

REQUEST FOR QUALIFICATIONS
FOR
WATER RECLAMATION FACILITY EXPANSION
CONSTRUCTION MANAGER AT RISK

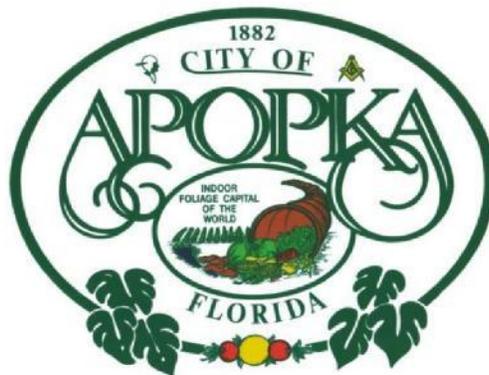
RFQ #2016-08

Closing Date:

Closing Time:

April 7, 2016

2:00 P.M. EST



Date Issued: March 18, 2016

I. INTRODUCTION

The City of Apopka (City) is seeking a qualified Construction Manager at Risk (CMAR) to provide pre-construction and complete construction services for the Apopka Water Reclamation Facility (WRF) Expansion and Renovations. The City intends to award one contract to the highest qualified firm after all SOQs are evaluated and negotiations completed.

The project is to expand the capacity of the City of Apopka WRF from 4.5 mgd AADF to 8.0 mgd AADF while continuing to treat sewage and provide public access reclaimed water to its reclaimed water service area. Expansion to the City of Apopka WRF will occur in two (2) phases referred to throughout as the East Plant Improvements (Phase I) which is the construction of a new 4.0 mgd AADF advanced secondary treatment plant and the West Plant Improvements (Phase II), which includes improvements to the existing WRF facilities include converting the existing Walker Process Package Plant into an equalization basin, modifying the existing advanced secondary treatment plant rerating it to a 4.0 mgd AADF capacity.

TERMS:

The selection process will be conducted in two (2) phases: (1) Competitive selection – ranking of most qualified; and (2) Competitive negotiations – negotiation of Contract with top ranked firms; as provided by Section 287.055, Florida Statutes. An evaluation committee shall select, in order of preference based on the criteria established, a short list of three to five firms deemed to be the most qualified to provide the services required. The selection of the short list will be based on demonstrated competence and qualifications for the type of work included in this project. After a short list determination is made, the selection committee may choose to interview the three to five top ranked firms or proceed directly into negotiations for a contract with the highest rated firm for the required services. The negotiations shall include consideration of compensation and other contract terms and conditions the City determines to be fair and reasonable. In making this determination, the City shall take into account the estimated value, the scope, complexity and nature of the required services. If a satisfactory contract cannot be negotiated with the highest rated firm at a price or on other contract terms, negotiations shall be formally terminated. Negotiations would then be started with the next highest rated firm, in sequence, until an agreement is reached or a determination is made to reject all SOQs.

Services are to be provided based upon the scope of services included in this Request for Qualifications.

A pre-proposal meeting will be held on March 28, 2016 at 1:30 p.m. at the City of Apopka Water Reclamation Facility 748 E Cleveland St Apopka, FL 32703. Although this meeting is not mandatory, it is highly recommended that all interested firms attend. A walk through

of the facility will occur as part of the pre-proposal meeting. Access to the site at other times will be prohibited.

Qualified firms interested in responding may obtain a Request for Qualifications package (the "RFQ Package") from Glenn A. Irby, City Administrator, City of Apopka, P.O. Box 1229, Apopka, Florida 32704.

This RFQ is subject to the "Cone of Silence" (see Section IV.A., page 19) imposing certain restrictions on communications concerning the RFQ process as described in the specifications of the RFQ Package.

Submittals must be received no later than **April 7, 2016** at **2:00 P.M. EST**, and must be clearly marked on the outside "RFQ #2016-08."

Issued by the City of Apopka, Florida

Glenn A. Irby
City Administrator
City of Apopka
P.O. Box 1229
Apopka, Florida 32704

- OR -

120 East Main Street
Apopka, FL 32703

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I. GENERAL INFORMATION

A. PURPOSE

The City of Apopka (City) is seeking a qualified Construction Manager at Risk (CMAR) to provide pre-construction and complete construction services for the Apopka Water Reclamation Facility (WRF) Expansion. The City intends to award one contract to the highest qualified firm after all SOQs are evaluated and negotiations completed.

B. SCOPE OF SERVICES

See Attachment 1.

C. CONTRACT FOR SERVICES

The contract resulting from this solicitation will be in the form of the Construction Management at Risk Agreement that the successful firm will enter into with the City for the pre-construction phase, a copy of which is attached to this RFQ. By submission of a proposal, each firm will be certifying to the City that the contract is acceptable as written, unless exceptions are taken and specific alternate language proposed. The City may consider proposed changes and negotiate terms or conditions if deemed in the interest of the City. However, City reserves the right to reject any SOQ that takes exceptions or proposes alternate language unacceptable to the City.

After selection by the City, an Agreement will incorporate the major terms and conditions for CMAR's performance. The Agreement shall be in the form of a contract, as approved by the City Attorney for legal form and sufficiency, and shall include, but not be limited to, the following matters:

- (1) The services to be provided by the CMAR pursuant to the Agreement shall be non-exclusive and nothing therein shall preclude the City from engaging other firms to perform the same or similar services for the benefit of the City within the City's sole and absolute discretion.
- (2) The CMAR shall warrant that it has not employed or retained any company or person, other than a bona fide employee working solely for the CMAR, to solicit or secure a contract pursuant to the Invitation to Submit Qualifications. Also, that the CMAR has not paid or agreed to pay any person(s), company, corporation, individual, or firm, other than a bona fide employee working solely for the CMAR any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of a contract pursuant to this Invitation to Submit Qualifications
- (3) The Consultant shall be required to warrant and represent that at all times during the term of the Agreement it shall maintain in good standing all required licenses, certifications and permits required under federal, state, and local laws necessary to perform the services.

(4) Insurance Requirements

The selected firm, if any, shall maintain at all times during the term of the agreement, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below.

The firm will provide to the City original Certificates of Insurance satisfactory to the City to evidence such coverage before any work commences. The City of Apopka, a political subdivision of the State of Florida, shall be an additional named insured on all policies related to the project; excluding worker's compensation and professional liability. The policies shall contain a waiver of subrogation against the City of Apopka for workers compensation and general liability.

All insurance coverage shall be written with a company having an A.M. Best Rating of at least the "A" category and size category of VIII. The firm's self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the City. The City requires thirty (30) days written notice of cancellation and fifteen (15) days written notice of non-payment. In the event of any failure by the firm to comply with the provisions, the City may, at its option, on notice to the firm, suspend the project for cause until there is full compliance.

Worker's Compensation and Employer's Liability Insurance providing statutory benefits, including those that may be required by an applicable federal statute:

Admitted in Florida: Yes
Employer's Liability: \$100,000
Disease – Each Employee: \$100,000
Disease – Policy Limit: \$500,000
All States Endorsement Statutory
Voluntary Compensation Statutory

Commercial General Liability Insurance: Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate: \$2,000,000
Products-Completed Operations Aggregate: \$1,000,000
Personal & Advertising Injury: \$1,000,000
Each Occurrence: \$1,000,000

Premises and Operations and Products/Completed Operations: Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically

covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted) and Broad Form Property Damage coverage; Independent Contractors; Delete Exclusion relative to Collapse, Explosion and Underground Property Damage Hazards; Policy must include Separation of Insured's Clause.

Comprehensive Automobile Liability Insurance. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage and personal injury resulting from any one occurrence, including all owned, hired and non-owned vehicles. The policy shall be endorsed to include the following additional insured language: "The City of Apopka shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CMAR, including automobiles owned, leased, hired, or borrowed by the CMAR."

Builders Risk for the total construction cost (contract amount) of the project, and for the entire term of the Contract.

Excess or Umbrella Liability Insurance. Excess of the primary coverage required, in the paragraphs specified above:

Each Occurrence: \$5,000,000
General Aggregate: \$5,000,000

Subcontractors Insurance. The CMAR's certificate(s) shall include all subcontractors as additional insured under its policies or subcontractors shall maintain separate insurance as determined by the CMAR, however, subcontractors insurance limits of liability shall not be less than \$1,000,000 per occurrence/\$2,000,000 aggregate.

Pollution Liability Insurance. Pollution Legal/Environmental Legal Liability Insurance for pollution losses arising from all services performed to comply with this contract. Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage. If policy is written on a Claims Made form, a retroactive date is required, and coverage must be maintained for three (3) years after completion of contract or "tail" coverage must be purchased. Coverage should include and be for the least minimum limits listed below:

1. Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof,

cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;

2. Defense including costs, charges, and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages.
3. Cost of Cleanup/Remediation.

Limits

Per Claim or Occurrence: \$2,000,000

General Aggregate: \$2,000,000

For acceptance of Pollution Legal/Environmental Legal Liability coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Pollution Legal/Environmental Legal Liability and other coverage combined.

For herbicide and pesticide spraying operations only, an endorsement to the Commercial General Liability policy that provides Pollution Liability coverage for herbicide and pesticide spraying is acceptable.

(5) **Indemnification**

CMAR shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend (by counsel reasonably acceptable to City), indemnify and hold harmless the City, their agents, elected officials and employees from and against all claims, actions, liability, losses, costs arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting from or claims to have resulted in whole or in part from any actual or alleged act or omission of the CMAR, any subcontractor, anyone direct or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work; or violation of law, statute, ordinance governmental administration order, rule, regulation or infringement of patent rights by CMAR in the performance of work; or liens, claims or actions made by the CMAR or any subcontractor or other party performing the work.

(6) **Public Entity Crimes Statement**

Responders must comply with Presidential Executive Order Nos. 11246 and 11375, which prohibit discrimination in employment regarding race, creed, color, sex, or national origin; Title VI of the Civil Rights Act of 1962, the Anti-Kickback Act and the Contract Work Hours Standard Act; the provision of the Vietnam Era Veterans Re-Adjustment Act of 1974; and 23 CFR 635.112(f), provision on Non-Collusion.

CMAR shall be required, pursuant to Chapter 278, Florida Statutes, to execute a “Sworn Statement on Public Entity Crimes” prior to the execution of a contract resulting from this request for Qualifications. By executing this sworn statement, the CMAR is affirmatively stating that neither it nor an affiliate (as defined in the statute) has been convicted of a public entity crime, and that it is not barred from entering into the contract. The CMAR shall further acknowledge that any misstatement or misrepresentation of fact, lack of compliance with the statute, or subsequent conviction of a public entity crime shall result in the contract being null and void and/or subject to immediate termination by the City. In the event of such termination, the City shall not incur any liability for any work or materials furnished by the CMAR.

- (7) CMARs shall invoice the City for the project in accordance with the Agreement.
- (8) CMARs shall indemnify and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys’ fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of the CMAR and persons employed or utilized by the CMAR in the performance of the Agreement.
- (9) The CMAR shall pay all royalties and assume all costs arising from the use of any invention, design, process materials, equipment, product or device which is the subject of patent rights or copyrights. CMAR shall, at its own expense, hold harmless and defend the City against any claim, suit or proceeding brought against the City which is based upon a claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished under the contract, constitute an infringement of any patent or copyright of the United States. The CMAR shall pay all damages and costs awarded against the City in such matter.
- (10) An understanding and agreement, by and between the CMAR and the City, that the completion time will be as specified in Agreement and that all work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will ensure full completion thereof as specified in the Scope of Services.

