department will not be responsible for any communications or machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of revisions to Proposals as required above either at the Bidder's transmitting location, at the Department's receiving location, or anywhere between these locations. Receipt or

non-receipt of revisions to a Proposal will not be considered grounds for a bid protest. The Department will not be held responsible if the Bidder cannot complete or submit revisions to a bid due to failure or incomplete delivery of the files submitted via the Internet.

2-9.2 Hard Copy Bid Submittals: A Bidder may withdraw or revise a Proposal after submission, provided the Department receives a written request to withdraw or revise the Proposal prior to the time set for opening of bids. The resubmission of any Proposal withdrawn under this provision is subject to the provisions of 2-8.

Legible facsimile (FAX) Proposal changes will be accepted if received in full at the fax number listed in the Bid Solicitation Notice by the time Proposals are due on the day of the letting and provided that all of the following conditions are met:

1. The Bidder's name is the same on the faxed Proposal change as shown on the original Proposal.
2. The Proposal change includes the following:
 - a. The correct Proposal ID.
 - b. The correct bid item number for which the price is being changed and the respective unit price change.
 - c. The correct revised total per item.
 - d. The revised total bid amount.
 - e. The signature of the President or Vice President of the Company.

Faxed Proposal changes failing to meet all of these requirements will not be considered and will not change the original bid.

The Department will not be responsible for any communications or fax machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of faxed Proposal changes as required above either at the Bidder's fax location, at the Department's fax location, or anywhere between these locations. Receipt or non-receipt of a faxed Proposal change will not be considered grounds for a bid protest.

2-10 Opening of Proposals.

The Department will open and publicly announce Proposals at the time and place indicated in the Advertisement. The Department invites Bidders, their authorized agents, and other interested parties to attend.

2-11 Disqualification of Bidders.

The Department may disqualify any Bidder and reject the Bidder's Proposal or Proposals for any of the following reasons:

1. The submission of more than one Proposal for the same work from an individual, firm, or corporation under the same or a different name.
2. Evidence that one Bidder has a financial interest in the firm of another Bidder for the same work.
3. Evidence of collusion among Bidders. The Department will not recognize a participant in such collusion as a Bidder for any future work of the Department until the Department reinstates such participant as a qualified Bidder.
4. Failure to qualify in accordance with 2-1.

5. Uncompleted work on other projects that, in the judgment of the Department, could hinder or prevent the prompt completion of the proposed work.
6. Failure to pay or satisfactorily settle all bills due for labor and material on other contracts in force at the time of advertisement for bids.
7. Default under a previous contract.
8. Employment of unauthorized aliens in violation of Section 274A (e) of the Immigration and Nationality Act.
9. Falsification on any form required by the Department.
10. The submission of a Proposal that was not solicited by the Department.

**2-12 Material, Samples and Statement.
(Not included)**

**SECTION 3
AWARD AND EXECUTION OF CONTRACT**

3-1 Consideration of Bids.

For the purpose of award, after opening and reading the technical and price Proposals, the Department will consider as the bid the correct summation of each unit bid price multiplied by estimated quantities shown in the proposal. On this basis, the Department will compare the amounts of each bid and each technical proposal score and make the results of such comparison available to the public. Until the actual award of the Contract, however, the Department reserves the right to reject any or all Proposals and to waive technical errors that the Department determines, in its sole discretion, to be in the best interest of the State. In the event of any discrepancy in the two entries of the Contract lump sum price, the Department will evaluate the bid based on the lump sum price shown in words.

3-2 Award of Contract.

3-2.1 General: If the Department decides to award the Contract, the Department will award the Contract to the Bidder whose proposal complies with all the Contract Document requirements and has the highest total Proposal Score as calculated in accordance with the RFP. If awarded, the Department will award the Contract within 50 days after the opening of the Proposals, unless the Special Provisions change this time limit or the Bidder and the Department extend the time period by mutual consent.

Prior to award of the Contract by the Department, a Contractor must provide proof of authorization to do business in the State of Florida.

**3-2.2 Bids Exceeding Contractor's Rating:
(Not included)**

3-3 Cancellation of Award.

The Department reserves the right to cancel the award of any Contract at any time before the execution of the Contract by all parties, with no compensation due any of the Bidders.

3-4 Release of Proposal Guaranty.

The Department will release all proposal guaranties except those of the two Bidders with the highest proposal scores immediately following the opening and checking of the Proposals. The Department will immediately release the Proposal Guaranty of the two Bidders with the highest proposal scores after the successful Bidder delivers the executed Contract and a satisfactory bond to the Department, except that the Department will not retain the proposal guaranty of the next-to-lowest Bidder longer than 50 days after the opening of the Proposals unless the Department awards the Contract to the next lowest responsible Bidder prior to the expiration of this time limit.

3-5 Contract Bond Required.

3-5.1 General Requirements of the Bond:

3-5.1.1 Bond Requirements for Multi-Year Contracts: Upon award, furnish to the Department, and thereafter continue to furnish to the Department during the term of the Contract, a Payment and Performance Bond guaranteeing the contract obligations for each twelve -month period of the Contract.

No later than the date of Contract execution, provide to the Department a Payment and Performance Bond on Department Form No. 375-020-59 in a penal sum equal to the first year's annual Contract amount under the Contract. Annually thereafter, between thirty and forty-five days prior to the contract anniversary date, provide to the Department a Payment and Performance Bond on Form No. 375-020-61 in a penal sum equal to the upcoming year's annual Contract amount. Regardless of the number of separate bonds or bond continuations provided by the Surety hereunder, the Surety's liability for each bond or bond continuation will be limited to the contract amount for the twelve-month period for which the bond or bond continuation is provided.

Obtain the Payment and Performance Bond from a Surety authorized to conduct business in the State of Florida. Each Payment and Performance Bond must be executed only on the forms provided by the Department. Failure to provide any of the required Payment and Performance Bond's to the Department within the aforementioned time frames will entitle the Department to annul the award, declare the Contractor in default, terminate the Contract, or decline to renew the Contract, all in the Department's sole discretion.

3-5.1.2 Bonds for Improvement, Demolition or Removal Contracts of \$25,000 or

Less:

(Not included)

3-5.2 Continued Acceptability of Surety: Provide a surety bond that remains acceptable to the Department throughout the life of the Contract. In the event that the surety executing the bond, although acceptable to the Department at the time of execution of the Contract, subsequently becomes insolvent or bankrupt, or becomes unreliable or otherwise unsatisfactory due to any cause that becomes apparent after the Department's initial approval of the company, then the Department may require that the Contractor immediately replace the surety bond with a similar bond drawn on a surety company that is reliable and acceptable to the Department. In

such an event, the Department will bear all costs of the premium for the new bond, after deducting any amounts that are returned to the Contractor from his payment of premium on the original bond.

3-5.3 Default by Contractor: In case of default on the part of the Contractor, the Department will charge against the Contract bond all expenses for services incidental to ascertaining and collecting losses under the Contract bond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.

3-5.4 Surety to Furnish Legal Defense as to Payment and Performance Claims or Suits: The Surety shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract where the Contractor has failed to timely provide the Department such defense. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved annual Contract amount, which shall be the original annual Contract amount as may be modified by subsequent Supplemental Agreements.

3-5.5 Liability for Wrongful or Criminal Act by Contractor: The principal and surety executing the bond shall be liable to the State in any civil action that might be instituted by the Department or any officer of the State authorized in such cases, for double any amount in money or property the State might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Contractor, their agent, or their employees.

3-6 Execution of Contract and Contract Bond.

Within 5 calendar days, excluding Saturdays, Sundays, and State holidays, after receipt of the Contract award, execute the necessary agreements to enter into a Contract with the Department and return the Contract along with a satisfactory Contract Bond and documentation evidencing all insurance required by 7-13 to the Department's Contracts Office that awarded the Contract. The Department will not be bound by any proposal until it executes the associated Contract. The Department will execute the Contract and Contract Bond in the manner stipulated in 3-5.1.

The Department will execute the Contract within 5 calendar days, excluding Saturdays, Sundays, and State holidays, after receipt of the necessary agreements and Contract Bond from the Contractor.

3-7 Failure by Contractor to Execute Contract and Furnish Bond.

In the event that the Bidder fails to execute the awarded Contract and to file an acceptable Contract Bond, as prescribed in 3-5 and 3-6, within 5 calendar days, excluding Saturdays, Sundays, and State holidays, of receipt of the Contract award, the Department may annul the award, causing the Bidder to forfeit the Proposal Guaranty to the Department; not as a penalty but in liquidation of damages sustained. The Department may then award the Contract to the next lowest responsible Bidder, re-advertise, or accomplish the Work using alternate resources.

3-8 Audit of Contractor's Records.

Upon execution of the Contract, the Department reserves the right to conduct an audit of the Contractor's records pertaining to the project. The Department or its representatives may conduct an audit, or audits, at any time prior to final payment, or thereafter pursuant to 5-13. The Department may also require submittal of the records from either the Contractor or any subcontractor or material supplier. As the Department deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the project work.

Retain all records pertaining to the Contract for a period of not less than three years from the date of the end of the original Contract period or subsequent renewal periods, unless a longer minimum period is otherwise specified. Upon request, make all such records available to the Department or its representative(s). For the purpose of this Article, records include but are not limited to all books of account, supporting documents, and papers that the Department deems necessary to ensure compliance with the Contract provisions.

If the Contractor fails to comply with these requirements, the Department may disqualify or suspend the Contractor from Bidding on or working as a subcontractor on future Contracts.

Ensure that the subcontractors provide access to their records pertaining to the project upon request by the Department.

Comply with Section 20.055(5), Florida Statutes, and incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

3-9 Public Records.

The Contractor shall comply with Chapter 119, Florida Statutes. Specifically, the Contractor shall:

1. Keep and maintain public records required by the Department to perform the service
2. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the Department.
4. Upon completion of the Contract, transfer, at no cost, to the Department all public records in possession of the Contractor or keep and maintain public records required by the Department to perform the service. If the Contractor transfers all public records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure to comply with Chapter 119, Florida Statutes and the Article 3-9 shall be grounds for immediate unilateral termination of this Contract by the Department pursuant to 8-9.1.

SECTION 4 SCOPE OF THE WORK

4-1 Intent of Contract.

The intent of the Contract is to provide for the Contractor's Performance of every detail of the work described in the Contract. Furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Contract Documents.

4.2 Work not covered by Standard Specifications. (Not included)

4-3 Alteration of Plans or of Character of Work.

4-3.1 General: (Not included)

4-3.2 Increase, Decrease or Alteration in the Work: (Not included)

4-3.3 No Waiver of Contract: (Not included)

4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment:

A Supplemental Agreement or Unilateral Payment will be used to clarify the Plans and Specifications of the Contract; to provide for extra Work which could not reasonably have been contemplated or foreseen in the original Scope to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.

A Supplemental Agreement or Unilateral Payment may be used to expand the physical limits of the project only to the extent necessary to make the project functionally operational in accordance with the intent of the original Contract. The cost of any such agreement extending the physical limits of the project shall not exceed \$100,000 or 10% of the original Contract price, whichever is greater.

Perform no work to be covered by a Supplemental Agreement or Unilateral Payment before written authorization is received from the Engineer. The Engineer's written authorization will set forth sufficient work information to allow the work to begin. The work activities, terms and conditions will be reduced to written Supplemental Agreement or Unilateral Payment form promptly thereafter. No payment will be made on a Supplemental Agreement or Unilateral Payment prior to the Department's approval of the document.

4-3.5 Extra Work: (Not included)

4-3.6 Connection to Existing Pavement, Drives and Walks:

(Not included)

4-3.7 Differing Site Conditions: During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

Upon receipt of written notification of differing site conditions from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

The Engineer will not allow a Contract adjustment for a differing site condition unless the Contractor has submitted the required written notice.

The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other Department or non-Department projects on which the Contractor may be working.