II. SUBMITTAL DUE DATE CONTENT

A. TIME AND LOCATION

Sealed submittals consisting of five (5) complete printed sets and one electronic set (submitted on CD or DVD) must be received at the City of Apopka’s City Clerk’s office in City Hall (120 E. Main St.) no later than **2:00 P.M., April 7, 2016.**

Submittals should be addressed as follows:

Mail delivery:

Linda Goff
City Clerk
City of Apopka
P.O. Box 1229
Apopka, FL 32704

Hand delivery:

Linda Goff
City Clerk
City of Apopka
120 E Maine St.
Apopka, FL 32703

Submittal envelopes should be clearly marked “RFQ #2016-008” and include the title and the name of the entity submitting the SOQ. It is the sole responsibility of the entity submitting the SOQ to see that his/her SOQ is received at the proper time and proper location. SOQs “faxed” to the City shall not be accepted.

SOQs received after the scheduled closing time for receipt of SOQs will be returned unopened to the proposer(s).

B. SUBMITTAL CONTENT

The Respondents interested in performing these described services must display considerable relevant experience with the specified type of work outlined in the Scope of Services and should emphasize both the experience and capability of particular personnel who will actually perform the work.

The attached City forms must be completed and provided with the submittal:

1. Sworn statement pursuant to Section 287.133(3)(a), Florida Statutes, on public entity crimes.
2. Americans with Disabilities Act (ADA) disability nondiscrimination statement.
3. Business Entity Affidavit (vendor/bidder, etc. disclosure).
4. Respondent’s Certification.

C. EFFECT OF SUBMISSION OF QUALIFICATIONS

- (1) Incurred Expenses:

The City is not responsible for any expenses which persons making submittals may incur in preparing and submitting their qualifications or in participating in the RFQ solicitation, selection and negotiation process.

(2) Acknowledgement:

By making a submittal, the respondent certifies that they have fully read and understand the solicitation and have full knowledge of the nature of services which may be required and of the requirements of the RFQ process and agree to abide by such process and City's decisions made therein.

(3) Request for Additional Information:

The respondent shall furnish such additional information as the City of Apopka may reasonably require. This includes information which indicates financial resources as well as ability to provide the services. The City reserves the right to make investigations of the qualifications of the respondent as it deems appropriate, including but not limited to, a background investigation.

(4) Acceptance/Rejection/Modification:

The City reserves the right to negotiate modifications to submittals that it deems acceptable, reject any and all submittals, and to waive irregularities in the procedure.

(5) Addendum or Amendment to Request for Qualifications:

If it becomes necessary to revise or amend any part of this Request for Qualifications, the City Administrator will endeavor to make available the revision by written Addendum to all prospective respondents who received an original Request for Qualifications. Respondents must be diligent to check for any Addendum.

(6) Economy of Preparation:

Submittals should be prepared simply and economically, providing a straightforward, concise description of the respondent's ability to fulfill the requirements. **Submittals shall be limited to 35 pages.**

(7) Proprietary Information:

In accordance with Chapter 119 of the Florida Statutes (Public Records Law), and except as may be provided by other applicable State and Federal Law, all respondents should be aware that the Request for Qualifications and the responses are in public domain. However, the respondents are requested to identify specifically any information contained in their submittals which they consider confidential and which they believe to be exempt from disclosure, citing specifically the applicable exempting law.

All proposals received from respondents in response to this Request for Qualifications will become the property of the City and will not be returned to the respondents. In the event

of contract award, all documentation produced as part of the contract will become the exclusive property of the City, unless otherwise specified in the Contract.

(8) Protest, appeals and disputes:

A contract may not be awarded to a respondent, unless prior to award, the proposed award is posted on the city website ten (10) working days prior to the scheduled award by the City Council. Protest must be submitted in writing to the City Administrator no later than five (5) working days prior to the scheduled award by the City Council. Should the matter not be resolved to the satisfaction of the challenger, the appeal shall be heard by the City Council. The City Administrator shall act as the City's representative, in the issuance and administration of all contracts, and shall issue and receive all documents, notices, and all correspondence. Any documentation not issued by or received by the City Administrator shall be null and void. All costs accruing from a Request for Qualifications or award challenged shall be assumed by the challenger. The decision of the City Council shall be final and conclusive. The City Council's decision shall be binding on all parties concerned, subject to review only on the grounds that it constitutes arbitrary action, in a court of competent jurisdiction in Orange County in accordance with laws of the State of Florida.

D. CONDITIONS OF SUBMITTALS:

- (1) Late Submittals- Submittals received by the City after the time specified for receipt will not be considered. Respondents shall assume full responsibility for timely delivery at the location designated for receipt of submittals.
- (2) Completeness- All information required by the Request for Qualifications must be supplied to constitute a regular submittal.
- (3) Public Closing- The names of respondents will be publicly read into the record on **April 7, 2016 at 2:00 p.m.**, in the City Hall Council Chambers.
- (4) Award Presentation - The City Administrator will present to the City Council for approval of the final ranking of respondents making submittal(s), or rejection of all or some categories of submittals, within one hundred and twenty (120) calendar days from the date of opening of submittals.

III. SELECTION COMMITTEE AND PROCEDURE FOR REVIEW OF SUBMITTALS

- (1) A selection committee (Committee) has been established to review and evaluate all qualifications submitted in response to this Request for Qualifications (RFQ). The

Committee shall conduct a preliminary evaluation of all submittals on the basis of the information provided and other evaluation criteria as set forth in this RFQ or as reasonably determined by the Committee. The factors to be considered by the City in making this finding of qualifications of the respondents are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

- (2) The Committee will review each submittal for compliance with the minimum qualifications and mandatory requirements of the RFQ. Failure to comply with any mandatory requirements will disqualify a submittal.
- (3) The Committee may choose to interview the shortlisted firms or to proceed directly into contract negotiations with the highest ranked firm. Should the selection committee recommend interviews, the City will coordinate with the short-listed firms for an appropriate meeting time and place. Interviews are not anticipated to last longer than 1 hour per firm. The City may provide an agenda or outline and any additional evaluation criteria to be provided to the short-listed firms in advance of the interview. Upon completion of interviews, the short-listed firms will be re-scored based on information provided during the interview to determine the final ranking of the final list of three firms.
- (4) The City intends, but is not obligated, to negotiate fees for the Phase I services with the highest-ranked firm. If an agreement cannot be reached with the highest-ranked firm, the City intends to enter into negotiation with the next lower-ranked firm, or firms, or reject all SOQs. The selection of the firm shall be at the discretion of the City, and the City reserves the right to reject any or all SOQs. Upon completion of negotiations, a contract will be prepared for the selected firm and presented for approval by the City Council. A contract with the successful submitter is formed only after City Council approval of the contract.
- (5) Respondents shall carefully read the information contained in the following criteria and submit a complete SOQ to all questions in paragraphs 1.1, 1.2, 1.3, 1.4 and 1.5 of this section, including executed Exhibits A through I.

1.1 INTRODUCTORY LETTER (No points)

Respondent's Statement of Interest and Availability to Undertake the Project (1-2 pages, not included in total page count). The introductory letter should not exceed two (2) pages, 8½" X 11". The letter shall be on company letterhead including the company name, address, phone number and fax number. The letter should be addressed to the Point of Contact referencing the RFQ. The letter shall be signed, in original ink signature, by an authorized officer of the firm and should contain the following:

1. A statement of interest for the Project including a summary of key points describing the respondent's unique qualifications as they pertain to this particular Project;

2. The availability and commitment of the respondent;
3. The respondent's city and state of its corporate headquarters; and
4. A statement regarding acknowledgement of all issued addenda, if any, and agreement or exception to the Attachment 1 – Background and Scope of Services or in Attachment 2 – CMAR Agreement.

1.2 SUPPLEMENTARY MATERIAL (No Points)

Respondent is required to submit supplementary material as part of the SOQ. Supplementary material will be considered on a pass/fail basis. Respondents should note that a “fail” to these items can preclude any further review of the SOQ if it is determined to be in the best interest of the City. Supplementary material includes:

A. Disclosure of Responsibility Statement of the CMAR firm. SOQ must include a completed Exhibit A for the firm, firm's officers, and those individuals proposed in the SOQ.

B. CMAR Statement of Bonding Capacity from their payment and performance bond provider stating they will bond this project for the budgeted amount of \$55,000,000 plus a 10 percent contingency.

1.3 APPROACH (30 points)

Respondent shall provide a narrative to be included as part of the overall page count discussing the respondents approach to services as described, including involvement/evaluation by subcontractors. Additionally, respondent shall provide discussion of their experience and planning for the following:

A. Cost modeling/budgeting for scope packaging: This project may require division of the total project into multiple GMP packages. As a result, the CMAR will need to define cost/scope packages per available funding limits of the City.

B. Maintenance of plant operations: The WRF will remain operational and at full capacity throughout the duration of the project.

C. Startup and commissioning: Successfully bringing all processes constructed under the Project online and supporting the Plant Staff in the initial operation will be imperative.

D. Other pertinent considerations: Respondent shall add any additional feature or services that will be beneficial to the project with justifications.

1.4 QUALIFICATIONS AND EXPERIENCE OF THE PROJECT TEAM AND THE FIRM

Respondent shall include specific project experience and company data that addresses the following:

A. Experience of the Firm (20 points)

Based on \$30 - \$50+ million dollar municipal water and wastewater projects in the last 10 years. Provide descriptive summaries for five (5) projects related to wastewater improvements and/or expansions completed in the past ten (10) years. SOQ must include a completed Exhibit B – Experience of the Firm for at least five projects, one of which is in Florida. Include specific information on change orders related to project schedule and costs.

B. Proposed Project Team (20 points)

SOQ must include an Organizational Chart reflecting key officers and staff members that would provide services under the CMAR contract.

SOQ must include an Exhibit C – Candidate Summary for each of the following:

1. Proposed Project Manager
2. Proposed Construction Superintendent
3. Proposed Cost Estimator
4. Proposed Scheduler
5. Other Pertinent Staff

Clearly define and describe the role, responsibilities, qualifications, and licensure (if applicable) of each staff member that would provide services under the CMAR contract. Include background and experience to demonstrate the ability to successfully perform the following work:

1. Constructability Reviews
2. Value Engineering
3. Scheduling
4. Cost Estimating
5. Construction Services

Provide references for project team members.

C. CMAR experience (20 points)

Preferred on municipal water and wastewater projects. Provide descriptive summaries for three (3) projects completed under the CMAR Delivery Method. Additional relevant projects considered under the Design/Build Delivery Method may be considered. Relevant projects must be related to wastewater treatment plant improvements/expansions and must have been completed for municipalities or public entities. Include the names of all proposed staff that worked on each relevant project and the position held on the project. SOQ must include a completed Exhibit D – CMAR Experience for at least three (3) projects with at

least one in Florida. Provide references knowledgeable about the work of the Respondent on projects completed under the CMAR Delivery Method within the past ten (10) years. Provide letters of reference if available. Include name, title, company, address, phone number, and email address.

D. Financial Capability (5 points).

SOQ must include a completed Exhibit E, Financial Capability to help determine the Firm's ability to finance the project as presented in this RFQ.

E. Litigation history over the last 5 years (5 points).

SOQ must include a completed Exhibit F – Litigation History for consideration by the City.

F. Subcontractors Selection Plan for Construction Services (5 points).

Firm submitting SOQ is required to provide a proposed Subcontractors Selection Plan for consideration by City, in compliance with Florida Statutes.

G. Current Workload Commitments (5 points).

Firm submitting SOQ must complete Exhibit G – Current Workload Commitments throughout anticipated construction period and include the completed exhibit as part of the SOQ for consideration by the City.

H. Safety History (5 points).

Firm submitting SOQ must complete Exhibit H – Safety History for last 5 years and submit as part of the SOQ along with summary information regarding the Firm's safety program for City's consideration.

1.5 PRESENTATIONS / INTERVIEWS

In the event the City determines interviews are necessary for selection the City will advise the short-listed firms of the time and place. Presentation/Interviews are not anticipated to last longer than 1 hour per firm. The City may provide an agenda or outline in advance of the interview covering any additional evaluation criteria to be addressed by the short-listed firms.

[Remainder of page is intentionally left blank]

IV. QUESTIONS REGARDING SPECIFICATIONS OR SUBMITTAL PROCESS:

A. CONE OF SILENCE:

- (1) **Definition:** “Cone of Silence,” as used herein, means a prohibition on any communication regarding a particular Request for Proposal (“RFP”), Request for Qualification (“RFQ”) or bid, between:
 - (a) a potential vendor, service provider, proposer, bidder, lobbyist, or consultant, and;
 - (b) the City Council members, City’s professional staff including, but not limited to, the City Administrator and his or her staff, any member of the City’s selection or evaluation committee.

- (2) **Restriction Notice:** A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the City Administrator or his or her designee shall provide for public notice of the Cone of Silence by posting a notice at the City Hall. The City Administrator shall issue a written notice thereof to the affected departments, file a copy of such notice with the City Clerk, with a copy thereof to each City Council member, and shall include in any public solicitation for goods or services a statement disclosing the requirements of this section.

- (3) **Termination of Cone of Silence:** The Cone of Silence shall terminate at the beginning of the City Council meeting (whether regular, special or Committee of the Whole meeting) at which the City Administrator makes his or her written recommendation to the City Council. However, if the City Council refers the Administrator’s recommendation back to the Administrator or staff for further review, the Cone of Silence shall be re-imposed until such time as the Administrator makes a subsequent written recommendation.

- (4) **Exceptions to Applicability:** The provisions of this section shall not apply to:
 - (a) Oral communications at pre-proposal meeting;
 - (b) Oral presentations before selection or evaluation committees;
 - (c) Public presentations made to the City Council members during any duly noticed public meeting;
 - (e) Communications in writing at any time with any City employee, unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or respondent shall file a copy of any written communication with the City Clerk. The City Clerk shall make copies available to any person upon request;
 - (f) Communications regarding a particular RFP, RFQ or Bid between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the City employee designated responsible for administering the procurement process for

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

- (g) Communications with the City Attorney and his or her staff;
- (h) Duly noticed site visits to determine the competency of the bidders regarding a particular bid during the time period between the opening of bids and the time the City Administrator makes his or her written recommendation;
- (i) Any emergency procurement of goods or services pursuant to City Code;
- (j) Responses to the City's request for clarification or additional information;
- (k) Contract negotiations during any duly noticed public meeting;
- (l) Communications to enable City staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the City's professional staff including, but not limited to, the City Administrator and his or her staff are in writing or are made at a duly noticed public meeting.
- (m) **Penalties:** Violation of this section by a particular respondent, bidder or proposer shall render any RFP award, RFQ award or bid award to said bidder or proposer voidable by the City Council or City Administrator. Any person who violates a provision of this section may be prohibited from serving on a City selection or evaluation committee. In addition to any other penalty provided herein, violation of any provision of this section by a City employee may subject said employee to disciplinary action.

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

B. ADDENDIUM

It will be the responsibility of the respondent to contact the City Administrator's Office prior to filing a submittal to ascertain if any addenda have been issued, to obtain all such addenda, and to return executed addenda with the submittal.

C. INQUIRIES

Direct inquiries to:

Linda Goff
City Clerk
City of Apopka
120 E. Main St.
Apopka, FL 32704
Telephone: (407) 703-1794

Any and all requests for Additional Information (RAIs) shall be sent to the attention of the above listed person. Deadline for submission of RAIs shall be by the close of business on Monday, March 28, 2016. Responses to all RAIs shall be posted on Demand Star no later than close of business on Thursday, March 31, 2016. Phone calls and emails seeking additional information will not be accepted.

[Remainder of page is intentionally left blank]

THE FOLLOWING ARE REQUIREMENTS OF THIS RFQ, AS INDICATED BELOW, USE OF THIS CHECKLIST MAY HELP ENSURE THAT YOUR SUBMISSION IS COMPLETE.

Place a check mark in the “Done” column as you complete and enclose each item.

Required	Done	Requirements	Found in Section
<input type="checkbox"/>		Licenses & Certifications	Sec. I C (3), Pg. 7
<input type="checkbox"/>		Proof of Insurance	Sec. I C (4), Pg. 8
<input type="checkbox"/>		Copies of proposal	Sec. II A, Pg. 11
<input type="checkbox"/>		Organizational Chart	Sec. III (5) 1.4 (B), Pg. 17
<input type="checkbox"/>		References	Sec. III (5) 1.4 (C), Pg. 17
<input type="checkbox"/>		Respondent’s Certification	Page 23
<input type="checkbox"/>		PEC Form, ADA Statement, & Business Entity Form	Page 24-27

This checklist is for your guidance only and does not necessarily constitute each and every requirement of this RFQ. Please read the entire RFQ thoroughly to ensure that your submission is complete.

 Addendum Received: # # # # # # #

RFQ #2016-___ – RESPONDENTS CERTIFICATION

I have carefully examined the Request for Qualification.

I hereby propose to furnish the services specified in the Request for Qualification. I agree that my submittal will remain firm for a period of at least 120 days in order to allow the City adequate time to evaluate the submittals and determine a ranking of the most qualified firms.

I certify that all information contained in this submittal is truthful. I further certify that I am duly authorized to provide this submittal on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this submittal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation tendering a submittal for the same service; that no officer, employee, or agent of the City of Apopka or any other respondent is interested in said submittal; and that the undersigned executed this Respondent's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

NAME OF BUSINESS

SIGNATURE

NAME & TITLE, TYPED OR PRINTED

MAILING ADDRESS CITY, STATE, ZIP CODE

(____) _____
TELEPHONE NUMBER

(____) _____
FAX NUMBER

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this _____ day
of _____, 2016 by _____
who is personally known to me or produced _____
as identification.

NOTARY PUBLIC, State of _____

Print Name: _____

Commission Expires: _____

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

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

1. This sworn statement is submitted to the CITY OF APOPKA, FLORIDA by: _____
(print individual's name and title)
for: _____
(print name of entity submitting sworn statement)
whose business address is: _____
and (if applicable) its Federal Employer Identification Number (FEIN) is: _____
(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____ - _____ - _____.)
2. **I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft bribery, collusion, racketeering, conspiracy, or material misrepresentations.**
3. **I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.**
4. **I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:**
 1. A predecessor or successor of a person of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of **the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime Florida during the preceding 36 months shall be considered an affiliate.**

5. **I understand that a “person” as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or **supplies to transact business with a public entity. The term “person” includes those officers,** directors, executives, and partners. Shareholders, employees, members, and agents who are active in management of an entity.**
6. Based on information and brief, the statement, which I have marked below, is true in relations to the entity submitting this sworn statement. (Indicate which statement applies).
- Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
 - The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
 - The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (attach a copy of the final order).

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

Signature

STATE OF _____
COUNTY OF _____

Sworn to and subscribed before me this _____ day _____, 20____.
 Personally known Produced identification _____

Notary Public- State of _____

Printed name

[Seal]

**AMERICANS WITH DISABILITIES ACT (ADA)
DISABILITY NONDISCRIMINATION STATEMENT**

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

This sworn statement is submitted to the CITY OF APOPKA, FLORIDA by:

_____ *(Print individual's name and title)*

for: _____

(Print name of entity submitting sworn statement)

Whose business address

is: _____

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

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

I, being duly first sworn state:

That the above named firm, corporation or organization is in compliance with and agreed to continue to comply with, and assure that any subcontractor, or third party contractor under this project complies with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and services, transportation, communications, access to facilities, renovations, and new construction.

The American with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 USC 1210112213 and 47 USC Sections 225 and 661 including Title I, Employment; Title IV, Telecommunications; and Title V, Miscellaneous Provisions.

The Florida Americans with Disabilities Accessibility Implementation Act of 1993, Section 553.501-553.513, Florida Statutes:

The Rehabilitation Act of 1973, 229 USC Section 794;

The Federal Transit Act, as amended 49 USC Section 1612;

The Fair Housing Act as amended 42 USC Section 3601-3631.

Signature

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this _____ day _____, 20____.

Personally known Produced identification _____

Notary Public- State of _____

Printed Name [Seal]

BUSINESS ENTITY AFFIDAVIT
(VENDOR / BIDDER DISCLOSURE)

I, _____, being first duly sworn state:

The full legal name and business address of the person(s) or entity contracting or transacting business with the City of Apopka (“City”) are (Post Office addresses are not acceptable), as follows:

Federal Employer Identification Number (If none, Social Security Number)

Name of Entity, Individual, Partners or Corporation

Doing Business As (If same as above, leave blank)

Street Address Suite City State Zip Code

OWNERSHIP DISCLOSURE AFFIDAVIT

1. If the contract or business transaction is with a corporation, the full legal name and business address shall be provided for each officer and director and each stockholder who holds directly or indirectly five percent (5%) or more of the corporation’s stock. If the contract or business transaction is with a trust, the full legal name and address shall be provided for each trustee and each beneficiary. All such names and addresses are (Post Office addresses are not acceptable), as follows:

<u>Full Legal Name</u>	<u>Address</u>	<u>Ownership</u>
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

2. The full legal names and business address of any other individual (other than subcontractors, material men, suppliers, laborers, or lenders) who have, or will have, any interest (legal, equitable, beneficial or otherwise) in the contract or business transaction with the City are (Post Office addresses are not acceptable), as follows:

Signature of Affiant

Date

Print Name

STATE OF _____
COUNTY OF _____

Sworn to and subscribed before me this _____ day _____, 20____.
 Personally known Produced identification _____

Notary Public- State of _____

Printed Name

[Seal]

EXHIBITS TO THE REQUEST FOR QUALIFICATIONS (RFQ)

EXHIBIT A: DISCLOSURE OF RESPONSIBILITY STATEMENT

EXHIBIT B: EXPERIENCE OF THE FIRM

EXHIBIT C: CANDIDATE SUMMARY

EXHIBIT D: CMAR EXPERIENCE

EXHIBIT E: FINANCIAL CAPABILITY

EXHIBIT F: LITIGATION HISTORY

EXHIBIT G: CURRENT WORKLOAD COMMITMENTS

EXHIBIT H: SAFETY HISTORY

ATTACHMENT NO. 1 BACKGROUND AND SCOPE OF SERVICES

ATTACHMENT NO. 2 PRE-CONSTRUCTION SERVICES CONTRACT

EXHIBIT B – SUBMITTAL REQUIREMENTS FOR THE GMP

ATTACHMENT NO. 3 FDEP SUPPLEMENTARY CONDITIONS

EXHIBIT A

DISCLOSURE OF RESPONSIBILITY STATEMENT

CONSTRUCTION MANAGER AT RISK
PROCUREMENT

This disclosure statement shall be executed with regard to the proposers firm, firm's officers and those individuals proposed in the SOQ. Proposer shall attach additional pages as necessary to document their response(s).

1. List any convictions of any person, subsidiary, or affiliate of the company, arising out of obtaining, or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

2. List any convictions of any person, subsidiary, or affiliate of this company for offenses such as embezzlement, theft, fraudulent schemes, etc. or any other offenses indicating a lack of business integrity or business honesty which affects the responsibility of the contractor.

3. List any convictions or civil judgments under state or federal antitrust statutes.

4. List any violations of contract provisions such as knowingly (without good cause) to perform, or unsatisfactory performance, in accordance with the specifications of a contract.

5. List any prior suspensions or debarments by any governmental agency.

EXHIBIT A

(Continued)

I, _____, as _____
Name of individual Title & Authority

of _____, declare under oath that
Company Name

the above statements, including any supplemental responses
attached hereto, are true.