4-3.8 Changes Affecting Utilities: The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor, and the Contractor shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities.

Department approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design, maintenance, or construction activities from those in the original Contract Specifications, Design Plans (including Traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the Utility Plans, joint project agreements or utility relocation schedules.

**4-3.9 Cost Savings Initiative Proposal:
(Not included)**

4-4 Unforeseeable Work.

When the Department requires work that is not covered by the Contract and the Department finds that such work is essential to the satisfactory completion of the Contract within its intended scope, the Department will make an adjustment to the Contract. The Engineer will determine the basis of payment for such an adjustment in a fair and equitable amount.

4-5 Rights in and Use of Materials Found on the Site of the Work.

4-5.1 Ownership and Disposal of Existing Materials:

Take ownership and dispose of all materials that are not designated as the property of other parties, in both roadway and structures, found on the right-of-way, and all material in structures designated for removal. Such materials do not include earth or other excavated material required for the maintenance of the project, or material otherwise exempted by Department policy or procedure. During maintenance, the Contractor may use materials from existing structures that

are required to be removed and that are designated to remain the property of the Department. Do not cut or otherwise damage such material during removal unless the Engineer gives permission to do so. Store material in an accessible location as the Engineer directs. The Department is not responsible for the quality or quantity of any material salvaged.

**4-5.2 Ornamental Trees and Shrubs:
(Not included)**

**4-6 Final Cleaning Up of Right-of-Way.
(Not included)**

**SECTION 5
CONTROL OF THE WORK**

**5-1 Plans and Working Drawings.
(Not included)**

5-2 Coordination of Contract Documents.

All Contract documents are integral parts of the Contract; a requirement occurring in one is as binding as though occurring in all. All parts of the Contract are complementary and describe and provide for a complete work.

In cases of discrepancy, the governing order of the documents is as follows:

1. Request for Proposal (RFP)
2. Scope of Services excluding attachments and referenced Contract Documents
3. Other Attachments in the Scope of Services
4. Standard Maintenance Specifications General Requirements and Covenants (Attachment I)
5. Division II & III of the Standard Specifications for Road and Bridge Construction
6. Standard Plans
7. All other Contract Documents that are incorporated by reference into the Scope of Services

5-3 Conformity of Work with Contract Documents.

Perform all work and furnish all materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances, as specified in the Contract Documents.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, but that the Contractor has produced reasonably acceptable work, the Engineer will determine if the Department will accept the work in place. In this event, the Engineer will document the basis of acceptance by Contract modification, which provides for an appropriate reduction in the Contract price for such work or materials included in the accepted work as deemed necessary to conform to the determination based on engineering judgment.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, and

that the Contractor has produced an inferior or unsatisfactory product, the Contractor shall remove and replace or otherwise correct the work or materials at no expense to the Department.

For base and surface courses, the Department will allow the finished grade to vary as much as 0.1 foot from the grade shown in the Plans, provided that the Contractor's work meets all templates and straightedge requirements and contains suitable transitions.

5-4 Errors or Omissions in Contract Documents.

Do not take advantage of any apparent error or omission discovered in the Contract Documents, but immediately notify the Engineer in writing of such discovery. The Engineer will then make such corrections and interpretations as necessary to reflect the actual spirit and intent of the Contract Documents.

5-5 Authority of the Engineer.

The Director, Office of Maintenance will decide all questions, difficulties, and disputes, of whatever nature, that may arise relative to the interpretation of the plans, construction, prosecution, and fulfillment of the Contract, and as to the character, quality, amount, and value of any work done, and materials furnished, under or by reason of the Contract.

5-6 Authority and Duties of Engineer's Assistants.

The Director, Office of Maintenance may appoint such assistants and representatives as desired. These assistants and representatives are authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the manufacture, preparation, or fabrication of the materials to be used. Such assistants and representatives are not authorized to revoke, alter, or waive any requirement of these Specifications. Rather, they are authorized to call to the attention of the Contractor any failure of the work or materials to meet the Contract Documents and have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer. The Engineer will immediately submit written notification to the Contractor of any such suspension of the work, stating in detail the reasons for the suspension. The presence of the inspector or other assistant in no way lessens the responsibility of the Contractor.

5-7 Engineering and Layout. (Not included)

5-8 Contractor's Supervision.

5-8.1 Prosecution of Work: Give the work the constant attention necessary to ensure the scheduled progress and cooperate fully with the Engineer and with other contractors at work in the vicinity.

5-8.2 Contractor's Superintendent: Maintain a competent superintendent to act as the Contractor's agent. Provide a superintendent who is a competent superintendent capable of properly interpreting the Contract Documents and is thoroughly experienced in the type of work being performed. Provide a superintendent with the full authority to receive instructions from the Engineer and to execute the orders or directions of the Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. Provide such superintendence regardless of the amount of work sublet.

Provide a superintendent who speaks and understands English and maintain at least one other responsible person who speaks and understands English, on the project during all working hours.

5-8.3 Supervision for Emergencies: Provide a responsible person, who speaks and understands English, and who is available at or reasonably near the worksite on a 24-hour basis, seven days a week. Designate this person as the point of contact for emergencies and in cases that require immediate action to maintain traffic or to resolve any other problem that might arise. Submit the phone numbers and names of personnel designated to be contacted in cases of emergencies, along with a description of the project location, to the Florida Highway Patrol and all other local law enforcement agencies.

5-9 General Inspection Requirements.

5-9.1 Cooperation by Contractor: Upon request, furnish the Engineer with every reasonable facility for ascertaining whether the work performed and materials used are in accordance with the requirements and intent of the Contract Documents. If the Engineer so requests at any time, remove or uncover portions of finished work as directed. After examination, restore the uncovered portions of the work to the standard required by the Contract Documents. For bridge projects with construction operations accessible only by watercraft, provide safe passage and transport to facilitate the Engineer's inspection of the Work. If the Engineer determines that the work so exposed or examined is unacceptable, perform the uncovering or removal, and the replacing of the covering or making good of the parts removed, at no expense to the Department. However, if the Engineer determines that the work thus exposed or examined is acceptable, the Department will pay for the actual costs incurred by uncovering or removing, and the replacing of the covering or making good of the parts removed.

5-9.2 Failure of Engineer to Reject Work: If, during or prior to Work, the Engineer fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered or obligates the Department to final acceptance. The Department is not responsible for losses suffered due to any necessary removals or repairs of such defects.

5-9.3 Failure to Remove and Renew Defective Materials and Work: If the Contractor fails or refuses to remove and renew any defective materials used or work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the Contract within the time indicated in writing, the Engineer has the authority to repair, remove, or renew the unacceptable or defective materials or work as necessary, all at the Contractor's expense. The Department will obtain payment for any expense it incurs in making these repairs, removals, or renewals, that the Contractor fails or refuses to make, by deducting such expenses from any moneys due or which may become due the Contractor, or by charging such amounts against the Contract bond.

5-10 Final Inspection.

**5-10.1 Maintenance until Acceptance:
(Not included)**

5-10.2 Inspection for Acceptance

Upon completion of the work and before final payment is made, remove from the job site any surplus materials or waste, and restore the job site area to conditions acceptable to the Engineer.

5-11 Final Acceptance.

When, upon completion of the final maintenance inspection of the entire project, the Engineer determines that the Contractor has satisfactorily completed the work, the Engineer will provide the Contractor a written Notice of Beginning and Completion of Maintenance Projects.

5-12 Claims by Contractor.

5-12.1 General: When the Contractor deems that extra compensation is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation, and resolution of the claim.

If such claim arises from the “substantial financial impact of 3%” clause described in the AM Scope of Services, and the Contractor believes the 3% threshold has been reached, the Contractor shall follow the procedures set forth herein for preservation, presentation, and resolution of the claim.

Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the Contractor’s certified written claim. The failure to provide such notice of intent, preliminary time extension request, time extension request, certified written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute, and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

5-12.2 Notice of Claim:

5-12.2.1 Claims for Extra Work: Where the Contractor deems that additional compensation is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer, the Contractor shall submit written notification to the Engineer of the intention to make a claim for additional compensation before beginning the work on which the claim is based. If such written notification is not submitted to the Engineer and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, and equipment, the Contractor waives the claim for additional compensation. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials, and equipment, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation for such claim. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after the end of the original Contract period or subsequent renewal periods, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after the end of the original Contract period or subsequent renewal periods, the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9. However, for any claim or part of a claim that pertains solely to final estimate quantities disputes the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9, as to such final estimate claim dispute issues, within 90 or 180 calendar days, respectively, of the Contractor’s receipt of the Department’s final estimate.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten-calendar day notice shall constitute a waiver of the claim.

**5-12.2.2 Claims for Delay:
(Not included)**

5-12.3 Content of Written Claim: As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract, for any claim, the Contractor shall submit a certified written claim to the Department which will include for each individual claim, at a minimum, the following information:

1. A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
2. The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;
3. Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
4. Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;
5. A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
 - a. documented additional job site labor expenses;
 - b. documented additional cost of materials and supplies;
 - c. a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
 - d. any other additional direct costs or damages and the documents in support thereof;
 - e. any additional indirect costs or damages and all documentation in support thereof.
6. A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance, or occurrence.

Further, the Contractor shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any circuit court, arbitration, or other formal claims resolution proceeding shall be limited solely to the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude a Contractor from withdrawing or reducing any of the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

5-12.4 Action on Claim: The Engineer will respond in writing on projects with an original Contract amount of \$3,000,000 or less within 90 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3, and on projects with an original Contract amount greater than \$3,000,000 within 120 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3. Failure by the Engineer to respond to a claim within 90 or 120 days, respectively, after receipt of a complete claim in compliance with 5-12.3 constitutes a denial of the claim by the Engineer. If the Engineer finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract. No circuit court or arbitration proceedings on any claim, or a part thereof, may be filed until after the end of the original Contract period or subsequent renewal periods.

5-12.5 Pre-Settlement and Pre-Judgment Interest: Entitlement to any pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with 5-12.3, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the Contractor simple interest calculated at the Prime Rate (as reported by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with 5-12.3, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with 5-12.3 and ending on the date of final settlement or formal ruling.

**5-12.6 Compensation for Extra Work or Delay:
(Not included)**

5-12.7 Mandatory Claim Records: After submitting to the Engineer a notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, submit the Contractor's daily records to the Engineer and be likewise entitled to receive the Department's daily records. The daily records to be submitted hereunder shall be done at no cost to the recipient.

5-12.8 Claims for Acceleration: The Department shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

5-12.9 Certificate of Claim: When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

5-12.10 Non-Recoverable Items: The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

1. Loss of profit, incentives, or bonuses;
2. Any claim for other than extra work or delay;
3. Consequential damages, including, but not limited to, loss of bonding capacity, loss of Bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
4. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing "to accelerate at the Department's expense"; nor
5. Attorney fees, claims preparation expenses and costs of litigation.

5-12.11 Exclusive Remedies: Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department's liability will be limited to those items which are specifically identified as payable in 5-12.

5-12.12 Settlement Discussions: The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

5-12.13 Personal Liability of Public Officials: In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Engineer or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

5-12.14 Auditing of Claims: All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department's sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the

Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department's auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Department shall have the right to request and receive, and the Contractor shall have the affirmative obligation to submit to the Department any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as may be deemed relevant by the Department in its review of the basis, validity, or value of the Contractor's claim.

Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department's auditors, or upon the Department's written request, submit at the Department's expense, any, or all of the following documents:

1. Daily time sheets and foreman's daily reports and diaries;
2. Insurance, welfare, and benefits records;
3. Payroll register;
4. Earnings records;
5. Payroll tax return;
6. Material invoices, purchase orders, and all material and supply acquisition contracts;
7. Material cost distribution worksheet;
8. Equipment records (list of company owned, rented or other equipment used);
9. Vendor rental agreements and subcontractor invoices;
10. Subcontractor payment certificates;
11. Canceled checks for the project, including, payroll and vendors;
12. Job cost report;
13. Job payroll ledger;
14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on this project;
17. Income tax returns for all years reflecting the operations on this project;
18. All documents which reflect the Contractor's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
19. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
20. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

5-13 Recovery Rights, Subsequent to Final Payment.