Signature

State of _____

City of _____

Subscribed and sworn to before me on this _____ day of _____

by _____ representing him/herself to be

_____ of the company named herein.

Notary public

My Commission expires:

Residing at:

EXHIBIT B
EXPERIENCE OF THE FIRM

CITY OF APOPKA, FLORIDA
REQUEST FOR QUALIFICATIONS
APOPKA WRF EXPANSION
CONSTRUCTION MANAGER AT RISK

Name of Firm:

Use a separate sheet for each contract.

1.	Contract Number:
	Contract Name:
2.	Name of Project Owner:
3.	Address of Project Owner:
4.	Contact Name, Title and Phone Number:
5.	Contract role (check one): <input type="checkbox"/> Sole/Prime Contractor <input type="checkbox"/> Subcontractor
6.	Value of the Total Contract/Subcontract:
7.	Date of Award:
8.	Date of Completion:
9.	Contract/Subcontract Duration (years and months): _____years_____months
10.	For sole/prime contractors, indicate the approximate US\$ amount and nature of substantial work (more than 20% in contract value) undertaken by subcontract, if any.
11.	For sole/prime contractors, indicate the approximate US\$ amount and nature of substantial work (more than 20% in contract value) undertaken by subcontract, if any.

**EXHIBIT B
EXPERIENCE OF THE FIRM**

(Continued)

EXHIBIT C
CANDIDATE SUMMARY

CITY OF APOPKA, FLORIDA
REQUEST FOR QUALIFICATIONS
APOPKA WRF EXPANSION
CONSTRUCTION MANAGER AT RISK

Candidate Name:

Position:	Candidate: <input type="checkbox"/> Prime <input type="checkbox"/> Alternate	
<i>Candidate Information</i>	1. Name of Candidate:	2. Certifications/Licenses:
	3. Professional Qualifications (that apply to this project):	

EXHIBIT C
CANDIDATE SUMMARY

(Continued)

Present 4. Name of Employer:
Employment

Address of Employer:

Telephone: _____ Contact (manager/personnel officer): _____

Fax: _____ E-mail: _____

Job Title of Candidate: _____ Years with Present Employer: _____

Summarize professional experience over the last 10 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the Project. Attach candidate's resume up to 2-pages in length to this form.

<i>From</i>	<i>To</i>	<i>Company / Project / Position / Relevant technical and management experience</i>

EXHIBIT D
CONSTRUCTION MANAGER AT RISK EXPERIENCE

CITY OF APOPKA, FLORIDA
REQUEST FOR QUALIFICATIONS
APOPKA WRF EXPANSION
CONSTRUCTION MANAGER AT RISK

Firm Name:

Use a separate form for each project. Each project description shall not exceed two (2) pages.

1.	CMAR Contract Number:
	CMAR Contract Name:
2.	Name of Project Owner:
3.	Address and Phone Number of Project Owner:
4.	Contact Name, Title and Phone Number:
5.	Contract Role (check one): <input type="checkbox"/> Sole/Prime CMAR <input type="checkbox"/> CMAR Subcontractor
6.	Value of the total CMAR contract/subcontract:
7.	Date of Award:
8.	Date of Completion:
9.	CMAR Contract/subcontract duration (years and months): _____ years _____ months
10.	Indicate whether the project schedule was met or the specific project schedule changes and costs for the project...
11.	For sole/prime CMAR contractors, indicate the approximate US\$ amount and nature of substantial work (more than 20% in contract value) undertaken by subcontract, if any.
12.	Nature of works and special features relevant to the contract for which the Applicant wishes to qualify:

EXHIBIT E FINANCIAL CAPABILITY

CITY OF APOPKA, FLORIDA
REQUEST FOR QUALIFICATIONS

APOPKA WRF EXPANSION
CONSTRUCTION MANAGER AT RISK

Firm Name:

Applicants should provide financial information to demonstrate that they meet the requirements stated in the RFQ. If necessary, use separate sheets to provide complete banker information. A copy of the audited balance sheets should be attached.

Banker Name of Banker:

Address of Banker:

Telephone:

Contact Name and Title:

Fax:

Telex:

Summarize actual assets and liabilities in US\$ for the previous five years. Based upon known commitments, summarize projected assets and liabilities in US\$ for the next two years.

Financial information US\$	Actual: previous five years					Projected: next two years	
	1	2	3	4	5	6	7
1. Total assets							
2. Current assets							
3. Total liabilities							
4. Current liabilities							
5. Profits before taxes							
6. Profits after taxes							

**EXHIBIT E
FINANCIAL CAPABILITY**

(Continued)

Specify proposed sources of financing to meet the cash flow demands of the Project, net of current commitments specified in the RFQ.

Source of Financing	Amount (US\$)
1.	
2.	
3.	
4.	

Attach audited financial statements for the last five years.

Firms owned by individuals and partnerships may submit their balance sheets certified by a registered accountant and supported by copies of tax returns, if audits are not required by the laws of their states of origin.

**EXHIBIT G
CURRENT WORKLOAD COMMITMENTS**

**CITY OF APOPKA, FLORIDA
REQUEST FOR QUALIFICATIONS
APOPKA WRF EXPANSION
CONSTRUCTION MANAGER AT RISK**

Firm Name:

Applicants should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which a final completion certificate has yet to be issued throughout construction period.

Name of Contract	Value of Outstanding Work (current US\$)	Estimated Completion Date
1.		
2.		
3.		
4.		
5.		
6.		

EXHIBIT H
SAFETY HISTORY

CITY OF APOPKA, FLORIDA
REQUEST FOR QUALIFICATIONS
APOPKA WRF EXPANSION
CONSTRUCTION MANAGER AT RISK

Firm Name:

Applicants shall complete this form with the requested statistics as well as attach summary information regarding the applicant's safety program.

Year	Overall Experience Rate	Lost Time Accident (LTA) Rate	Number of Federal & State Safety Citations
Industry Average			

ATTACHMENT NO. 1
CITY OF APOPKA, FLORIDA
REQUEST FOR QUALIFICATIONS
APOPKA WRF EXPANSION
CONSTRUCTION MANAGER AT RISK
BACKGROUND AND SCOPE OF SERVICES

1.1 BACKGROUND / SCOPE

A. Project construction is currently planned to begin in October 2016 with an estimated construction period of approximately 24 months. The preliminary project construction budget is estimated at approximately \$48 million.

The project is to expand the capacity of the City of Apopka WRF from 4.5 mgd AADF to 8.0 mgd AADF while continuing to treat sewage and provide public access reclaimed water to its reclaimed water service area. Expansion to the City of Apopka WRF will occur in two (2) phases referred to throughout as the East Plant Improvements (Phase 1) which is the construction of a new 4.0 mgd AADF advanced secondary treatment plant and the West Plant Improvements (Phase 2), which includes improvements to the existing WRF facilities include converting the existing Walker Process Package Plant into an equalization basin, modifying the existing advanced secondary treatment plant rerating it to a 4.0 mgd AADF capacity.

The project includes but is not limited to the following:

East Plant Improvements (Phase 1)

- Construction of a new advanced secondary treatment plant with a 4.0 mgd AADF/8.0 mgd PHF capacity.
- Construction of a biological treatment reactor designed for nitrogen removal.
- Construction of a clarifier splitter box.
- Construction of two (2) 85-ft diameter secondary clarifiers.
- Construction of a RAS/WAS pump station.
- Construction of a granular media or cloth disk filter system.
- Construction of chlorine rapid mix basins.
- Construction of a chlorine contact tank.
- Construction of an effluent pump station.
- Construction of chemical storage and feed facilities.
- Installation of new reuse pumps.

- Construction of an in-plant pump station.
- Construction of a new dewatering building.
- Construction of aerobic digesters
- Construction of a thermal drying system.
- Construction of a new generator/MCC building.
- Construction of a biosolids area MCC building.
- Construction of a new air compressor/MCC building
- Furnish, install, connect and test all piping and underground facilities as shown on the drawings.
- Furnish, install, connect and test all electrical motor controls and other controls and all electrical conduits and wiring required for the complete facility.
- Furnish, install, connect and test instrumentation, control hardware and SCADA system.
- Restore the site to a condition that is equal or better than the condition of the site before construction began.
- Construct Site Work including pavement, grading, sidewalks, grassing, and stormwater management facilities.
- Removal and disposal in a legal manner of the wood and charcoal debris found on the East plant site.
- Construction of a new addition to the Laboratory Building, replacing the existing Operations Building on the WRF site (Note: this work will occur on the West Plant but to be completed in conjunction with the East Plant to provide a complete and functional system).

West Plant Improvements (Phase 2)

- Construction of a 4.0 mgd AADF/8.0 mgd PHF preliminary treatment structure including screening and grit removal.
- Remove debris and clean existing preliminary treatment structure.
- Installation of two (2) odor control systems.
- Modifying the existing Walker Process Packaged Plant to provide flow equalization including the following:
 - Demolition of internal components of existing package plant.
 - Installation of coarse bubble diffused aeration system.
 - Installation of submersible equalization pumps and flow meters.
 - Removing and refurbishing the existing three (3) centrifugal blowers and relocating them to a new blower building. Installation of three (3) new positive displacement blowers for the equalization basin.
- Rerating the existing loop aeration plant to 4.0 mgd AADF/6.0 mgd MDADF by providing the following modifications and additions:

- Construction of anoxic tanks upstream of the existing loop aeration system.
- Installation of fine bubble diffusers in the existing ditches.
- Construction of a blower/MCC building.
- Construction of an additional 65-ft diameter secondary clarifier.
- Construction of a RAS/WAS pump station.
- Modification of the existing in-plant lift station by providing the following:
 - Installation of a new hatch on the existing Plant Drain Pump Station, clear out debris and settled solids, inspect the tank interior, and coat the tank interior.
- Conversion of the existing aerobic digester into a sludge holding tank.
- Piping modifications and construction of a substandard reclaimed water flow metering station.
- Construction of a thermal drying system.
- Construction of a new generator/MCC building.
- Construction of a new blower/MCC building
- Abandon yard pipe as shown in drawings and specified herein.
- Furnish, install, connect and test all piping and underground facilities as shown on the drawings.
- Furnish, install, connect and test all electrical motor controls and other controls and all electrical conduits and wiring required for the complete facility.
- Furnish, install, connect and test instrumentation, control hardware and SCADA system.
- Restore the site to a condition that is equal or better than the condition of the site before construction began.
- Construct Site Work including pavement, grading, sidewalks, grassing, and stormwater management facilities.

B. Construction activities must be planned and executed so that the facility remains in operation and in full compliance with existing permit requirements. The WRF must achieve compliance with the Florida Department of Environmental Protection (FDEP) permit requirements no later than October 1, 2018. The CMAR will be required to complete the construction and commissioning portion of Phase 1 of the project to allow permit compliance by that date. Phase 2 of the Project shall be completed by March 1, 2019.

C. The project is funded through the FDEP State Revolving Fund (SRF) Program and the FDEP Supplementary Conditions shall apply to the pre-construction and construction phase services. See Attachment 3.

D. The City's in conjunction with Tetra Tech, the Project Professional for the Project, are currently working through the detailed design concepts.

1.2 CMAR METHODOLOGY

A. GENERAL

The intent is to establish a relationship of trust and confidence between the CMAR, the Designers and the City. The Project will be an “Open Book” job, whereby the City may attend any and all meetings and bid openings relating to the project and have access to any and all books, accounts, and records of the CMAR relating to the Project.