The Department reserves the right, if it discovers an error in payment or if it discovers that the Contractor performed defective work or used defective materials, after the final payment

has been made, to claim and recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials.

SECTION 6 CONTROL OF MATERIALS

6-1 Acceptance Criteria. (Not included)

6-2 Applicable Documented Authorities Other Than Specifications.

6-2.1 General: Details on individual materials are identified in various material specific Sections of the Specifications that may refer to other documented authorities for requirements. When specified, meet the requirements as defined in such references.

6-2.2 Test Methods: Methods of sampling and testing materials are in accordance with the Florida Methods (FM). If an FM does not exist for a particular test, perform the testing in accordance with the method specified in the Specification. When test methods or other standards are referenced in the Specifications without identification of the specific time of issuance, use the most current issuance, including interims or addendums thereto, at the time of bid opening.

6-2.3 Construction Aggregates: Aggregates used on Department projects must be in accordance with Rule 14-103, FAC.

6-3 Storage of Materials and Samples. (Not included)

6-4 Defective Materials. (Not included)

6-5 Products and Source of Supply. (Not included)

SECTION 7 LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC

7-1 Laws to be Observed.

7-1.1 General: Become familiar with and comply with all Federal, State, and Local Rules and Regulations that control the action or operation of those engaged or employed in the work or that affect material used. Pay particular attention called to the safety regulations promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration

(OSHA). In addition, comply with Chapter 403, of the Florida Statutes, regarding control of air pollution. Direct special attention to that portion of Chapter 62-256, Rules of the Department of Environmental Protection, Florida Administrative Code, pertaining to open burning in land clearing operations. Where work or structures included in the Contract are in “Navigable Waters of the U.S.,” (reference 33 of the Code of Federal Regulations, Part 329); “Waters of the U.S.,” (reference 33 of the Code of Federal Regulations, Parts 323 and 328); or “Waters of the State,” (reference Part 4, Chapters 253 and 373 of the Florida Statutes and Section 62-340 of the Florida Administrative Code); comply with the regulatory provisions of Section 404 of the Federal Clean Water Act of 1977; Sections 9 and 10 of the Federal River and Harbor Act of 1899; Chapter 161 of the Florida Statutes; and any local authority having jurisdiction over such waters.

Comply with Part IV, Chapter 378, of the Florida Statutes regarding land reclamation. Direct special attention to Chapters 62C-36 and 62C-39 of the Florida Administrative Code. Submit the Notice of Intent to Mine to:

Department of Environmental Protection
Collins Building
2051 East Dirac Drive
Tallahassee, Florida 32310-3760

with a copy to the Engineer. The Engineer will determine consistency with the environmental documents prior to commencement of mining.

Obtain certification from the Construction Industry Licensing Board as required by Part I, Chapter 489, of the Florida Statutes, regardless of exemptions allowed by subsection 489.103, prior to removing underground pollutant storage tanks. Dispose of tanks and pollutants in accordance with the requirements and regulations of any Federal, State, or local, agency having jurisdiction.

Prior to building construction, maintenance, or renovation, provide copies of current registrations or certifications issued by the Florida Construction Industry Licensing Board in accordance with Chapter 489, for the appropriate category of construction or maintenance.

Corporations must be registered with the State of Florida, Department of State, Division of Corporations, and hold a current State Corporate Charter Number in accordance with Chapter 607, Florida Statutes.

The Contractor or the authorized subcontractor applying the roofing material must be licensed or be an approved dealer and applicator of the proposed roofing material.

Indemnify, defend, and save harmless the Department and all of its officers, agents, and employees, in the amount of the Contract price, against all claims or liability arising from or based on the violation of any such Federal, State, and Local Rules and Regulations, whether by himself or his employees.

The Contractor shall comply with all environmental permits, including measures identified in the National Pollutant Discharge Elimination System (NPDES) Stormwater Pollution Prevention Plan and Sediment and Erosion Control Plan for the work.

The Contractor shall exert every reasonable and diligent effort to ensure that all labor employed by the Contractor and his subcontractors for work on the project work harmoniously and compatibly with all labor used by other building, maintenance, and construction contractors now or hereafter on the site of the work covered by this Contract. Include this provision in all subcontracts and require all subcontractors to include it in their subcontracts with others. However, do not interpret or enforce this provision so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article I, Section 6 of the Florida Constitution.

Comply with Chapter 556 of the Florida Statutes during the performance of excavation or demolition operations.

The Executive Order 11246 Electronic version, dated September 24, 1965, is posted on the Department's website at the following URL address:

https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/deo112468a91904c88e94148b94569982fdff3d2.pdf?sfvrsn=6b78d1d6_2..

Take responsibility to obtain the information posted on this website up through five calendar days before the opening of bids and comply with the provisions contained in Executive Order 11246.

If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.

7-1.2 Plant Quarantine Regulations: The U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services have issued quarantine regulations pertaining to control of the nematodes of citrus, Rule 5B-44, Florida Administrative Code, and other plant pests. Contact the local (or other available) representatives of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, and the Division of Plant Industry of the Florida Department of Agriculture and Consumer Services to ascertain all current restrictions regarding plant pests that are imposed by these agencies. Keep advised of current quarantine boundary lines throughout the maintenance period.

These restrictions may affect operations in connection with such items as clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, and other items which might involve the movement of materials containing plant pests across quarantine lines.

Obtain quarantine regulations and related information from the following:

Animal and Plant Health Inspection Service
U.S. Department of Agriculture
3029 Lake Alfred Road
Winter Haven, Florida 33881

Director, Division of Plant Industry
Florida Department of Agriculture and Consumer Services
Post Office Box 147100
Gainesville, Florida 32614-7100

7-1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds: Do not introduce or release prohibited aquatic plants, plant pests, or noxious weeds into the project limits as a result of clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, or other such activities. Immediately notify the Engineer upon discovery of all prohibited aquatic plants, plant pests, or noxious weeds within the project limits. Do not move prohibited aquatic plants, plant pests, or noxious weeds within the project limits or to locations outside of the project limits without the Engineer's permission. Maintain all borrow material brought onto the project site free of prohibited aquatic plants, plant pests, noxious weeds, and their reproductive parts. Refer to Rule 5B-64 and Rule 5B-57, of the Florida

Administrative Code for the definition of prohibited aquatic plants, plant pests, and noxious weeds.

7-1.4 Compliance with Federal Endangered Species Act and other Wildlife

Regulations: The Federal Endangered Species Act requires that the Department investigate the potential impact to a threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation determines that there is a potential impact to a protected, threatened or an endangered species, the Department will conduct an evaluation to determine what measures may be necessary to mitigate such impact. When mitigation measures and/or special conditions are necessary, these measures and conditions will be addressed in the Contract Documents or in permits as identified in 7-2.1.

In addition, in cases where certain protected, threatened, or endangered species are found or appear within close proximity to the project boundaries, the Department has established guidelines that will apply when interaction with certain species occurs, absent of any special mitigation measures or permit conditions otherwise identified for the project.

These guidelines are posted at the following URL address:

https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/endangeredwildlifeguidelines.pdf?sfvrsn=e27baf3f_2.

Take responsibility to obtain this information and take all actions and precautions necessary to comply with the conditions of these guidelines during all project activities.

Prior to establishing any off-project activity in conjunction with a project, notify the Engineer of the proposed activity. Covered activities include but are not necessarily limited to borrow pits, concrete or asphalt plant sites, disposal sites, field offices, and material or equipment storage sites. Include in the notification the Financial Project ID, a description of the activity, the location of the site by township, range, section, county, and city, a site location map including the access route, the name of the property owner, and a person to contact to arrange a site inspection. Provide this notification at least 30 days in advance of planned commencement of the off-site activity, to allow for the Department to conduct an investigation without delaying job progress.

Do not perform any off-project activity without obtaining written clearance from the Engineer. In the event the Department's investigation determines a potential impact to a protected, threatened, or endangered species and mitigation measures or permits are necessary, coordinate with the appropriate resource agencies for clearance, obtain permits and perform mitigation measures as necessary. Immediately notify the Engineer in writing of the results of this coordination with the appropriate resource agencies. Additional compensation or time will not be allowed for permitting or mitigation, associated with Contractor initiated off-project activities.

7-1.5 Occupational Safety and Health Requirements: The Contractor shall take all precautions necessary for the protection of life, health, and general occupational welfare of all persons, including employees of both the Contractor and the Department, until the Contractor has completed the work required under the Contract as provided in 5-10 and 5-11.

Comply at all times with applicable Federal, State, and local laws, provisions, and policies governing safety and health, including 29 CFR 1926, including all subsequent revisions and updates.

7-1.6 Discovery of an Unmarked Human Burial: When an unmarked human burial is discovered, immediately cease all activity that may disturb the unmarked human burial and notify the Engineer. Do not resume activity until specifically authorized by the Engineer.

7-1.7 Insecticides, Herbicides, and Fertilizers:

7-1.7.1 Insecticides, Herbicides Use products found on the following website, <http://state.ceris.purdue.edu/>, approved by the Florida Department of Agriculture and Consumer Services. The use of restricted products is prohibited. Do not use any products in the sulfonylurea family of chemicals. Herbicide application by broadcast spraying is not allowed.

Procure any necessary licenses, pay all charges and fees, and give all notices necessary for lawful performance of the work.

All insecticides and herbicides must be applied by, or directly supervised by, an employee who possesses a current Florida Department of Agriculture Commercial Applicator's license with the categories of licensure in Right-of-Way Pest Control and Aquatic Pest Control. Provide a copy of current certificates, upon request, to the Engineer.

Ensure that employees who work with herbicides comply with all applicable Federal, State, and local regulations.

Comply with all regulations and permits issued by any regulatory agency within whose jurisdiction work is being performed. Post all permit placards in a protected, conspicuous location at the work site.

Acquire any permits required for work performed on the rights-of-way within the jurisdiction of National Forests in Florida. Contact the Local National Forest Ranger District, or the United States Department of Agriculture (USDA) office for the proper permits and subsequent approval.

Acquire all permits required for aquatic plant control as outlined in Chapter 62C-20, Florida Administrative Code Rules of the Florida Department of Environmental Protection. Contact the Regional Field Office of Bureau of Invasive Plant Management of the Florida Department of Environmental Protection for proper permits and subsequent approval. If application of synthetic organo-auxin herbicides is necessary, meet the requirements of Chapter 5E-2, Florida Administrative Code.

7-1.7.2 Fertilizer:

Ensure that all employees applying fertilizer, have been trained and certified through the Green Industries (GI) BMP Program and possess a current Florida Department of Agriculture and Consumer Services Commercial Applicator license in accordance with Section 482.1562, F.S. Upon request, submit the current certificates to the Engineer.

7-1.8 Compliance with Section 4(f) of the USDOT Act: Section 4(f) of the USDOT Act prohibits the U. S. Secretary of Transportation from approving a project which requires the use of publicly owned land of a public park, recreation area or a wildlife and waterfowl refuge, or of any historic site of national, state, or local significance unless there is no prudent or feasible alternative to using that land and the program or project includes all possible planning to minimize the harm to the site resulting from the use.

Before undertaking any off-project activity associated with any federally assisted undertaking, ensure that the proposed site does not represent a public park, recreation area, wildlife or waterfowl refuge, or a historic site (according to the results of the Cultural Resources Survey discussed in 120-6.2). If such a site is proposed, notify the Engineer, and provide a description of the proposed off-site activity, the Financial Project ID, the location of the site by township, range, section, a county, or city map showing site location and including the access

route and the name of the property. It is the Contractor's responsibility to submit justification for use of Section 4(f) property that is sufficient for the Florida Department of Transportation and the Federal Highway Administration to make a Section 4(f) determination. Submit this notification sufficiently in advance of planned commencement of the off-site activity to allow a reasonable time for the Engineer to conduct an investigation without delaying job progress. Do not begin any off-project activity without obtaining written clearance from the Engineer.

**7-1.9 Florida Minority Business Loan Mobilization Program:
(Not included)**

7-2 Permits and Licenses.

7-2.1 General: Except for permits procured by the Department, as incorporated by Special Provision expanding this Subarticle, if any, procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

The Department will also acquire any modifications or revisions to an original permit incorporated by Special Provision to this Subarticle when the Contractor requires such modifications or revisions to complete the construction operations specified in the Plans or Special Provisions and within the right-of-way limits.

Acquire all permits for work performed outside the right-of-way or easements for the project.

In carrying out the work in the Contract, when under the jurisdiction of any environmental regulatory agency, comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to construction activities of all permits issued to the Department as though such conditions were issued to the Contractor. Post all permit placards in a protected location at the worksite.

In case of a discrepancy between any permit condition and other Contract Documents, the more stringent condition shall prevail.

7-2.2 Work or Structures in Navigable Waters of the U.S., Waters of the U.S., and Waters of the State: In general, one or more governmental agencies will exercise regulatory authority over work or structures, including related construction operations, in all tidal areas (Channelward of the mean high water lines on the Atlantic and Gulf Coast); in the ocean and gulf waters to the outer limits of the continental shelf; in all rivers, streams, and lakes to the ordinary high water line; in marshes and shallows that are periodically inundated and normally characterized by aquatic vegetation capable of growth and reproduction; in all artificially created channels and canals used for recreational, navigational, or other purposes that are connected to navigable waters; and in all tributaries of navigable waters up to their headwaters.

Whenever the work under or incidental to the Contract requires structures or dredge/fill/construction activities in "Navigable Waters of the U.S.," "Waters of the U.S.," and "Waters of the State," the Federal, State, county, and local regulatory agencies may require the Department to obtain a permit. For such dredge/fill /construction specified in the Plans to be accomplished within the limits of the project, or for any dredge/fill/construction within the limits of Department-furnished borrow areas, the Department will procure the necessary permits prior to advertising for bids.

7-2.3 As-Built Drawings and Certified Surveys:

7-2.3.1 Surface Water Management Systems for Water Management

Districts: As a condition precedent to the end of the original Contract period or subsequent renewal periods, submit to the Engineer the as-built drawings and a certified survey verifying the as-built conditions for all installed and constructed surface water management systems. The as-built drawings and certified survey must be PDF files in the same scale as the Contract Plans, formatted on 11 inch by 17-inch sheets, and satisfy all the requirements and special conditions listed in the Water Management District's Environmental Resource Permit (ERP) and any applicable local permit. The as-built drawings and certified survey must be signed and sealed by an appropriately licensed professional registered in the State of Florida.

If the ERP does not contain specific requirements, submit as-built drawings with the following information as a minimum:

1. Discharge structures: structure identification number, type, locations (latitude and longitude), dimensions and elevations of all, including weirs, bleeders, orifices, gates, pumps, pipes, and oil and grease skimmers.
2. Side bank and underdrain filters, or exfiltration trenches: locations, dimensions, and elevations of all, including clean-outs, pipes, connections to control structures and points of discharge to receiving waters.
3. Storage areas for treatment and attenuation: storage area identification number, dimensions, elevations, contours, or cross-sections of all, sufficient to determine stage-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems.
4. System grading: dimensions, elevations, contours, final grades, or cross-sections to determine contributing drainage areas, flow directions and conveyance of runoff to the system discharge points.
5. Conveyance: dimensions, elevations, contours, final grades, or cross-sections of systems utilized to divert off-site runoff around or through the new system.
6. Water levels: existing water elevations and the date determined.
7. Benchmarks: location and description (minimum of one per major water control structure).

7-2.3.2 Bridge Clearances for Projects under the Authority of a U.S. Coast

Guard Permit: As a condition precedent to the end of the original Contract period or subsequent renewal periods, submit to the Engineer a certified survey verifying the as-built clearances described in the U.S. Coast Guard Owner's Certification of Bridge Completion. The certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and Mapper registered in the State of Florida.

7-2.3.3 Projects Under the Authority of a U.S. Army Corps of Engineers

Permit: As a condition precedent to the end of the original Contract period or subsequent renewal periods, submit to the Engineer three copies of as-built drawings and a certified survey verifying the as-built conditions. The as-built drawings and certified survey must be submitted in PDF files formatted in the same scale as the Contract Plans, formatted on 11 inch by 17-inch sheets, and satisfy all of the requirements and special conditions listed in the U.S. Army Corps of Engineers permit. The as-built drawings and certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and Mapper registered in the State of Florida.

7-3 Patented Devices, Materials and Processes.

Include all royalties and costs arising from patents, trademarks, and copyrights, in any way involved in the work in the Contract price. Whenever using any design, device, material, or process covered by letters patent or copyright, obtain the right for such use by suitable legal agreement with the patentee or owner of the copyright. File a copy of such agreement with the Engineer. However, whether or not such agreement is made or filed as noted, the Contractor and the surety in all cases shall indemnify, defend, and save harmless, the Department from all claims for infringement by reason of the use of any such patented design, device, material, or process on work under the Contract, and shall indemnify the Department for all costs, expenses, and damages that it may be obliged to pay by reason of any such infringement, at any time during the prosecution or after the completion of the work.

7-4 Right-of-Way Furnished by the Department.

Except as otherwise stipulated in these Specifications or as shown in the Plans, the Department will furnish all rights-of-way necessary for the proper completion of the work at no expense to the Contractor.

Should Department-furnished areas for obtaining borrow material, contain limerock material do not remove such material from the pit unless the Engineer gives specific approval.

Use of Department owned right-of-way for the purpose of equipment or material storage, lay-down facilities, pre-cast material fabrication sites, batch plants for the production of asphalt, concrete or other construction or maintenance related materials, or other similar activities, shall require advance written approval by the Department prior to making use of said Department owned right of way. Use of Department owned right of way for these purposes is expressly limited to the storage of equipment and materials for the Project or production of materials or products for the Project.

7-5 Restoration of Surfaces Opened by Permit.

Upon the presentation of a duly authorized and satisfactory permit that provides that all necessary repair work will be paid for by the party holding such permit, the Engineer may authorize the Contractor to allow parties bearing such permits to make openings in the highway. Upon the Engineer's written order, perform, in an acceptable manner, all necessary repairs due to such openings, and such necessary work that the Engineer orders, subject to the same conditions as the original work performed. The Department will pay the Contractor for such work either under applicable Contract items or in accordance with 4-4 when Contract items are not applicable.

7-6 Sanitary Provisions.

The Contractor shall provide and maintain, in a neat and sanitary condition, such accommodations for the use of his employees as are necessary to comply with the requirements and regulations of the State and local boards of health. Commit no public nuisance.

7-7 Control of the Contractor's Equipment.

7-7.1 Traffic Interference: Do not allow equipment, while it is on or traversing a road or street, to unreasonably interfere with traffic.

7-7.2 Overloaded Equipment: Do not operate on any road, street, or bridge, including a Department owned temporary bridge, any hauling unit or equipment loaded in excess of: (1) the

maximum weights specified in the Florida Highway Patrol, Commercial Motor Vehicle Manual (Trucking Manual), or (2) lower weight limits legally established and posted for any section of road or bridge by the Department or local authorities. The governmental unit having jurisdiction over a particular road or bridge may provide exceptions by special permit under the provisions of 7-7.3. This restriction applies to all roads and bridges inside and outside the Contract limits as long as these roads and bridges are open for public use. The Contractor may overload roads and bridges which are to be demolished after they are permanently closed to the public. The Contractor is responsible for all loss or damages resulting from equipment operated on a structure permanently closed to the public.

7-7.3 Crossings: Where it is necessary to cross an existing road or street, including specifically the existing traveled lanes of a divided highway within the limits of the project, obtain permits from the Department, for crossing overloaded or oversized equipment. Cross existing roads or streets only at Engineer-designated points. The Engineer may require the Contractor to protect the pavement or Roadway at the crossing by using lumber, planks, or fill. Movement of equipment around the project site must be in accordance with requirements of the Standard Plans and not create an undue hazard to the traveling public or workers. Provide flagging and watchman service, or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.

7-7.4 Protection from Damage by Tractor-Type Equipment: Take positive measures to ensure that tractor-type equipment does not damage the road. If any such damage should occur, repair it without delay, at no expense to the Department and subject to the Engineer's approval.

7-7.5 Contractor's Equipment on Bridge Structures: The Contractor's Engineer of Record shall analyze the effect of imposed loads on bridge structures, within the limits of the Contract, resulting from the following operations:

- (1) Overloaded Equipment as defined in 7-7.2:
 - (a) Operating on or crossing over completed bridge structures.
 - (b) Operating on or crossing over partially completed bridge structures.
- (2) Equipment within legal load limits:
 - (a) Operating on or crossing over partially completed bridge structures.
- (3) Construction and Maintenance cranes:
 - (a) Operating on completed bridge structures.
 - (b) Operating on partially completed bridge structures.

Any pipe culvert(s) or box culvert(s) qualifying as a bridge under 1-3 is excluded from the requirements above.

A completed bridge structure is a bridge structure in which all elemental components comprising the load carrying assembly have been completed, assembled, and connected in their final position. The components to be considered shall also include any related members transferring load to any bridge structure.

The Contractor's Engineer of Record shall determine the effect that equipment loads have on the bridge structure and develop the procedures for using the loaded equipment without exceeding the structure's design load capacity. Submit to the Department for approval of the design calculations, layout drawings, and erection drawings showing how the equipment is to be used so

that the bridge structure will not be overstressed. The Contractor's Engineer of Record shall sign and seal the drawings and the cover sheet of the calculations for the Department's Record Set.

7-7.6 Posting of the Legal Gross Vehicular Weight: Display the maximum legal gross weight, as specified in the Florida Uniform Traffic Code, in a permanent manner on each side of any dump truck or dump type tractor-trailer unit hauling embankment material, aggregates, road base material, or hot bituminous mixture to the project over any public road or street. Display the weight in a location clearly visible to the scale operator, in numbers that contrast in color with the background and that are readily visible and readable from a distance of 50 feet.

7-8 Structures over Navigable Waters.

7-8.1 Compliance with Federal and Other Regulations: When working on structures in, adjacent to, or over, navigable waters, observe all regulations and instructions of Federal and other authorities having control over such waters. Do not obstruct navigation channels without permission from the proper authority and provide and maintain navigation lights and signals in accordance with the Federal requirements for the protection of the structure, of false work, and of navigation.

When working on moveable bridges, requests for temporarily changing the operating requirements for the moveable bridge must be submitted in writing to the appropriate Coast Guard District Bridge Branch, 90 days before the start of any action. For all other bridges, notify the appropriate Coast Guard District Bridge Branch, at least 60 days prior to the start of any operations including construction and 30 days prior to any channel operations, closures, or opening restrictions.

When work platforms are indicated in the permit for construction or maintenance, submit work platform construction plans to the appropriate Coast Guard District for approval. Obtain approval prior to beginning construction on the platform.

7-8.2 Maintenance of Channel: Where the work includes the excavation of a channel or other underwater areas to a required section, maintain the section from shoaling or other encroachment until the end of the original contract period or subsequent renewal periods.

In the event of accidental blocking of the navigation channel, immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage.

7-9 Use of Explosives.

When using explosives for the prosecution of the work, exercise the utmost care not to endanger life or property, including new work. The Contractor is responsible for all damage resulting from the use of explosives.