The City will contract for the CMAR services in phases. The City anticipates at minimum two phases with agreements and fee negotiations for each. For Phase I, the CMAR will start by providing pre-construction services during the design phase of the project. It is anticipated that design will be 60 percent complete at the beginning of Phase I. At the completion of the design or at any point in Phase I prior to construction, as may be required by the City, the CMAR will be requested to provide a Guaranteed Maximum Price (GMP) to act as General Contractor for the construction and assume the risk of delivering the project on schedule at or under the GMP. Acceptance of the GMP by the City will initiate Phase II, which will include complete construction services for the actual completion of the project. The City reserves the right to phase work and/or use a fast track approach requiring multiple GMPs of the CMAR if deemed appropriate in Phase II. It is possible that the phases may overlap. Acceptance of the GMP will be reflected in the contract in an amendment that incorporates the construction provisions and scope limits of the contract. The City reserves the right to end the CMAR’s services at the completion of Phase I, and continue with another procurement if deemed in the best interests of the City. If this occurs, the CMAR shall be paid at the agreed upon fee for services rendered for Phase I.

Work performed directly by the CMAR during the construction services shall be limited to no more than 50% of the GMP. For any construction work that will be performed by the CMAR, bids or request for proposals shall be submitted to and reviewed by the City.

B. PHASE I – PRE-CONSTRUCTION SERVICES

The CMAR will be responsible during Phase I for working with the Project Team including the Design Professional and the City. Phase I services will generally proceed concurrently with finalization of detailed design of the project elements and may include but is not limited to the following:

- Team building/partnering (meetings)
- Project scheduling/management
- Construction sequencing
- Value analysis/engineering at 60% design milestone
- Constructability reviews at 60% and 90% design milestones
- Cost model/budgeting at 60% and 90% design milestones
- Estimating/price guarantees (Development of GMP’s)
- Assistance with permitting
- Bid package coordination/strategy (subcontracting)

- Identification and ordering strategy of long lead-time materials
- Subcontractor pre-qualifications
- Change order mitigation review
- Continuity of plant operations planning.

C. PHASE II – CONSTRUCTION SERVICES

If selected to continue as the General Contractor in Phase II, the CMAR shall be responsible for construction means, methods, sequencing, scheduling and coordination, and shall solicit bids from pre-qualified subcontractors to perform the work. The FDEP Supplementary Conditions shall be incorporated in to each contract that is bid.

Work performed directly by the CMAR during the construction services shall be limited to no more than 50% of the GMP. For any construction work that will be performed by the CMAR, bids or request for proposals shall be submitted to and reviewed by the City.

For the purposes of this section, the total contract price for construction does not include the cost of pre-construction services, design services or any other related services or the cost to procure any right-of-way or other cost of condemnation. Note: construction work in Phase II may be completed in multiple GMP packages. Services include but are not limited to the following:

- Team management/coordination and meetings
- Scheduling, updates and planning
- Site management such as project control, site housekeeping, and construction materials waste management
- Construction
- Scheduling/submittal process
- Cost control/change order management
- Subcontracting
- Equipment/materials submittals and procurement
- Field management
- Inspection coordination
- Project record keeping and record documents
- Safety programs
- Quality Control programs
- Project start-up/commissioning
- Project close out
- Warranty period services.

ATTACHMENT NO. 2

CONSTRUCTION MANAGER AT RISK AGREEMENT

BETWEEN

THE CITY OF APOPKA

AND

THIS AGREEMENT made and entered by and between the **City of Apopka**, a Florida municipal corporation, hereinafter designated the “City” and _____ hereinafter designated the “Construction Manager at Risk” or “CMAR.”

RECITALS

- A.** This Contract has been procured pursuant to the applicable requirements of the City of Apopka Code and State law.
- B.** The City intends to construct a Water Reclamation Facility Expansion Project as more fully described in Exhibit A attached, hereafter referred to as the “Project.”
- C.** To undertake the design of said Project the City has entered into a contract with Tetra Tech Inc., hereafter referred to as the “Design Professional.”
- D.** The CMAR has represented to the City the ability to provide pre-construction phase services and, if approved by the City, to enter into a contract or amendment to construct the Project.
- E.** Based on this representation, the City intends to enter into a contract with the CMAR for the pre-construction phase services identified in this contract. At the end of the design phase, at the City’s discretion, the City may enter into a separate construction contract or amendment to this Agreement with the CMAR for construction phase services.

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CMAR as follows:

ARTICLE 1 DEFINITIONS

Addenda - Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement (Contract) – This written document signed by the City and CMAR covering the pre-construction phase of the Project, and including other documents itemized and referenced in or

attached to and made part of this Contract.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the City and CMAR, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other contract terms.

City (Owner) - The City of Apopka, a Florida municipal corporation, with whom CMAR has entered into this Contract and for whom the services is to be provided pursuant to said Contract.

Construction Contract Time(s) - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.

Construction Documents – The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

Construction Fee – The CMAR's administrative costs, home office overhead, and profit, whether at the CMAR's principal or branch offices.

Construction Manager at Risk (CMAR) - The firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract.

Contingency, CMAR's - A fund to cover cost growth during the Project used at the discretion of the CMAR usually for costs that result from Project circumstances. The amount of the CMAR's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CMAR's Contingency is described in Article 2.

Contingency, Owner's – A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by the City and will be in addition to the project costs included in the CMAR's GMP packages. Use and management of the Owner's Contingency is described in Article 2.

Contract Amount - The cost for services for this Contract as identified in Article 4.

Contract Documents - means the following items and documents in descending order of precedence executed by the City and the CMAR: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

Cost of the Work - The direct costs necessarily incurred by the CMAR in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by City), materials testing, and related items. The Cost of the Work shall not include the CMAR's Construction Fee, General Conditions Cost, or taxes.

Critical Path Schedule - The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

Day - Calendar day unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CMAR in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by the CMAR during the pre-construction phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Professional - The qualified, licensed person, firm or corporation who furnishes design and construction administration services required for the Project.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CMAR during the construction phase and which have been prepared or approved by the Design Professional and the City. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. detailed design Drawings at 60%, 90% or 100%, construction documents), but “*not for construction*”. Shop Drawings are not Drawings as so defined.

Float - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

General Conditions Costs – Includes, but is not limited to the following types of costs for the CMAR during the construction phase: job office personnel, job officer and temporary facilities and office materials, supplies and equipment, including payroll costs for project manager or construction manager for Work conducted for the project; payroll costs for the superintendent and full-time general foremen for work conducted at the site; payroll costs for other management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); costs of offices and temporary facilities including office materials, office supplies, office equipment utilized at the site; utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CMAR or Subcontractors; and fees for licenses.

Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the Work including the CMAR’s Construction Fee, General Conditions Costs, sales tax, and CMAR Contingency.

GMP Plans and Specifications – The three sets of plans and specifications provided pursuant to Article 2 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CMAR submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article

2 of this Contract.

Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Notice to Proceed (NTP) - A written notice given by City to the CMAR fixing the date on which the CMAR will start to perform the CMAR's obligations under this Contract.

Payment Request - The form that is accepted by the City and used by the CMAR in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the City.

Project - The works to be completed in the execution of this Contract as described in the Recital above and Exhibit "A" attached.

Project Team - Pre-construction phase services team consisting of the Design Professional, CMAR, Project Manager, City's representatives and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) - Document specified in the construction phase Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Progress Schedule depending on if the Progress Schedule is cost-loaded or not.

Shop Drawings - All drawings, diagrams, schedules and other data specifically prepared for the Work by the CMAR or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site - The land or premises on which the Project is located 748 E Cleveland St. Apopka, FL 32703.

Specifications - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subconsultant - A person, firm or corporation having a contract with the CMAR to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor - An individual or firm having a direct contract with the CMAR or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the pre-construction phase services or construction phase Work at the site for which the CMAR is responsible. Subcontractors will be selected through the Subcontractor Selection process described in Article 2 of this Contract.

Substantial Completion - When the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by City Fire Chief and local authorities (Certificate of Occupancy); (ii) Elevator Permit; (iii) all systems in place, functional, and displayed to the City or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by

the City; (vi) draft O&M manuals and record documents reviewed and accepted by the City; (vii) City operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); (ix) landscaping and site work; and (x) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to the Construction Phase contract.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CMAR or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CMAR or any Subcontractor.

Work - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

ARTICLE 2 BASIC PRE-CONSTRUCTION PHASE SERVICES

GENERAL

A. The CMAR, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Apopka, Florida would exercise at such time, under similar conditions. The CMAR will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.

B. Program Evaluation: As a participating member of the Project Team, the CMAR will provide to the City and Design Professional a written evaluation of the City's Project Program and Project Budget, and site design plan each in terms of the other, with recommendations as to the appropriateness of each.

C. Project Meetings: The CMAR will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.

D. The CMAR will provide pre-construction phase services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CMAR will promptly notify the City in writing whenever the CMAR determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

E. The CMAR, when requested by the City, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings, germane to the Project. The CMAR will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

CONSTRUCTION MANAGEMENT PLAN

A. If requested by the City, the CMAR will prepare a Construction Management Plan (CMP), which may include the CMAR's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.

B. The CMAR may add detail to its previous version of the CMP to keep it current throughout the pre-construction phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional or the CMAR, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

PROJECT SCHEDULE

A. The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CMAR will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise in writing by the City. The CMAR will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.

B. The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

C. The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.

D. The CPM diagram schedule shall indicate all relationships between activities.

E. The activities making up the schedule shall be sufficient detail to assure that adequate planning has

been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

F. The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.

G. The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

H. The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CMAR activities.

I. The schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.

J. Float time shall be as prescribed below:

1. The total Float within the overall schedule, is not for the exclusive use of either the City or the CMAR, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.

2. The CMAR shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.

3. Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CMAR, etc.). In such an event, the CMAR shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

K. The Project Schedule will be updated and maintained by the CMAR throughout the pre-construction phase such that it will not require major changes at the start of the construction phase to incorporate the CMAR's plan for the performance of the construction phase Work. The CMAR will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CMAR will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

L. Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CMAR will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CMAR will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market

conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

DESIGN DOCUMENT REVIEWS

A. The CMAR will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.

B. The CMAR will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CMAR to construct the Project. Before initiating construction operations, the CMAR may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.

C. The CMAR will meet with the Project Team as required to review designs during their development. The CMAR will familiarize itself with the evolving documents through the various design phases. The CMAR will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CMAR will furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CMAR will recommend cost effective alternatives.

D. The CMAR will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.

1. Constructability Reviews: The CMAR will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.

2. Bidability Reviews: The CMAR will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.

3. The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications

with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CMAR will meet with the City and Design Professional to discuss any findings and review reports.

4. The CMAR's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CMAR.

E. Notification of Variance or Deficiency: It is the CMAR's responsibility to assist the Design Professional in ascertaining that, in the CMAR's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.

F. Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CMAR in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CMAR will include the cost of the alternatives into the cost estimate and any GMP Proposals.

COST ESTIMATES

A. Unless otherwise agreed by both parties, within 14 days after receipt of the documents for the various phases of design, the CMAR shall provide a complete and detailed cost estimate and a written review of the documents. The cost estimate should include all cost categories included in the GMP Summary identified in Exhibit "B" attached. The Design Professional and CMAR shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.

B. If any estimate submitted to the City exceeds previously accepted estimates or the City's Project budget, the CMAR shall make appropriate recommendations on methods and materials to the City and Design Professional that he believes will bring the project back into the Project budget.

C. In between these milestone estimates, the CMAR shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CMAR to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.

D. If requested by the City, the CMAR shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

A. The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit "B" attached). Due to the potential for the City to update procedures without notice, CMAR must verify with the City the current Exhibit "B" requirements and procedures when entering into these services.

B. The City may request a GMP Proposal for all or any portion of the Project and at any time during the pre-construction phase. Any GMP Proposals submitted by the CMAR will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

C. Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

1. The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.

2. The General Conditions Costs are a firm fixed lump sum amount which will include bonds and insurance premiums based on the full contract price for construction.