Store all explosives in a secure manner in compliance with all laws and ordinances, and clearly mark all such storage places with the words: "DANGEROUS - EXPLOSIVES". Place such storage in the care of a competent watchman. Where no local laws or ordinances apply, provide storage satisfactory to the Engineer and, in general, not closer than 1,000 feet from the road or from any building, camping area, or place of human occupancy.

Notify each public utility company having structures in proximity to the site of the work of the intention to use explosives. Give such notice sufficiently in advance to enable the companies to take precautionary steps to protect their property from injury.

7-10 Forest Protection.

7-10.1 Compliance with State and Federal Regulations: In carrying out work within or adjacent to State or National forests or parks, comply with all of the regulations of the State or Federal authority having jurisdiction, governing the protection of and the carrying out of work in forests or parks, and observe all sanitary laws and regulations with respect to the performance of work in these areas. Keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction, installation, and maintenance of any camps, living quarters, stores, warehouses, sanitary facilities, and other structures; all in accordance with the requirements of the forest or park official.

7-10.2 Prevention and Suppression of Forest Fires: Take all reasonable precautions to prevent and suppress forest fires. Require employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress forest fires. Assist in preventing and suppressing forest fires and make every possible effort to notify a forest official at the earliest possible moment of the location and extent of all fires. Extinguish the fire if practicable.

7-11 Preservation of Existing Property.

7-11.1 General: Preserve from damage all existing property within the project limits of or in any way affected by the Work, the removal or destruction of which is not specified in the Plans. This applies to, but is not limited to, public and private property, public and private utilities (except as modified by the provisions of 7-11.5), trees, shrubs, crops, sod, signs, monuments, fences, guardrail, pipe and underground structures, Intelligent Transportation Systems (ITS) facilities, traffic control signals and devices, highway lighting, and public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor). Department owned underground facility locations shown in the Plans are approximate. Unless otherwise shown in the Plans, Department owned underground facilities will not be located by the Department nor through notification to "Sunshine 811".

Whenever the Contractor's activities damage such existing property, immediately restore it to a condition equal to or better than that existing at the time such damage occurred, at no expense to the Department. Temporary repairs may be used to immediately restore ITS facilities and traffic control signals and devices. Permanent repairs to ITS facilities and traffic control signals and devices shall be made within 90 days of any temporary repairs and prior to final acceptance of the project. Submit permanent ITS facility repair plans to the Engineer prior to beginning repair work.

Protect existing bridges during the entire maintenance period from damage caused by the Work. Immediately repair, at no expense to the Department, all damage to existing bridges caused by the Work, prior to continuing the Work.

Direct special attention to the protection of all geodetic monuments, horizontal or vertical, and Public Land Survey Corners located within the project. If any geodetic monument or Public Land Survey Corner, located within the project, is at risk of being damaged or destroyed, immediately notify the Engineer. Locate and replace any damaged or destroyed geodetic monuments or Public Land Survey Corners under the direction of a Professional Surveyor and Mapper registered in the State of Florida.

Whenever the actions of a third-party damage such existing property, restore it to a condition equal to or better than that existing at the time such damage occurred. Theft and vandalism are considered damage caused by a third party.

7-11.2 Failure to Restore Damaged Existing Property: In case of failure on the part of the Contractor to restore such property, bridge, road, or street, or to make good such damage or injury, the Engineer may, upon 48 hours' notice, proceed to repair, rebuild, or otherwise restore such property, road, or street as may be deemed necessary, and the Department will deduct the cost thereof from any monies due or which may become due the Contractor under the Contract. Nothing in this clause prevents the Contractor from receiving proper compensation for the removal, damage, or replacement of any public or private property, not shown in the Plans, that is made necessary by alteration of grade or alignment. The Engineer will authorize such work, provided that the Contractor, or his employees or agents, have not, through their own fault, damaged such property.

7-11.3 Contractor's Use of Streets and Roads:

7-11.3.1 On Systems Other than the State Highway System: When hauling materials or equipment to the project over roads and bridges on the State Park road system, county road system, or city street system, and such use causes damage, immediately, at no expense to the Department, repair such road or bridge to as good a condition as before the hauling began.

The Department may modify the above requirement in accordance with any agreement the Contractor might make with the governmental unit having jurisdiction over a particular road or bridge, provided that the Contractor submits written evidence of such agreement to the Engineer.

7-11.3.2 On the State Highway System: The Department is responsible for the repair of any damage that hauling materials to the site causes to roads outside the limits of the project, that are either on the State highway system (roads under the jurisdiction of the Department) or specifically designated in the Plans as haul roads from Department-furnished material pits, except in the event damage is due to failure to comply with 7-7.2. The Contractor is responsible for all damages to any road or bridge caused by the Contractor's failure to comply with 7-7.2.

7-11.3.3 Within the Limits of a Maintenance Project: The Department will not allow the operation of equipment or hauling units of such weight as to cause damage to previously constructed elements of the project, including but not necessarily limited to bridges, drainage structures, base course, and pavement. Do not operate hauling units or equipment loaded in excess of the maximum weights specified in 7-7.2 on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement, and bridges. The Engineer may allow exceptions to these weight restrictions for movement of necessary equipment to and from its worksite, for hauling of offsite fabricated components to be incorporated into the project, and for crossings as specified in 7-7.3.

7-11.4 Operations within Railroad Right-of-Way:

7-11.4.1 Notification to the Railroad Company: Notify the superintendent of the railroad company or Engineer at least 72 hours before beginning any operation within the limits of the railroad right of way; any operation requiring movement of employees, trucks, or other equipment across the tracks of the railroad company at other than an established public crossing; and any other work that may affect railroad operations or property.

7-11.4.2 Contractor's Responsibilities:

Comply with whatever requirements an authorized representative of the railroad company deems necessary in order to safeguard the railroad's property and operations. The Contractor is responsible for all damages, delays, or injuries and all suits, actions, or claims brought on account of damages or injuries resulting from the Contractor's operations within or adjacent to railroad company right of way.

7-11.4.3 Watchman or Flagging Services: The railroad company will furnish protective services (i.e., watchman or flagging services) to ensure the safety of railroad operations during certain periods of the project. The Contractor will reimburse the railroad company for the cost thereof. Schedule work that affects railroad operations so as to minimize the need for protective services by the railroad company.

7-11.5 Utilities:

7-11.5.1 Arrangements for Protection or Adjustment: Do not commence work at points where the construction or maintenance operations are adjacent to utility facilities until all necessary arrangements have been made for removal, temporary removal, relocation, de-energizing, deactivation, or adjustment with the utility facilities owner to protect against damage that might result in expense, loss, disruption of service, or other undue inconvenience to the public or to the owners. The Contractor is solely and directly responsible to the owners and operators of such properties for all damages, injuries, expenses, losses, inconveniences, or delays caused by the Contractor's operations.

Do not request utility removal, temporary removal, relocation, de-energizing, deactivation, or adjustment when work can be accomplished within the utility work schedules. In the event that removal, temporary removal, relocation, de-energizing, deactivation, or adjustment of a utility or a particular sequence of timing in the relocation of a utility is necessary and has not been addressed in a utility work schedule, the Engineer will determine the necessity for any such utility work. Coordinate such work as to cause the least impediment to the overall construction operations and utility service. The Department is not responsible for utility removal, temporary removal, relocation, de-energizing, deactivation, or adjustment work where such work is determined not necessary by the Engineer or done solely for the benefit or convenience of the utility owner or its contractor, or the Contractor.

7-11.5.2 Cooperation with Utility Owners: Cooperate with the owners of all underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum, and that services rendered by the utility owners will not be unnecessarily interrupted.

In the event of interruption of water or other utility services as a result of accidental breakage, exposure, or lack of support, promptly notify the proper authority and cooperate with the authority in the prompt restoration of service. If water service is interrupted and the Contractor is performing the repair work, the Contractor shall work continuously until the service is restored. Do not begin work around fire hydrants until the local fire authority has approved provisions for continued service.

7-11.5.3 Utility Adjustments: Certain utility adjustments and reconstruction work may be underway during the progress of the Contract. Cooperate with the various utility

construction crews who are maintaining utility service. Exercise due caution when working adjacent to relocated utilities. The Contractor shall repair all damage to the relocated utilities resulting from his operations at no expense to the Department. The requirements of 7-11.1 and 7-11.5.2 outline the Contractor's responsibility for protecting utility facilities.

**7-11.5.4 Weekly Meetings:
(Not included)**

**7-11.5.5 Florida Gas Transmission Company, LLC (FGT) Facilities:
(Not included)**

7-12 Responsibility for Damages, Claims, etc.

7-12.1 Contractor to Provide Indemnification: The Contractor shall indemnify and hold harmless the Department, 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 misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the maintenance Contract. The Contractor shall indemnify and hold harmless Florida Gas Transmission Company, LLC (FGT) 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 misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract or caused by the violation of enforceable environmental statutes, ordinances, rules, orders, or regulations of any governmental entity or agency having jurisdiction resulting from the storage or generation of any hazardous or toxic wastes or substances. Include this provision in all subcontracts and require all subcontractors to include it in their subcontracts with others.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

7-12.2 Guaranty of Payment for Claims: The Contractor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against him or any subcontractor, in connection with the Contract. The Department's final acceptance and payment does not release the Contractor's bond until all such claims are paid or released.

7-13 Insurance.

The Contractor must have and maintain during the initial term of this Contract and all renewal periods, the following policies/coverages, with a company authorized to do business in Florida:

7-13.1 Workers' Compensation Insurance: Provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or

other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.

7-13.2 Commercial General Liability Insurance: Carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Contract. Such insurance will be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Cause the Department to be made an Additional Insured as to such insurance. Such coverage must be on an "occurrence" basis and include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured must be primary as to any other available insurance and not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage must not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein must apply fully to the work or operations performed under the Contract and may not be shared with or diminished by claims unrelated to the Contract. Pay all deductibles as required. No policy/ies or coverage described herein can contain or be subject to a Retention or a Self-Insured Retention. Prior to the execution of the Contract, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department must be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates will not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

7-13.3 Insurance Required for Construction and Maintenance at Railroads: The additional insurance described in this section is only required for the time period that the Contractor is actively performing Work within railway right-of-way limits. When the Contract includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, you shall, in addition to the insurance coverage required pursuant to 7-13.2 above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to subsection 7-13.2 above. Prior to the execution of the Contract, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

7-13.4 Insurance for Protection of Utility Owners: When the Contract involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the policy/ies procured pursuant to subsection 7-13.2. Prior to entering FGT property to conduct operations, provide FGT with a certificate of insurance evidencing the insurance coverage required by 7-13.2.

7-14 Contractor's Responsibility for Work.

Until the Department's acceptance of the work, take charge and custody of the work, and take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the work. Rebuild, repair, restore, and make good, without additional expense to the Department, all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance, except that in case of extensive or catastrophic damage, the Department may, at its discretion, reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy, or of governmental authorities.

7-15 Opening Sections of Highway to Traffic.

Whenever any bridge or section of roadway is in acceptable condition for travel, the Engineer may direct the Contractor to open it to traffic. The Department's direction to open a bridge or roadway does not constitute an acceptance of the bridge or roadway, or any part thereof, or waive any Contract provisions. Perform all necessary repairs or renewals, on any section of the roadway or bridge thus opened to traffic under instructions from the Engineer, due to defective material or work or to any cause other than ordinary wear and tear, pending completion and the Engineer's acceptance of the roadway or bridge, or other work, at no expense to the Department.

7-16 Wage Rates for Federal-Aid Projects.

(Not included)

7-17 Supplemental Agreements.

Section 337.11 of the Florida Statutes as amended, which prescribe certain limitations on the use of supplemental agreements, are a part of the Contract.

7-18 Scales for Weighing Materials.

(Not included)

7-19 Source of Forest Products.

As required by Section 255.2575 of the Florida Statutes, where price, fitness and quality are equal, and when available, use only timber, timber piling, or other forest products that are produced and manufactured in the State of Florida. This provision does not apply to Federal-aid projects.

7-20 Regulations of Air Pollution from Asphalt Plants.

7-20.1 General: Perform all work in accordance with all Federal, State, and local laws and regulations regarding air pollution and burning. In particular, pay attention to Chapters 62-210 and 62-256, Rules of the Department of Environmental Protection, Florida Administrative Code, and to any part of the State Implementation Plan applicable to the project. See also 110-9.2 regarding burning of debris.

7-20.2 Dust Control: Control dust during the storage and handling of dusty materials by wetting, covering, or other means as approved by the Engineer.

7-20.3 Asphalt Material: Use only emulsified asphalt, unless otherwise stated in the Plans and allowed by Chapter 62-210 Rules of the Department of Environmental Protection, Florida Administrative Code. Store and handle asphalt materials and components so as to minimize unnecessary release of hydrocarbon vapors.

7-20.4 Asphalt Plants: Operate and maintain asphalt plants in accordance with Chapter 62-210, Rules and Regulations of the Department of Environmental Protection, Florida Administrative Code. Provide the plant site with a valid permit as required under Chapter 62-210 prior to start of work.

7-21 Dredging and Filling.

Section 370.033 of the Florida Statutes requires that all persons, who engage in certain dredge or fill activities in the State of Florida, obtain a certificate of registration from the Florida Department of Environmental Protection, Tallahassee, Florida 32301, and that they keep accurate logs and records of all such activities for the protection and conservation of the natural resources. Obtain details as to the application of this law from the Department of Environmental Protection.

7-22 Available Funds.

For Contracts in excess of \$25,000 or a term for more than one year, comply with the following provisions of Chapter 339 of the Florida Statutes:

The Department will not, during any fiscal year, expend money, incur any liability, or enter into any Contract that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for expenditure during such fiscal year. If the Department enters into such a Contract, verbal or written, in violation of this subsection, such Contract is null and void, and the Department will not make any payments thereon. The Department will require a statement from the Department's comptroller that funds are available prior to entering into any such Contract or other binding commitment of funds. Nothing herein contained prevents the Department from executing Contracts for a period exceeding one year, but the Department will make such Contracts executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. The Department will incorporate this paragraph verbatim in all Contracts in excess of \$25,000 or having a term for more than one year.

7-23 Contractor's Motor Vehicle Registration.

The Contractor shall provide the Department with proof that all motor vehicles operated or caused to be operated by such Contractor are registered in compliance with Chapter 320 of the

Florida Statutes. Submit such proof of registration in the form of a notarized affidavit to the Department.

The Department will not make payment to the Contractor until the required proof of registration is on file with the Department.

If the Contractor fails to register any motor vehicle that he operates in Florida, pursuant to Chapter 320 of the Florida Statutes, the Department may disqualify the Contractor from bidding, or the Department may suspend and revoke the Contractor's certificates of qualification.

7-24 Disadvantaged Business Enterprise Program.

7-24.1 Disadvantaged Business Enterprise Affirmative Action Plan: Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (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 is incorporated into and made a part of the Contract.

7-24.2 Required Contract and Subcontract DBE Assurance Language: In accordance with 49 CFR 26.13 (b), the Contract FDOT signs with the Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following 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 CFR 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, which may include, but is not limited to,

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible."

7-24.3 Plan Requirements: Include the following in the DBE Affirmative Action Program Plan:

1. A policy statement, signed by an authorized representative (president, chief executive officer, or chairman of the contractor), expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible, outlining the various levels of responsibility, and stating the objectives of the program. Circulate the policy statement throughout the Contractor's organization.

2. 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.

3. Utilization of techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

a. 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.

- b. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.
- c. 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.
- d. Encouraging eligible DBEs to apply for certification with the Department.
- e. 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.

7-24.4 DBE Records and Reports: Submit the following through the Equal Opportunity Compliance System:

1. DBE Commitments - at or before the Pre-Work Conference.
2. Report monthly, through the Equal Opportunity Compliance System on the Department's Website, actual payments (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material 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:

1. the procedures adopted to comply with these Specifications;
2. the number of subordinated Contracts on Department projects awarded to DBEs;
3. the dollar value of the Contracts awarded to DBEs;
4. the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;
5. a description of the general categories of Contracts awarded to DBEs; and
6. the specific efforts employed to identify and award Contracts to DBEs.

Upon request, provide the records to the Department for review. Maintain all such records 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.

7-24.5 Counting DBE Participation and Commercially Useful Functions: 49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. When reporting DBE Commitments, only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Update DBE Commitments to reflect changes to the initial amount that was previously reported or to add DBEs not initially reported.

When a DBE participates in a contract, the value of the work is determined in accordance with 49 CFR Part 26.55, for example:

1. The Department will count only the value of the work performed by the DBE toward DBE goals. The entire amount of the contract that is performed by the DBE's own forces (including the cost of supplies, equipment and materials obtained by the DBE for the contract work) will be counted as DBE credit.
2. The Department will count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or

managerial services or for providing bonds or insurance specifically required for the performance of a Department-assisted contract, toward DBE goals, provided that the Department determines the fees to be reasonable and not excessive as compared with fees customarily followed for similar services.

3. When the DBE subcontracts part of the work of its contract to another firm, the Department will count the value of the subcontracted work only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

4. When a DBE performs as a participant in a joint venture, the Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.

5. The Contractors shall ensure that only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract may be counted toward the voluntary DBE goal.

6. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

7. Contractors wishing to use joint checks involving DBE credit must provide written notice to the District Contract Compliance Office prior to issuance of the joint check. The Contractor must also provide a copy of the notice to the DBE subcontractor and maintain a copy with the project records.

8. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

9. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

10. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE has not performed a commercially useful function.

7-24.6 Prompt Payments: Meet the requirements of 9-5 for payments to all DBE subcontractors.

7-25 On-The-Job Training Requirements. (Not included)

7-26 Cargo Preference Act – Use of United States-Flag Vessels.

Pursuant to Title 46 CFR 381, the Contractor agrees

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to

this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 1 of this Article to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

7-27 Equal Employment Opportunity Requirements.

7-27.1 Equal Employment Opportunity Policy: Accept as the operating policy, the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their age, race, color, religion, national origin, sex, or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

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

7-27.2 Equal Employment Opportunity Officer: Designate and make known to the Department's contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active Contractor program employment opportunity and who must be assigned adequate authority and responsibility to do so.

7-27.3 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 equal employment opportunity policy and contractual responsibilities.

7-27.4 Recruitment: When advertising for employees, include in all advertisements for employees the notation “An Equal Opportunity Employer”.

7-27.5 Personnel Actions: Establish and administer wages, working conditions, employee benefits, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination without regard to age, race, color, religion, national origin, sex, or disability.

Follow the following procedures:

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

- (2) Periodically evaluate the spread of wages paid with each classification to determine any evidence of discriminatory wage practices.
 - (3) Periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action must include all affected persons.
 - (4) Investigate all complaints of alleged discrimination made in connection with obligations under this Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action must include such other persons.
- Upon completion of each investigation inform every complainant of all of the avenues of appeal.

7-27.6 Subcontracting: Use the best efforts to ensure subcontractor compliance with their equal employment opportunity policy.

7-27.7 Records and Reports: Keep such records as are necessary to determine compliance with the equal employment opportunity obligations. The records kept will be designed to indicate the following:

- (1) The number of minority and nonminority group members employed in each work classification on the project.
- (2) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to Contractors who rely in whole or in part on unions as a source of their work force).
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees as deemed appropriate to comply with their Equal Employment Opportunity Policy.
- (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group representation among their employees as deemed appropriate to comply with their Equal Employment Opportunity Policy.

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

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

7-28 Preference to State Residents.

Florida Statutes 255.099 (Chapter 2010-147, Section 50, Laws of Florida), providing for preference to residents of the State of Florida, is hereby made a part of this Contract:

Each contract that is funded by state funds must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work on the project if state residents have substantially equal qualifications to those of nonresidents.

As used in this Section, the term “substantially equal qualifications” means the qualification of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

7-29 E-Verify.

The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

7-30 Scrutinized Companies.

For Contracts of any amount if the Department determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the Department shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

For Contracts \$1,000,000 and greater, if the Department determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

SECTION 8 PROSECUTION AND PROGRESS

8-1 Subletting or Assigning of Contracts.

Do not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. Upon request, furnish the Department with a copy of the subcontract. The subletting of work does not relieve the Contractor or the surety of their respective liabilities under the Contract. The Department recognizes a subcontractor only in the capacity of an employee or agent of the Contractor and the Engineer may require the Contractor to remove the subcontractor as in the case of an employee.

8-2 Work Performed by Equipment Rental Agreement.

Rental agreements will not be considered subcontracts

8-3 Prosecution of Work.

8-3.1 Compliance with Time Requirements: Commence work in accordance with the accepted working schedule and provide sufficient labor, materials, and equipment to complete the work within the time limit(s) set forth in the proposal. Should the Contractor fail to furnish sufficient and suitable equipment, forces, and materials, as necessary to prosecute the work in accordance with the required schedule, the Engineer may withhold all payments that are, or may become due, or suspend the work until the Contractor corrects such deficiencies.

8-3.2 Submission of Working Schedule:
(Not included)

8-3.3 Beginning Work: Do not commence work under the Contract until after the Department has issued the Notice to Proceed.

8-3.4 Provisions for Convenience of Public: Schedule maintenance operations so as to minimize any inconvenience to adjacent businesses or residences. Where necessary, the Engineer may require the Contractor to first construct the work in any areas along the project where inconveniences caused by maintenance operations would present a more serious handicap. In such critical locations, where there is no assurance of continuous effective prosecution of the work once the maintenance operations are begun, the Engineer may require the Contractor to delay removal of the existing (usable) facilities.

8-3.5 Prewrite Conference: Immediately after executing the Contract but before the Contractor begins work, the Engineer will call a prework conference at a place the Engineer designates to go over the maintenance and management aspects of the project. Attend this meeting, along with the Department and the various utility companies that will be involved with the road maintenance.

8-3.6 Partnering: For this Contract, a no-bid Lump Sum pay item has been established for Partnering. The objective of Partnering is to establish a partnership charter and action plan for the Contractor, the Engineer and other parties impacted by the activities covered under this Contract to identify and achieve reciprocal goals. These objectives may be met through participation in a major workshop held as early as possible after the Contract is awarded and follow-up workshops held periodically throughout the duration of the Contract.

As early as possible and prior to the prework conference, meet with the Department's District Maintenance Engineer or designee and plan an initial partnering/team building workshop. At this planning session, select a workshop facilitator, suitable to the District Maintenance Engineer or designee, from the Department's approved list of facilitators maintained by the Quality Initiatives Office. Additionally, the agenda, duration, location, time, and attendees for the initial workshop should be determined. Attendees should include the Department's District Maintenance Engineer and key project personnel, the Contractor's Superintendent, and key personnel as well as other project or field level personnel.

Partnering workshops may be held periodically throughout the duration of the Contract if authorized by the District Maintenance Engineer or designee.

The Department will reimburse the Contractor based on actual invoice amounts for the following costs associated with Partnering:

- a. Meeting room.
- b. Facilitator fees.

c. Travel expenses of the facilitator, in accordance with Section 112.061, Florida Statutes.

The Department will not reimburse the Contractor for any other expenses. Payment will be the actual cost incurred to conduct such partnering meeting and shall be made by using the no-bid Partnering pay item established in the Contract.

8-3.7 Disputes Review Board: For this Contract, a Disputes Review Board will be available to assist in the resolution of disputes and claims arising out of the work on the Contract.

8-3.7.1 Purpose:

The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes and claims between the Department and the Contractor in an effort to avoid construction delay and future claims.

It is not intended for the Department or the Contractor to default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Department and Contractor to resolve potential disputes or claims without resorting to this alternative resolution procedure.