3. The Construction Fee is a firm fixed lump sum.

4. CMAR's Contingency is an amount the CMAR may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. CMAR's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.

5. Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

D. Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CMAR, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CMAR at the time that Owner's Contingency is used.

E. GMPs are cumulative except for CMAR Contingency. The amount of CMAR Contingency for each GMP amendment will be negotiated separately and shall reflect the CMAR's risk from that point in the project forward. CMAR Contingency may not be moved from one GMP to another without written approval of the City.

F. The CMAR, in preparing any GMP Proposal, will obtain from the Design Professional, three sets of signed, sealed, and dated plans and specifications (including all addenda). The CMAR will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CMAR will mark the face of each document of each set upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications. The CMAR will send one set of those documents to the City's Project Manager, keep one set and return the third set to the Design Professional.

G. An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of Article 2.

H. GMP savings resulting from a lower actual project cost than anticipated by the CMAR remaining at the end of the project will revert to City.

GMP PROPOSAL(S) REVIEW AND APPROVAL

- A. The CMAR will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of the statement of basis, the CMAR shall identify and justify any costs that are significantly different than the latest cost estimate provided by the CMAR. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CMAR will make adjustments as necessary to the GMP Proposal, its basis or both.
- B. The City upon receipt of any GMP proposal from the CMAR, will have 14 calendar days to either accept or reject the GMP, or enter into negotiations with the CMAR on the GMP. The City will notify the CMAR in writing whether it accepts or rejects the GMP Proposal.
- C. If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CMAR. The CMAR will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

SUBCONTRACTOR AND SUPPLIER SELECTIONS

- A. The selection of Subcontractors and Suppliers may occur prior to submission of a GMP Proposal. Subcontractors shall be selected based on a combination of qualifications and price, in accordance with the Subcontractor Selection Plan submitted by the CMAR. Except as noted below, the selection of Subcontractors/Suppliers is the responsibility of the CMAR. In any case, the CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers. All Subcontractor/Supplier Selections must comply with the Selection Plan, the City Code and State law.
- B. The CMAR shall apply the approved Subcontractor Selection Plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation. The CMAR must receive City approval of the selected Subcontractor(s)/Supplier(s).
- C. The CMAR will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
- D. The CMAR may self-perform portions of the Work, subject to the approval of the City, and if not in conflict with the Subcontractor Selection Plan. The CMAR will be required to prepare two different reports on the subcontracting process.

1. Within fifteen Days after each Subcontractor/Supplier selection, the CMAR will prepare a report

for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name and qualifications of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each subcontractor, and (d) trade work and its cost that the CMAR intends to self-perform, if any.

2. Upon completion of the Subcontractor/Supplier selection process, the CMAR shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.

- E. The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- F. Promptly after receipt of the Notice of Intent to Award from CMAR, the City will conduct a pre-award conference with the CMAR and other Project Team members. At the pre-award conference, the CMAR will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CMAR's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CMAR Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

ARTICLE 3 PERIOD OF SERVICES

- A. The pre-construction phase services described in this Contract will be performed by CMAR in accordance with the most current update/revised Project Schedule. Failure on the part of the CMAR to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.
- B. Upon failure to adhere to the approved schedule, City may provide written notice to CMAR that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CMAR's receipt of such notice.

ARTICLE 4

CONTRACT AMOUNT AND PAYMENTS CONTRACT AMOUNT

A. Based on the pre-construction phase services fee proposal submitted by the CMAR and accepted by the City (which by reference is made a part of this Contract); the City will pay the CMAR a fee not to exceed \$_____.

PAYMENTS

- A. Requests for monthly payments by the CMAR for pre-construction phase services will be submitted on the City's "Contract Payment Request" form and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum,

a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

- B. The CMAR will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CMAR has received payment for those services from the City. In no event will the City pay more than 90 percent of the Contract Amount until final acceptance of the all pre-construction phase services, and award of the final approved GMP for the entire Project by City Council. In the event that the City rejects the GMP, City shall pay to the CMAR the remaining amounts due under this Contract within 30 days of the final rejection of the GMP.
- C. The CMAR agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CMAR to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.
- D. If any service(s) executed by the CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CMAR, the CMAR is to be paid for the services performed prior to the abandonment or suspension.

ARTICLE 5 CITY'S RESPONSIBILITIES

A. The City, at no cost to the CMAR, will furnish the following information:

1. One copy of data the City determines pertinent to the work. However, the CMAR will be responsible for searching the records and requesting information it deems reasonably required for the Project.

2. All available data and information pertaining to relevant policies, standards, criteria, studies, etc.

3. The name of the City employee or City's representative who will serve as the Project Manager during the term of this Contract. The Contracts Manager has the authority to administer this Contract. The Project Manager has the authority to monitor the CMAR's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.

4. The City additionally will Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CMAR for its information. The CMAR will have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.

5. Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CMAR except for those copies whose cost has been reimbursed by the City.

6. Provide the CMAR with adequate information in its possession or control regarding the City's requirements for the Project.

7. Give prompt written notice to the CMAR when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CMAR that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CMAR's receipt of such notice.

8. Notify the CMAR of changes affecting the budget allocations or schedule.

B. The City's Project Manager will have authority to approve the Project Schedule, and render decisions and furnish information the Project Manager deems appropriate to the CMAR.

ARTICLE 6 CONTRACT CONDITIONS

PROJECT DOCUMENTS AND COPYRIGHTS

- A. City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, Computer Aided Drafting and Design (CADD) file, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents), including all intellectual property rights thereto, are to be and remain the property of the City and all Project Documents are to be delivered to the Project Manager before the final payment is made to the CMAR. Nonetheless, in the event these Projects Documents are altered, modified or adapted, the City agrees that any CMAR warranties or responsibilities, if any, with regard to the Project Documents and their use for other projects are void and that the CMAR is not responsible for such use.
- B. Documents to Bear Seal: When applicable and required by State law, the CMAR and its Subconsultants will endorse by a Florida professional seal all plans, works, and Deliverables prepared by them for this Contract.

COMPLETENESS AND ACCURACY OF CMAR'S WORK

The CMAR will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the CMAR to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CMAR in Apopka, Florida would exercise under similar conditions. The fact that the City has accepted or approved the CMAR's work or Deliverables will in no way relieve the CMAR of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City.

Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design Professional.

ALTERATION IN CHARACTER OF WORK

In the event an alteration or modification in the character of work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by the City and the CMAR. Such Change Order or Amendment will not be effective until approved by the City.

Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CMAR may accordingly be adjusted by mutual agreement of the contracting parties.

No claim for extra work done or materials furnished by the CMAR will be allowed by the City except as provided herein, nor will the CMAR do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CMAR without such prior written authorization will be the CMAR's sole jeopardy, cost, and expense, and the CMAR hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

DATA CONFIDENTIALITY

- A. As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CMAR in the performance of this Contract.
- B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMAR in connection with the CMAR's performance of this Contract is confidential and proprietary information belonging to the City, subject to the requirements of Florida law.
- C. The CMAR will not divulge data to any third party without prior written consent of the City. The CMAR will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
 - 1. Data which was known to the CMAR prior to its performance under this Contract unless such data was acquired in connection with work performed for the City;
 - 2. Data which was acquired by the CMAR in its performance under this Contract and which was disclosed to the CMAR by a third party, who to the best of the CMAR's knowledge and belief, had the legal right to make such disclosure and the CMAR is not otherwise required to hold such data in confidence; or court.
 - 3. Data, which is required to be disclosed by the CMAR by virtue of law, regulation, or

4. In the event the CMAR is required or requested to disclose data to a third party, or any other information to which the CMAR became privy as a result of any other contract with the City, the CMAR will first notify the City as set forth in this Article of the request or demand for the data. The CMAR will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

- D. The CMAR, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.
- E. The CMAR assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CMAR, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

e-VERIFY REQUIREMENTS

To the extent applicable under Florida Statutes, the Consultant and its subcontractors shall warrant compliance with all federal immigration laws and regulations and the Immigration Reform and Control Act of 1986 (State of Florida Executive Order 11-116) that relate to their employees and compliance with the E-verify requirements under Florida Statutes. Consultant's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

APPROPRIATION CONTINGENCY

The CMAR acknowledges that the continuation of the Contract beyond the existing City fiscal year is contingent upon the City appropriating funds necessary to provide the funds to pay the City's obligations herein. This Contract shall continue without action by either party from the beginning of the next fiscal year until completion, unless terminated prior to the end of the current fiscal year. Should the City fail to appropriate the necessary funds to continue this Contract, the City will notify the CMAR of the lack of funds, and this Contract shall terminate on the date of said notification. Upon such termination, the CMAR shall be paid for all services provided the City to the date of termination, subject to review and approval of the City, and subject to the availability of funds.

PROJECT STAFFING

- A. Prior to the start of any work or Deliverable under this Contract, the CMAR will submit to the City, an organization chart for the CMAR staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CMAR desires to change such key personnel from performing such services under this Contract, the CMAR will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and

procurement planning.

- B. The CMAR will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CMAR's staff, the CMAR will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

INDEPENDENT CONTRACTOR

The CMAR is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CMAR as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

TERMINATION

- A. The City and the CMAR hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CMAR.
- B. In the event the City terminates or abandons any or all of the services or any part of the services as herein provided, the City will so notify the CMAR in writing, and the CMAR will immediately after receiving such notice is to discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.
- C. The CMAR, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.
- D. The CMAR will appraise the work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CMAR's work or Deliverable to appraise the work completed.
- E. The CMAR will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable costs and expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract, and will be an amount mutually agreed upon by the CMAR and the City. If there is no mutual agreement, the final determination will be made in accordance with Article 6, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended. The City will make the final payment within thirty days after the CMAR has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

DISPUTES

In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the Director of Public

Works. Any claims made under this Contract shall be resolved by the City Manager, pursuant to the applicable provisions of the City procurement code and state law.

WITHHOLDING PAYMENT

The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CMAR, until such time that a settlement on those claims has been reached.

RECORDS/AUDIT

- A. Records of the CMAR's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CMAR will be kept on a generally recognized accounting basis and shall be available for up to five years following final completion of the Project. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CMAR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CMAR's records, the audit discloses the CMAR has provided false, misleading, or inaccurate cost and pricing data.
- B. The CMAR will include a provision similar to that found in Article 6 "Records/Audits" in all of its agreements, except lump sum contracts, with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

INDEMNIFICATION

To the fullest extent permitted by law, the CMAR agrees to defend, indemnify and hold harmless the City of Apopka, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter individually and collectively referred to as "Indemnities", for, from and against all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the work or Deliverable done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workmen's Compensation Law, or arising out of the failure of the CMAR to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CMAR will be responsible for primary loss investigation, defense and judgment costs where this Contract of indemnity applies.

NOTICES

Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	Name Mr. R. Jay Davoll, P.E. City of Apopka 748 E Cleveland St Apopka, FL 32703
With Copy to	
To CMAR:	
Copy to: Design Professional	Name: Mr. Jon Fox Tetra Tech 201 E Pine St Orlando, FL 32801

Or to other such place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

COMPLIANCE WITH FEDERAL LAWS

The CMAR understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CMAR agrees to comply with these and all laws in performing this Contract and to permit the City to verify such compliance.

CONFLICT OF INTEREST

- A. To evaluate and avoid potential conflicts of interest, the CMAR will provide written notice to the City, as set forth in this section, of any work or services performed by the CMAR for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CMAR for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

Mr. R. Jay Davoll, P.E.
Public Services Director
748 E. Cleveland St
Apopka, FL 32703

B. Actions considered to be adverse to the City under this Contract include but are not limited to:

1. Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;

2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and

3. Using data to produce income for the CMAR or its employees independently of performing the services under this Contract, without the prior written consent of the City.