The Board will be used when normal Department-Contractor dispute or claim resolution is unsuccessful. Either the Department or the Contractor may refer a dispute or claim to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. Referral to the Board is accomplished by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for entitlement to the dispute or claim. Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the Board will be eligible to be heard by the Board. Claims that are referred to the Board must be in compliance with 5-12. It is a condition of this Contract that the parties shall use the Dispute Review Board. The completed DRB hearing of any unresolved dispute or claims is a condition precedent to the Department or the Contractor having the right to initiate arbitration, other alternative resolution procedures, or to initiate legal action, as provided by law, on such unresolved disputes or claims.

The recommendations of the Board will not be binding on either the Department or the Contractor unless otherwise stated in the Contract.

The Board will fairly and impartially consider disputes or claims referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes or claims.

8-3.7.2. Continuance of Work: During the course of the Disputes Review Board process, the Contractor will continue with the work as directed by the Engineer in a diligent manner and without delay or otherwise conform to the Engineer's decision or order and will be governed by all applicable provisions of the Contract. Throughout any protested work, the Contractor will keep complete records of costs and time incurred. The Contractor will permit the Engineer and Board access to these and any other records needed for evaluating the disputes and claims.

8-3.7.3 Membership:

The Disputes Review Board will consist of members pre-selected by the Engineer and the President of the Florida Transportation Builders' Association (FTBA) and posted on the Department's Website.

If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the Contractor or any subcontractor or supplier on the project, he/she shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

Once established, the Board will remain active and in full force and effect. If, after the Department has made final acceptance of the project, there are unresolved disputes and claims remaining, the Disputes Review Board shall remain active and in full force and effect until the project is otherwise administratively closed by the Department following final payment so that the Board may continue in operation until all unresolved disputes and claims are resolved.

8-3.7.4 Procedure and Schedules for Disputes Resolution: Disputes and claims will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the Department and the Contractor and the time periods stated below may be shortened in order to hasten resolution.

a. If the Contractor objects to any decision, action or order of the Engineer, the Contractor may file a written protest with the Engineer, stating clearly and in detail the basis for the objection, within 15 days after the event.

b. The Engineer will consider the written protest and make his decision on the basis of the pertinent contract provisions, together with the facts and circumstances involved in the dispute or claim. The Engineer's decision will be furnished in writing to the Contractor within 15 days after receipt of the Contractor's written protest.

c. This decision will be final and conclusive on the subject unless a written appeal to the Engineer is filed by the Contractor within 15 days of receiving the decision. Should the Contractor preserve its protest of the Engineer's decision, the matter can be referred to the Board by either the Department or the Contractor.

d. Upon receipt by the Board of a written duly preserved protest of a dispute or claim, either from the Department or the Contractor, A date of hearing will be determined by the board.

e. Either party furnishing any written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of 15 days prior to the Board-scheduled hearing date for the dispute or claim. If the Board requests any additional documentation or evidence prior to, during, or after the hearing, the Department and/or Contractor will provide the requested information to the Board and to the other party.

f. The Contractor and the Department will each be afforded an opportunity to be heard by the Board and to offer evidence. Neither the Department nor the Contractor may present information at the hearing that was not previously distributed to both the Board and the other party. Information must be shared at least 72 hours before the Hearing.

g. The Board's recommendations for resolution of the dispute or claim will be given in writing to both the Department and the Contractor within 15 days of completion of the hearings. In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. The Board will focus its attention in the written report to matters of entitlement and allow the parties to determine the monetary damages. If both parties request, and sufficient documentation is available, the Board may make a recommendation of monetary damages.

h. Within 15 days of receiving the Board's recommendations, both the Department and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of either party to respond within the 15-day period will be deemed an acceptance of the Board's recommendations by that party. If the Department and the Contractor are able to resolve the dispute or claim with or without the aid of the Board's recommendations, the Department will promptly process any required Contract changes.

i. Should the dispute or claim remain unresolved, either party may seek reconsideration of the decision by the Board only when there is new evidence to present. No provisions in this Specification will abrogate the Contractor's responsibility for preserving a claim filed in accordance with 5-12.

Although both the Department and the Contractor should place great weight on the Board's recommendation, it is not binding. If the Board's recommendations do not resolve the dispute or claim, all records and written recommendations of the Board will be admissible as evidence in any subsequent dispute resolution procedures.

8-3.7.6 Department Responsibilities: Except for its participation in the Board's activities as provided in the Contract and in this Agreement, the Department will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

The Department shall furnish the following services and items:

1. Contract Related Documents: The Department shall furnish each Board member a copy of all Contract Documents, supplemental agreements, written instructions issued by the Department to the Contractor, or other documents pertinent to the performance of the Contract and necessary for the Board to perform their function. A copy of such pertinent documents must also be furnished to the Contractor.

2. Coordination and Services: The Department, in cooperation with the Contractor, will coordinate the operations of the Board. The Department, through the Engineer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.

8-3.7.8 Basis of Payment: A per hearing cost of \$9,000 has been established by the Department for providing compensation for all members of the Dispute Review Board for participation in an actual hearing. The Board chairman will receive \$3,500 for participation in the hearing while the remaining two members will receive \$2,750 each. The Department and the Contractor will equally provide compensation to the Board for participation in an actual hearing. The Department will compensate the Contractor \$4,500 as its contribution to the hearing cost. Such payment will be full and complete compensation to the Board members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the Department and the Contractor. If an additional day(s) is granted for the hearing, it will be at \$3,900 per day, payment of which is equally divided between the Department and the Contractor. Payment shall be made by issuing a work order against contingency funds set aside for this Contract.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services. If the Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

8-4 Limitations of Operations.

8-4.1 Night Work: During active nighttime operations, furnish, place, and maintain lighting sufficient to permit proper workmanship and inspection. Use lighting with 5 ft-cd minimum intensity. Arrange the lighting to prevent interference with traffic or produce undue glare to property owners. Operate such lighting only during active nighttime construction and maintenance activities. Provide a light meter to demonstrate that the minimum light intensity is being maintained.

Lighting may be accomplished by the use of portable floodlights, standard equipment lights, existing streetlights, temporary streetlights, or other lighting methods approved by the Engineer.

During active nighttime operations, furnish, place, and maintain variable message signs to alert approaching motorists of lighted maintenance zones ahead. Operate the variable message signs only during active maintenance activities.

Take ownership of all lighting equipment for night work.

8-4.3 Interference with Traffic: At all times conduct the work in such manner and in such sequence as to ensure the least practicable interference with traffic. Operate all vehicles and other equipment safely and without hindrance to the traveling public. Park all private vehicles outside the clear zone. Place materials stored along the roadway so as to cause no obstruction to the traveling public as possible.

Where existing pavement is to be widened and stabilizing is not required, prevent any open trench from remaining after working hours by scheduling operations to place the full thickness of widened base by the end of each day. Do not construct widening strips simultaneously on both sides of the road, except where separated by a distance of at least 1/4 mile along the road and where either the work of excavation has not been started or the base has been completed.

8-4.4 Coordination with other Contractors: Sequence the work and dispose of materials so as not to interfere with the operations of other Contractors engaged upon adjacent work; join the work to that of others in a proper manner, in accordance with the spirit of the Contract Documents; and perform the work in the proper sequence in relation to that of other contractors; all as may be directed by the Engineer.

Each contractor is responsible for any damage done by him or his agents to the work performed by another contractor.

8-4.5 Drainage: Conduct the operations and maintain the work in such condition to provide adequate drainage at all times. Do not obstruct existing functioning storm sewers, gutters, ditches, and other run-off facilities.

8-4.6 Fire Hydrants: Keep fire hydrants on or adjacent to the highway accessible to fire apparatus at all times, and do not place any material or obstruction within 15 feet of any fire hydrant.

8-4.7 Protection of Structures: Do not operate heavy equipment close enough to pipe headwalls or other structures to cause their displacement.

8-4.8 Fencing: Erect permanent fence as a first order of business on all projects that include fencing where the Engineer determines that the fencing is necessary to maintain the security of livestock and other animals on adjacent property, or for protection of pedestrians who are likely to gain access to the project from adjacent property. Secure the right of way on Limited Access Facilities at all times by a fence, either temporary or permanent, that meets the height of the existing fence or the height required in the Contract.

8-4.9 Contaminated Materials: When the maintenance operations encounter or expose any abnormal condition that may indicate the presence of a contaminated material, discontinue such operations in the vicinity of the abnormal condition and notify the Engineer immediately. Be alert for the presence of tanks or barrels; discolored or stained earth, metal, wood, ground water; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of the presence of contaminated materials. Treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any contaminated materials into uncontaminated areas.

Dispose of the contaminated material in accordance with the requirements and regulations of any Local, State, or Federal agency having jurisdiction.

The Department may agree to hold harmless and indemnify the Contractor for damages when the Contractor discovers or encounters contaminated materials or pollutants during the performance of services for the Department when the presence of such materials or pollutants were unknown or not reasonably discoverable. Such indemnification agreements are only effective if the Contractor immediately stops work and notifies the Department of the contaminated material or pollutant problem. Such indemnification agreements are not valid for damages resulting from the Contractor's willful, wanton, or intentional conduct or the operations of Contaminated and Hazardous Material Contractors.

8-4.10 Equipment: Equip vehicles and mobile equipment used on the project with a minimum of one class 2 amber or white flashing light that meets the Society of Automotive Engineers recommended practice SAE J845 and SAE J1318. The Engineer may require a white flashing light meeting the above requirements when conditions reduce the effectiveness of amber light (i.e., at night under high intensity discharge lights such as sodium vapor).

Ensure all equipment safety devices recommended by the manufacturer are installed and properly maintained.

Park vehicles and equipment not in use or left on the right-of-way overnight as close as possible to the right-of-way line and always outside of the applicable clear zone. Conduct service and supply operations as close to the right-of-way line as possible. Do not park equipment in the median, regardless of the width of the median, unless movement from the work area is determined by the Engineer to be prohibitive.

8-5 Qualifications of Contractor's Personnel.

Provide competent, careful, and reliable superintendents, foremen, and workmen. Provide workmen with sufficient skill and experience to properly perform the work assigned to them. Provide workmen engaged on special work, or skilled work, such as bituminous courses or mixtures, concrete bases, pavements, or structures, or in any trade, with sufficient experience in such work to perform it properly and satisfactorily and to operate the equipment involved. Provide workmen that shall make due and proper effort to execute the work in the manner prescribed in the Contract Documents, or the Engineer may take action as prescribed below.

It is prohibited as a conflict of interest for a Contractor to subcontract with a Consultant to perform Contractor Quality Control when the Consultant is under contract with the Department to perform work on any project described in the Contractor's Contract with the Department. Prior to approving a Consultant for Contractor Quality Control, the Contractor shall submit to the Department a Certificate from the proposed Consultant certifying that no conflict of interest exists.

Whenever the Engineer determines that any person employed by the Contractor is incompetent, unfaithful, intemperate, disorderly, or insubordinate, the Engineer will provide written notice and the Contractor shall discharge the person from the work. Do not employ any discharged person on the project without the written consent of the Engineer. If the Contractor fails to remove such person or persons, the Engineer may withhold all estimates that are or may become due, or suspend the work until the Contractor complies with such orders. Protect, defend, indemnify, and hold the Department, its agents, officials, and employees harmless from all claims, actions, or suite arising from such removal, discharge, or suspension of employees.

All persons employed by the Contractor or Subcontractors working within the Department's right-of-way must have Tier 1 Illicit Discharge Detection and Elimination (IDDE) training. The computer-based training is provided by video on the following web page:

<http://wbt.dot.state.fl.us/ois/IllicitDischarge/index.htm>.

Provide a list of persons trained prior to submittal of the first invoice. Provide an updated list of new Contractor/Subcontractor employees annually thereafter.

8-6 Temporary Suspension of Contractor's Operations.