C. The CMAR represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CMAR under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

D. The CMAR's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

CONTRACTOR'S LICENSE

The CMAR must provide to the Contracts Manager CMAR's Contractor's License Classification and number and its Federal Tax I.D. number.

SUCCESSORS AND ASSIGNS

The City and the CMAR will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. The CMAR may not assign, sublet, or transfer its interest in this Contract without the written consent of the City. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

FORCE MAJEURE

If either party is delayed or prevented from the performance of any service, in whole or part, required under this Contract by reason of acts of God or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay or as reasonably agreed to by both parties.

COVENANT AGAINST CONTINGENT FEES

The CMAR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Apopka has any interest, financially, or otherwise, in the firm. The City of Apopka will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

NON-WAIVER PROVISION

The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

JURISDICTION

This Contract will be deemed to be made under, and will be construed in accordance with and governed by the laws of the State of Florida, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, Orange County, Florida, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

SURVIVAL

All warranties, representations and indemnifications by the CMAR will survive the completion or termination of this Contract.

MODIFICATION

No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

SEVERABILITY

If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

INTEGRATION

This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

TIME IS OF THE ESSENCE

Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

THIRD PARTY BENEFICIARY

This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CMAR. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CMAR and not for the benefit of any other party.

COOPERATION AND FURTHER DOCUMENTATION

The CMAR agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

CONFLICT IN LANGUAGE

All work or Deliverables performed will conform to all applicable City codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

CITY'S RIGHT OF CANCELLATION

All parties hereto acknowledge that this Contract is subject to cancellation by the City pursuant to the provisions of Florida Statutes.

ARTICLE 7 INSURANCE REQUIREMENTS

The CMAR and subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CMAR, its agents, representatives, employees, or subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the CMAR from liabilities that might arise out of the performance of the work under this Contract by the CMAR, his agents, representative, employees, or subconsultants. CMAR is free to purchase such additional insurance as may be determined necessary.

MINIMUM SCOPE AND LIMITS OF INSURANCE

- A. CMAR will provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability-Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: “The City of Apopka shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CMAR”.
- b. Policy shall contain waiver of subrogation against the City of Apopka.

2. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. The policy shall be endorsed to include the following additional insured language: “The City of Apopka shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CMAR”, including automobiles owned, leased or hired or borrowed by the CMAR”.
- b. Policy shall contain waiver of subrogation against the City of Apopka.

3. Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

- a. Policy shall contain waiver of subrogation against the City of Apopka.

4. Excess or Umbrella Liability Insurance

- a. Excess of the primary coverage required, in paragraphs (1), (2), and (3) above:

Each Occurrence	\$5,000,000
General Aggregate	\$5,000,000

ADDITIONAL INSURANCE REQUIREMENTS

- A. The policies shall include, or be endorsed to include the following provisions
- B. On insurance policies where the City of Apopka is named as additional insured, the City of Apopka shall be an additional insured to the full limits of liability purchased by the CMAR even if those limits of liability are in excess of those required by this Contract.
- C. CMAR’s insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- D. Coverage provided by the CMAR shall not be limited to the liability assumed under the indemnification provisions of this Contract.

SUBCONTRACTORS INSURANCE

CMAR’s certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the CMAR, however, subcontractors insurance limits of liability shall not be less than \$1,000,000 per occurrence/\$2,000,000 aggregate.

POLLUTION LIABILITY INSURANCE

Pollution Legal/Environmental Legal Liability Insurance for pollution losses arising from all services performed to comply with this contract. Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage. If policy is written on a Claims Made form, a retroactive date is required, and coverage must be maintained for 3 years after completion of contract or “tail” coverage must be purchased. Coverage should include and be for the at least the minimum limits listed below:

- 1. Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- 2. Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages.
- 3. Cost of Cleanup/Remediation.

Limits	
Per Claim or Occurrence	\$ 2,000,000
General Aggregate	\$ 2,000,000

For acceptance of Pollution Legal/Environmental Legal Liability coverage included within another policy coverage required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Pollution Legal/Environmental Legal Liability and other coverage combined.

For herbicide and pesticide spraying operations only, an endorsement to the Commercial General Liability policy that provides Pollution Liability coverage for herbicide and pesticide spraying is acceptable.

NOTICE OF CANCELLATION

Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent by certified mail, return receipt requested and sent directly to the City's named Project Manager at:

Mr. R. Jay Davoll, P.E.
Public Services Director
748 E. Cleveland St
Apopka, FL
32703

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Florida, and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CMAR from potential insurer insolvency.

VERIFICATION OF COVERAGE

- A. The CMAR will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- B. All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- C. All certificates required by this Contract will be sent directly to the City Engineer for this Project. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the City of Apopka by its Mayor and City Clerk have hereunto subscribed their names this _____ day of _____, 2016.

CITY OF APOPKA

Name, Mayor

ATTEST:

Name, City Clerk

APPROVED AS TO FORM:

Name, City Attorney

------(CONTRACTOR)-----

By: _____

Its:

(Title)

**EXHIBIT B TO
CONSTRUCTION MANAGER AT RISK
AGREEMENT ALL REQUIREMENTS FOR THE
GMP**

GMP submittal.

Table of Contents:

1. Scope of Work
2. Summary of the GMP
3. Schedule of Values - summary spreadsheet and backup documents
4. List of Plans and Specifications used for GMP Proposal
5. List of clarification and assumptions
6. Project Schedule

1. Scope of work will consist of a brief description of the work to be performed by CMAR and major points that the CMAR and the City must be aware of pertaining to the scope.
2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below: The general conditions fee includes bond and insurance cost. All costs should be listed individually for future use.

PROJECT #: _____ **DATE:** _____

PROJECT NAME: _____

GMP SUMMARY				AMOUNT	
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			\$	
B.	CMAR's Contingency			\$	
INDIRECT COSTS				RATE	
C.	Construction Fee			%	\$
D.	General Conditions			%	
	D1	Payment and Performance Bond	\$	%	
	D2	Insurance	\$	%	
E.	Sales Taxes			%	\$
				F. TOTAL GMP	
				\$	
				G. Owner's Contingency	
				\$	

Formulas:

$$\text{Total GMP: } A+B+C+D+E = F$$

Rates (Percentages) are calculated by dividing each amount by F, such as B/F, D/F, and D1/F

3. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CMAR's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CMAR, Design Professional, and Project Manager using the format below.

Plans Used For Preparation of GMP No.	
CMAR	Date
Design Professional	Date
Project Manager	Date

5. A list of the clarifications and assumptions made by the CMAR in the preparation of the GMP proposal, to supplement the information contained in the documents.
6. A Critical Path Method (CPM) diagram construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final GMP submittal will consist of the following:

1. 8 Copies of the GMP (perforated as requested by the City) Velo or 3-hole punched.
2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Professional, CMAR and Project Manager).

For questions regarding the submittal requirements, please contact Name

ATTACHMENT 3

FDEP SUPPLEMENTARY CONDITIONS (CONSTRUCTION)

Florida Department of Environmental Protection
State Revolving Fund Program
Supplementary Conditions
for
Formally Advertised
Construction Procurement
Revised July 2015

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FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUPPLEMENTARY CONDITIONS

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

ARTICLE 1 - DEFINITIONS

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

1.1 Addendum - A written or graphic instrument that is issued prior to the opening of bids and that clarifies, corrects, or changes the Bidding Documents.

1.2 Agreement or Contract - The written agreement between the Owner and the Contractor covering the Work to be performed and furnished; these Supplementary Conditions and other Contract Documents are attached to the Agreement/Contract and made a part thereof as provided therein.

1.3 Bid - The offer or proposal of a bidder submitted on the prescribed form and setting forth the price(s) for the Work to be performed and furnished.

1.4 Bidder - Any person, firm, or corporation that submits a bid directly to the Owner.

1.5 Bidding Documents - The Advertisement for Bids or the Invitation to Bid, the Instructions to Bidders or the Information for Bidders, the Bid Form, the proposed Contract Documents, and all addenda.

1.6 Bond - An instrument of security.

1.7 Change Order - A document that is recommended by the Engineer and signed by the Contractor and the Owner; that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time; and that is issued on or after the Effective Date of the Agreement/Contract.

1.8 Contract Documents - The Agreement/Contract; the Contractor's Bid when attached as an exhibit to the Agreement/Contract; the Performance and Payment Bond(s); the General Conditions; the Supplementary Conditions (including these Supplementary Conditions); the Specifications (written technical descriptions of material, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto); the Drawings (drawings that show the character and scope of the Work to be performed and furnished); all addenda that pertain to the Contract Documents; and all change orders.

1.9 Contract Time - The number of days or the date stated in the Contract Documents for completion of the Work.

1.10 Contractor - The person, firm, or corporation with whom or which the Owner enters into the Agreement/Contract.

1.11 Effective Date of the Agreement/Contract - The date indicated in the Agreement/Contract on which the Agreement/Contract becomes effective, or if no such date is indicated in the

Agreement/Contract, the date on which the Agreement/Contract is signed and delivered by the last of the two parties to sign and deliver the Agreement/Contract.

1.12 Engineer - The person, firm, or corporation named as such in the Contract Documents.

1.13 Minority Business Enterprise (MBE) - A historically Black college or university or a business that is (a) certified as socially and economically disadvantaged by the Small Business Administration, (b) certified as an MBE by a state or federal agency, or (c) an independent business concern which is at least 51-percent owned and controlled by minority group members. (A minority group member is an individual who is a citizen of the United States and one of the following: [i] Black American; [ii] Hispanic American [with origins from Puerto Rico, Mexico, Cuba, or South or Central America]; [iii] Native American [American Indian, Eskimo, Aleut, or native Hawaiian]; or [iv] Asian-Pacific American

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

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

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

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

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

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

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

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

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

1.22 Work - The entire completed construction or the various separately identifiable parts thereof required to be performed and furnished under the Contract Documents; Work is the result of

performing services, furnishing labor, furnishing material and equipment, and incorporating material and equipment into the construction as required by the Contract Documents.

ARTICLE 2 - PRIVACY OF AGREEMENT/CONTRACT

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

ARTICLE 3 - PROCUREMENT REQUIREMENTS

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

ARTICLE 4 - RESOLUTION OF PROTESTS AND CLAIMS/DISPUTES

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

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4.1. Protests concerning the Owner's solicitation and/or award of this Agreement/Contract must be filed in writing with the Owner to be considered.

4.2. All timely written protests concerning the Owner's solicitation and/or award of this Agreement/Contract are to be resolved in accordance with the Owner's dispute resolution process. A copy of the ordinance(s), resolution(s), or written policy (policies) that set forth the Owner's dispute resolution process is included elsewhere in the Bidding Documents or is to be made available by the Owner upon request.

4.3. Neither the (FDEP) nor the USEPA will become a party to, or have any role in resolving, protests concerning the Owner's solicitation and/or award of this Agreement/Contract. Protest decisions made by the Owner cannot be appealed to the FDEP or the USEPA.

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

4.4. Unless otherwise provided in the Contract Documents, all claims and disputes between the Owner and the Contractor arising out of, or relating to, the Contract Documents or the breach thereof are to be decided by arbitration (if the Owner and the Contractor mutually agree) or in a court of competent jurisdiction within the State of Florida.

4.5. Neither the FDEP nor the USEPA will become a party to, or have any role in resolving, claims and disputes between the Owner and the Contractor.