8-6.1 Authority to Suspend Contractor's Operations: The Engineer has the authority to suspend the Contractor's operations, wholly or in part. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. The Department may grant an extension of Contract Time in accordance with 8-7.3.2 when determined appropriate in the Department's sole judgment.

No additional compensation or time extension will be paid or granted to the Contractor when the operations are suspended for the following reasons:

1. The Contractor fails to comply with the Contract Documents.
2. The Contractor fails to carry out orders given by the Engineer.
3. The Contractor causes conditions considered unfavorable for continuing the Work.

Immediately comply with any suspension order. Do not resume operations until authorized to do so by the Engineer in writing. Any operations performed by the Contractor, and otherwise constructed in conformance with the provisions of the Contract, after the issuance of the suspension order and prior to the Engineer's authorization to resume operations will be at no cost to the Department. Further, failure to immediately comply with any suspension order will also constitute an act of default by the Contractor and is deemed sufficient basis in and of itself

for the Department to declare the Contractor in default, in accordance with 8-9, with the exception that the Contractor will not have ten calendar days to correct the conditions for which the suspension was ordered.

8-6.1.1 State of Emergency: The Engineer has the authority to suspend the Contractor's operations, wholly or in part, pursuant to a Governor's Declaration of a State of Emergency. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of Contractor's operations. The Department, at its sole discretion, may grant an extension of Contract Time and reimburse the Contractor for specific costs associated with such suspension. Further, in such instances, the Department's determination as to entitlement to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis.

8-6.2 Prolonged Suspensions: If the Engineer suspends the Contractor's operations for an indefinite period, store all materials in such manner that they will not obstruct or impede the traveling public unnecessarily or become damaged in any way. Take every reasonable precaution to prevent damage to or deterioration of the work performed. Provide suitable drainage of the roadway by opening ditches, shoulder drains, etc., and provide any temporary structures necessary for public travel through the project.

8-6.3 Permission to Suspend Contractor's Operations: Do not suspend operations or remove equipment or materials necessary for completing the work without obtaining the Engineer's written permission. Submit all requests for suspension of operations in writing to the Engineer and identify specific dates to begin and end the suspension. The Contractor is not entitled to any additional compensation for suspension of operations during such periods.

8-6.4 Suspension of Contractor's Operations - Holidays and Special Events:
During such suspensions, remove all equipment and materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104. The Contractor is not entitled to any additional compensation for removal of equipment from clear zones or for compliance with Section 102 and Section 104 during such Holiday and Special Event periods.

8-7 Computation of Contract Time.
(Not included)

8-8 Failure of Contractor to Maintain Satisfactory Progress.
(Not included)

8-9 Default and Termination of Contract.

8-9.1 Determination of Default: The following acts or omissions constitute acts of default and, except as to subparagraphs (9 and 11), the Department will give notice, in writing, to the Contractor and his surety for any delay, neglect or default, if the Contractor:

1. fails to begin the work under the Contract within the time specified in the Notice to Proceed;

2. fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure prompt completion of the Contract;
3. performs the work unsuitably, or neglects or refuses to remove materials or to perform anew such work that the Engineer rejects as unacceptable and unsuitable;
4. discontinues the prosecution of the work, or fails to resume discontinued work within a reasonable time after the Engineer notifies the Contractor to do so;
5. becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;
6. allows any final judgment to stand against him unsatisfied for a period of ten calendar days;
7. makes an assignment for the benefit of creditors;
8. fails to comply with Contract requirements regarding minimum wage payments or EEO requirements;
9. fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order; or
10. for any other cause whatsoever, fails to carry on the work in an acceptable manner, or if the surety executing the bond, for any reasonable cause, becomes unsatisfactory in the opinion of the Department.
11. fails to comply with 3-9.
12. fails to timely provide all required insurance policies and to keep the insurance policies in force and effect during the duration of the Contract.

For a notice based upon reasons stated in subparagraphs (1) through (8) and (10): if the Contractor, within a period of ten calendar days after receiving the notice described above, fails to correct the conditions of which complaint is made, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect, or default and the Contractor's failure to correct such conditions, have full power and authority, without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

If the Contractor, after having received a prior notice described above for any reason stated in subparagraph(2), (3), (4), (5), (6) or (8), commits a second or subsequent act of default for any reason covered by the same subparagraph (2), (3), (4), (5), (6), (8), or (12) as stated in the prior notice, and regardless whether the specific reason is the same, then, regardless of whether the Contractor has cured the deficiency stated in that prior notice, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to correct such conditions, have full power and authority, without any prior written notice to the Contractor and without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph (9), if the Contractor fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order, the Department will, upon written certificate from the Engineer of the fact of such delay and the Contractor's failure to correct that condition, have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph (11), if the Contractor fails to comply with 3-9, the Department will have full power and authority, without violating the Contract, to immediately take the

prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

The Department has no liability for anticipated profits for unfinished work on a Contract that the Department has determined to be in default.

Notwithstanding the above, the Department shall have the right to declare the Contractor (or its "affiliate") in default and immediately terminate this Contract, without any prior notice to the Contractor, in the event the Contractor (or its "affiliate") is at any time "convicted" of a "contract crime," as these terms are defined in Section 337.165(1), Florida Statutes. The Department's right to default the Contractor (or its "affiliate") for "conviction" of a "contract crime" shall extend to and is expressly applicable to any and all Department Contracts that were either advertised for bid; for which requests for proposals or letters of interest were requested; for which an intent to award was posted or otherwise issued; or for which a Contract was entered into, after the date that the underlying or related criminal indictment, criminal information or other criminal charge was filed against the Contractor (or its "affiliate") that resulted in the "conviction." In the event the Department terminates this Contract for this reason, the Contractor shall hereby forfeit any claims for additional compensation, extra time, or anticipated profits. The Contractor shall only be paid for any completed work up to the date of termination. Further, the Contractor shall be liable for any and all additional costs and expenses the Department incurs in completing the Contract work after such termination.

8-9.2 Termination of Contract for Convenience: The Department may terminate the entire Contract or any portion thereof, if the Secretary determines that a termination is in the Department's interest. The Secretary will deliver to the Contractor a Written Notice of Termination specifying the extent of termination and the effective date.

When the Department terminates the entire Contract, or any portion thereof, before the Contractor completes all items of work in the Contract, the Department will make payment for the actual number of units or items of work that the Contractor has completed, at the Contract unit price, and such payments will constitute full and complete compensation for such work or items. No payment of any kind or amount will be made for items of work not started.

The Department will consider reimbursing the Contractor for actual cost of mobilization (when not otherwise included in the Contract) including moving equipment to the job where the volume of the work that the Contractor has completed is too small to compensate the Contractor for these expenses under the Contract unit prices.

The Department may purchase at actual cost acceptable materials and supplies procured for the work, that the Department has inspected, tested, and approved and that the Contractor has not incorporated in the work. Submit the proof of actual cost, as shown by receipted bills and actual cost records, at such points of delivery as the Engineer may designate.

Termination of a contract or a portion thereof, under the provisions of this Subarticle, does not relieve the Contractor or the surety of its responsibilities for the completed portion of the Contract or its obligations for and concerning any just claims arising out of the work performed.

All Contractor claims for additional payment, due to the Department's termination of the entire Contract or any portion thereof, must meet the requirements of 5-12.

8-9.3 Completion of Work by Department: Upon declaration of default, the Department will have full power to appropriate or use any or all suitable and acceptable materials and equipment on the site and may enter into an agreement with others to complete the

work under the Contract or may use other methods to complete the work in an acceptable manner. The Department will charge all costs that the Department incurs because of the Contractor's default, including the costs of completing the work under the Contract, against the Contractor. If the Department incurs such costs in an amount that exceeds the sum that would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay the State the amount of the excess.

If, after the ten day notice period and prior to any action by the Department to otherwise complete the work under the Contract, the Contractor establishes his intent to prosecute the work in accordance with the Department's requirements, then the Department may allow the Contractor to resume the work, in which case the Department will deduct from any monies due or that may become due under the Contract, any costs to the Department incurred by the delay, or from any reason attributable to the delay.

8-10 Liquidated Damages for Failure to Complete the Work.

(Not included)

8-11 Release of Contractor's Responsibility.

The Department considers the Contract complete when the Contractor has completed all work and the Department has accepted the work. The Department will then release the Contractor from further obligation except as set forth in his bond, and except as provided in 5-13.

8-12 Recovery of Damages Suffered by Third Parties.

Pursuant to Section 337.18 of the Florida Statutes, when the Contractor fails to complete the work within the Contract Time or within such additional time that the Department may grant, the Department may recover from the Contractor amounts that the Department pays for damages suffered by third parties unless the failure to timely complete the work was caused by the Department's act or omission.

**SECTION 9
MEASUREMENT AND PAYMENT**

9-1 Measurement of Quantities.

(Not included)

9-2 Scope of Payments.

9-2.1 Items Included in Payment: Accept the compensation as provided in the Contract as full payment for furnishing all materials and for performing all work contemplated and embraced under the Contract; also for all loss or damage arising out of the nature of the work or

from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until the end of the original Contract period or subsequent renewal periods; also for all other costs incurred under the provisions of Division I.

**9-2.2 Fuels:
(Not included)**

**9-3 Compensation for Altered Quantities.
(Not included)**

9-4 Deleted Work.

The Department will have the right to cancel the portions of the Contract relating to the construction or maintenance of any acceptable item therein, by making an adjustment in payment to the Contractor of a fair and equitable amount covering the value of all cancelled work less all items of cost incurred prior to the date that the Engineer cancels the work.

9-5 Partial Payments.

**9-5.1 General
(Not included)**

9-5.2 Unsatisfactory Payment Record: In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Department, the Department may disqualify the Contractor from bidding on future Department contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory.

9-5.3 Withholding Payment:

(Not included)

**9-5.4 Release of Retainage After Acceptance:
(Not included)**

**9-5.5 Partial Payments for Delivery of Certain Materials:
(Not included)**

9-5.6 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 Department has 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 Department 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 Department. 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. Submit this certification in the form designated by the Department.

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 Department will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and submits written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30-day period.

The Contractor shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved annual Contract amount, which shall be the original annual Contract amount as may be increased by subsequent Supplemental Agreements.

9-6 Record of Construction Materials.

9-6.1 General: For all construction materials used in the performance of the project, (except materials exempted by 9-6.2), preserve for the Department's inspection the invoices and records of the materials for a period of three years from the date of completion of the project. Apply this requirement when subcontractors purchase materials and obtain the invoices and other materials records from the subcontractors. By providing the materials, the Contractor certifies that all invoices will be maintained for the required period.

9-6.2 Non-Commercial Materials: The provisions of 9-6.1 do not apply to materials generally classed as non-commercial, such as fill materials, local sand, sand-clay, or local materials used as stabilizer.

9-7 Disputed Amounts Due the Contractor.

The Department reserves the right to withhold from the final invoice any disputed amounts between the Contractor and the Department. The Department will release all other amounts due, as provided in 9-8.

9-8 Acceptance and Final Payment.

Submit a completed Department Form# 700-050-21 to the Department within 90 days of submittal of the final invoice. If this Form is not submitted as required, the Department may suspend the Contractor from bidding under the provisions of Florida Administrative Code 14-22.

9-9 Interest Due on Delayed Payments.

The Department will determine and pay any interest due the Contractor for delays in final payment in accordance with Section 337.141 of the Florida Statutes.

9-10 Offsetting Payments.

Section 337.145 of the Florida Statutes, providing for offsetting payments to the Contractor, is hereby made a part of this Contract:

(1) After settlement, arbitration, or final adjudication of any claim of the Department for work done pursuant to a construction or maintenance contract with any party, the Department may offset such amount from payments due for work done on any construction or maintenance contract, excluding amounts owed to subcontractors, suppliers, and laborers, which

it has with the party owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department.

(2) Offsetting any amount pursuant to (1) above shall not be considered a breach of Contract by the Department.