ARTICLE 5 - CHANGES TO THE BIDDING AND CONTRACT DOCUMENTS

5.1. All changes to the Bidding Documents made subsequent to the FDEP's acceptance of the Bidding Documents and prior to the opening of bids are to be documented via addendum

(addenda) to the Bidding Documents; all changes to the Contract Documents made after the opening of bids are to be documented by change order(s) to the Contract Documents. The Owner shall submit all addenda and change orders to the FDEP.

ARTICLE 6 - BONDS AND INSURANCE

Bid Guarantees:

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

Performance and Payment Bond(s):

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

Insurance:

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

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

6.5. Before any Work at the Work site is started, the Contractor shall deliver to the Owner certificates of insurance that the Contractor is required to purchase and maintain in

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

ARTICLE 7 - AWARD OF AGREEMENT/CONTRACT

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

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

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

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

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

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

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

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

NOTE: ARTICLE 10 ONLY APPLIES TO FEDERAL CAP GRANT PROJECTS

ARTICLE 10 - DISADVANTAGED BUSINESS ENTERPRISES

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

ARTICLE 11 - DEBARMENT AND SUSPENSION (EXECUTIVE ORDER 12549)

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

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

11.3. The bidder also certifies that it and its principals:

- 11.3.1. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 11.3.2. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 11.3.1 of this certification; and
- 11.3.3. Have not within a three-year period preceding this proposal had one or more public transactions (federal, state or local) terminated for cause or default. Where the bidder is unable to certify to any of the above, such owner shall attach an explanation to this proposal.
- 11.3.4. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 11.3.5. The bidder shall incorporate the foregoing requirements 11.1 through 11.3 in all subcontracts.

ARTICLE 12 - EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

12.1. **Notice of Requirement for Affirmative Action to Ensure Equal Employment**

Opportunity (Executive Order 11246). (Applicable to contracts/subcontracts exceeding \$10,000)

- 12.1.1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
- 12.1.2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in Florida, are as follows:
 - Goal for female participation: 6.9 percent statewide
 - Goal for minority participation: (See Appendix B at FDEP-20 for goals for each county)These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each

trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

12.1.3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

12.1.4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the State of Florida.

12.1.5. Contractors shall incorporate the foregoing requirements in all subcontracts.

12.2. **Equal Opportunity Clause** (Applicable to contracts/subcontracts exceeding \$10,000)

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

12.2.1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

12.2.2. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The notice can be obtained online at http://www.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf. The Contractor shall state that all qualified applicants be considered without regard to race, color, religion, sex or national origin.

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

12.2.4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.2.5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

12.2.6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- 12.2.7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.2.8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs 12.2.1 through 12.2.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

12.3. The Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

12.3.1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

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- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

12.3.2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in

excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

- 12.3.3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 12.3.4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- 12.3.5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, nor the regulations promulgated pursuant thereto.
- 12.3.6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 12.3.7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more

women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 12.3.7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as

Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

- 12.3.8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (12.3.7a through 12.3.7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- 12.3.9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 12.3.10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 12.3.11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12.3.12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 12.3.13. The Contractor, in fulfilling its obligation under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- 12.3.14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep

records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

12.3.15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

12.4. Pursuant to 41 CFR 60-1.7, if the price of this bid exceeds \$10,000, the bidder, by signing and submitting this proposal, certifies the following:

12.4.1. Affirmative action programs pursuant to 41 CFR 60-2 have been developed and are on file;

12.4.2. Documentation of a previous contract or subcontract subject to the equal opportunity clause is available;

12.4.3. All reports due under the applicable filing requirements have been filed with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission; and

12.4.4. Each prospective construction subcontractor that may be awarded a lower-tier construction subcontract with a price exceeding \$10,000 shall meet the above requirements 12.4.1 through 12.4.3.

12.5. Pursuant to 41 CFR 60-1.8, if the price of this bid exceeds \$10,000, the bidder, by signing and submitting this proposal, certifies the following:

12.5.1. That he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments;

12.5.2. That he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained;

12.5.3. That he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments;

12.5.4. That he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained;

12.5.5. That a breach of this certification is violation of the Equal Opportunity Clause of this contract; and

12.5.6. That he/she will obtain identical certifications from proposed Subcontractors prior to the award of Subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his/her files.

As used in this certification, the term “segregated facilities” means any waiting rooms, work eating areas, time clocks, locker rooms, and other storage or dressing areas, transportation and housing facilities provided for employees which are in fact segregated on the basis of race, color, religion, or otherwise.

12.6. If the price of this Agreement/Contract exceeds \$10,000, the Owner shall give written notice to the Director of the Office of Federal Contract Compliance Programs within ten working days of award of this Agreement/Contract. The notice is to include the name, address, and telephone number of the Contractor; the employer identification number of the Contractor; the dollar amount of this Agreement/Contract; the estimated starting and completion dates of this Agreement/Contract; the number of this Agreement/Contract; and the geographical area in which the Work is to be performed.

12.7. If the price of this Agreement/Contract equals or exceeds \$50,000 and if the Contractor has 50 or more employees, the Contractor shall electronically file Standard Form 100 (EEO-1) online at <https://egov.eeoc.gov/eo1/eo1.jsp> within 30 calendar days after the award of this Agreement/Contract, unless the Contractor has submitted such a report within 12 months preceding the date of award of this Agreement/Contract. In addition, the Contractor shall ensure that each construction subcontractor having 50 or more employees and a lower-tier construction subcontract with a price equaling or exceeding \$50,000 also electronically files this form within 30 calendar days after the award to it of the lower-tier construction subcontract, unless the construction subcontractor has submitted such a report within 12 months preceding the date of award of the lower-tier construction subcontract.

ARTICLE 13 - IMMIGRATION REFORM AND CONTROL ACT OF 1986 (STATE OF FLORIDA EXECUTIVE ORDER 11-116)

The Immigration Reform and Control Act of 1986 prohibits employers from knowingly hiring illegal workers. The Contractor shall only employ individuals who may legally work in the United States – either U.S. citizens or foreign citizens who are authorized to work in the U.S. The Contractor shall use the U.S. Department of Homeland Security’s E-Verify Employment Eligibility Verification system (<http://www.uscis.gov/portal/site/uscis>) to verify the employment eligibility of:

- all new employees, during the term of this Agreement, to perform employment duties within Florida; and,
- all new employees (including subcontractors and subrecipients) assigned by the Contractor to perform work pursuant to this Agreement.

The Contractor shall include this provision in all subcontracts/subgrants it enters into for the performance of work under this Agreement.

ARTICLE 14 – ENVIRONMENTAL COMPLIANCE

The Contractor, and all subcontractors at any tier, shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 (Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans), and 40 CFR Part 15.

ARTICLE 15 – FEDERAL LABOR STANDARDS PROVISION

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

ARTICLE 16 – AMERICAN IRON AND STEEL PROVISION

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

ARTICLE 17 - PROHIBITED LOCAL GOVERNMENT CONSTRUCTION PREFERENCES

A. Pursuant to Section 255.0991, F.S., for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation, a state, college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

1. The contractor's maintaining an office or place of business within a particular local jurisdiction;
2. The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
3. The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

B. For any competitive solicitation that meets the criteria in Paragraph A., a state college, county, municipality, school district, or other political subdivision of the state shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by Paragraph A.

APPENDIX A TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

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

This certification relates to a construction contract proposed by

_____,
(insert the name of the Owner)

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

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

- ARTICLE 11 DEBARMENT AND SUSPENSION (EXECUTIVE ORDER 12549)
- ARTICLE 12 EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)
- ARTICLE 13 IMMIGRATION REFORM AND CONTROL ACT OF (STATE OF FLORIDA EXECUTIVE ORDER 11-116)
- ARTICLE 14 ENVIRONMENTAL COMPLIANCE
- ARTICLE 15 FEDERAL LABOR STANDARDS PROVISION
- ARTICLE 16 AMERICAN IRON AND STEEL PROVISION

I agree that I will obtain identical certifications from prospective lower-tier construction subcontractors prior to the award of any lower-tier construction subcontracts with a price exceeding \$10,000. I also agree that I will retain such certifications in my files.

(Signature of Authorized Official) (Date)

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

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

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

(Employer Identification Number of Prospective Construction Contractor or Subcontractor)

APPENDIX B TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

GOALS AND TIMETABLES FOR MINORITIES AND FEMALES

[Note: These goals and timetables are the goals and timetables referred to in Paragraph 2 of the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)"; these goals and timetables are to be included in all FDEP assisted construction contracts and subcontracts with a price exceeding \$10,000 and in all solicitations for such contracts and subcontracts.]

The following goals and timetables for female utilization shall be included in all federal and federally assisted construction contracts and subcontracts in excess of \$10,000. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a federal or federally assisted construction contract or subcontract.

Area covered: Goals for Women apply nationwide.
Goals and Timetables

Timetable Goals (percent)
Indefinite 6.9

Goals for minority utilization can be found in the Department of Labor's Technical Assistance Guide for Federal Construction Contractors (May 2009), available on the internet at <http://www.dol.gov/ofccp/TAGuides/consttag.pdf>. These goals shall be included for each craft and trade in all federal or federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a federal, federally assisted or non-federally related project, contract or subcontract.

Construction contractors which are participating in an approved Hometown Plan (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goal contained in this Appendix.

APPENDIX C

TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

Davis-Bacon Requirements

FEDERAL LABOR STANDARDS PROVISIONS

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

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

1 Minimum Wages.

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

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

(ii)(a) The sponsor, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The FDEP

shall approve a request for an additional classification and wage rate and fringe benefits; therefore, only when the following criteria have been met:

(1)The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2)The classification is utilized in the area by the construction industry; and

(3)The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b)If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sponsor(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the sponsor to the FDEP. The FDEP will transmit the request to the Administrator of the Wage and Hour Division, employment Standards Administration, U. S. Department of Labor. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the FDEP or will notify FEDP within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

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

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

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

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

2. Withholding.

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

3. Payrolls and Basic Records.

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

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed, a copy of all payrolls to the sponsor. Such documentation shall be available upon request by FDEP. As to each payroll copy received, the sponsor shall provide a certification that the project is in compliance with the requirements of 29 CFR 5.5(a)(1) with each disbursement request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(I), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only

need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current addresses of each covered worker, and shall provide them upon request to the sponsor for transmission to the FDEP or EPA if requested by EPA, the FDEP, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsor. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

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

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

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

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

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

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

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

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, the Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with the determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, the Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits

for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program the contract will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

5. Compliance with Copeland Act Requirements.

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

6. Subcontracts.

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

7. Contract Termination, Debarment.

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

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

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

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

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

5.12(a)(1) or to be awarded EPA contracts or participate in EPA programs pursuant to Executive Order 12549.

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

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

11. Complaints, Proceedings, or Testimony by Employees.

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

B. Contract Work Hours and Safety Standards Act.

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

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

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

(3) Withholding for unpaid wages and liquidated damages. The sponsor, upon written request of the FDEP or an authorized representative of the Department of Labor, may

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

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

C.Health and Safety

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

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

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

12. Guidance to Contractor for Compliance with Labor Standards Provisions

a) Contracts with Two Wage Decisions

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

b) Complying with Minimum Hourly Amounts

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

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

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

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

c) Overtime

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

d) Deductions

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

e) Classifications Not Included in the Wage Decision

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

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

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

f) Supervisory Personnel

Foremen and other supervisory personnel who spend at least 80% of their time supervising workers are not covered by the Davis-Bacon and Related Acts. Therefore, a wage decision will

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

g) Sole Proprietorships / Independent Contractors / Leased Workers

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

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

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

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

h) Apprentices / Helpers

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

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

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

APPENDIX D TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

American Iron and Steel Requirement

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

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

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

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

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

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

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

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

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

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

For waivers to these requirements based on (2)(b) above, contact Sheryl Parsons at USEPA Region IV. She can be reached by phone at (404) 562-9337.