

ATTACHMENT B
GENERAL TERMS AND CONDITIONS

Upon award, the Contract and the General Terms and Conditions provided as part of the bid package will become a part of the contract document.

Section 1. INTENT OF CONTRACT DOCUMENTS.

1.1 It is the intent of the Contract Documents to describe a functionally complete project. Any work, materials or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result shall be supplied whether or not specifically called for. When words, which have a well-known technical or trade meaning, are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein.

1.1.2 No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

1.2 DEBARMENT AND SUSPENSION.

- 1.2.1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 1.2.2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 1.2.3. This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available

remedies, including but not limited to suspension and/or debarment.

1.2.4 The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

1.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications of other Contract Document provisions, Contractor shall be required to comply with the provision which is the more restrictive or stringent requirement upon the Contractor, as determined by the City.

Section 2. INVESTIGATION AND UTILITIES.

2.1 Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quality of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Contractor to acquaint itself with any applicable conditions shall not relieve Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

Section 3. PROGRESS PAYMENTS.

Contractor shall not assign this Agreement or any part thereof.

Section 4. PAYMENTS WITHHELD.

4.1. The City may decline to approve any Application for Payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections. The City may nullify the whole or any part of any approval for

payment previously issued and City may withhold any payments otherwise due Contractor under this Agreement or any other agreement between County and Contractor, to such extent as may be necessary in the City's opinion to protect it from loss because of: (a) defective Work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by the Contractor; or (g) any other material breach of the Contract Documents. If these conditions are not remedied or removed, City may, after three (3) days written notice, rectify the same at Contractor's expense. City also may offset against any sums due Contractor the amount of any liquidated or unliquidated obligations of Contractor to City, whether relating to or arising out of this Agreement or any other agreement between Contractor and City.

- 4.2.** Contractor shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. City, or any duly authorized agents or representatives of City, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

Section 5. CONTRACT TIME AND TIME EXTENSIONS

- 5.1.** Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and material men. Contractor shall be solely responsible for all means methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents.
- 5.2.** Should Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Contractor, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulations, strikes or lockouts, Contractor shall notify the City in writing within forty-eight (48) hours after the commencement of such delay. Written supporting data with specific details of Contractor operations, which were delayed, shall be submitted to the City within five (5) calendar days after the occurrence of the delay, unless the City grants additional time in writing for such submittals, or else the Contractor shall be deemed to have waived any right which Contractor may have had to request a time extension.
- 5.3.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which City may be responsible, in whole or in part, shall relieve Contractor of his duty to perform or give rise to any right to damages or additional compensation from City. Contractor expressly acknowledges and agrees that it shall receive no damages for delay.
- 5.4.** Contractor's sole remedy, if any, against the City will be the right to seek an extension to the contract time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damages For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.
- 5.5.** Requests for delays due to adverse weather conditions shall meet all of the following conditions:
- 5.5.1** Contractor notified the City in writing within forty-eight (48) hours of the delay.
 - 5.5.2** The weather was unusual as documented by supporting data.
 - 5.5.3** The weather did have an adverse impact on the contractor's schedule (critical path only).
 - 5.5.4** The Contractor and inspector's daily logs corroborate the adverse impact. Where a conflict exists between the weather data and the daily reports, the daily reports will take precedence.
 - 5.5.5** Work should be completed within a reasonable amount of time, as agreed upon by the City and Contractor.

Section 6. CHANGES IN THE WORK.

Contractor shall not assign this Agreement or any part thereof.

Section 7. CLAIMS AND DISPUTES.

7.1. A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between City and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

7.2. Claims by the Contractor shall be made in writing to the City within forty-eight (48) hours after the first day of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the City within fifteen (15) calendar days after the occurrence of the event, unless the City grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All claims shall be priced in accordance with the provisions of Subsection 10.4.

7.3. The Contractor shall proceed diligently with its performance as directed by the City, regardless of any pending Claim, action, suit or administrative proceeding, unless otherwise agreed to by the City in writing. City shall continue to make payments in accordance with the Contract Documents pending Claim.

Section 8. OTHER WORK.

8.1. The City may perform other work related to the Project by City's own forces, have or let other direct contracts.

8.2. If any part of Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or City), Contractor shall inspect and promptly report to City in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work.

Section 9. INDEMNIFICATION AND INSURANCE.

9.1. Contractor agrees to save harmless, indemnify, and defend City and its consultants, agents, officers and employees from any and all claims, losses,

penalties, interest, demands, judgments, and costs of suit, including attorneys' fees and paralegals' fees, for any expense, damage or liability incurred by any of them, whether for personal injury, death, property damage, direct or consequential damages, or economic loss, including environmental impairment, arising directly or indirectly on account of or in connection with the Work done by Contractor under this Agreement or by any person, firm or corporation to whom any portion of the Work is subcontracted by Contractor or resulting from the use by Contractor, or by any one for whom Contractor is legally liable, of any materials, tools, machinery or other property of City. City and Contractor agree the first \$100.00 of the Contract Amount paid by City to Contractor shall be given as separate consideration for this indemnification, and any other indemnification of City by Contractor provided for within the Contract Documents, the sufficiency of such separate consideration being acknowledged by Contractor by Contractor's acceptance and execution of the Agreement.

- 9.2** The Contractor's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

The Contractor agrees to pay on behalf of the City, as well as provide a legal defense for the City, both of which will be done only if and when requested by the City, for all claims made. Such payment on the behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

- 9.3** Contractor shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit C to the Agreement. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies, which are registered with the State of Florida. All commercial insurance carriers providing the Contractor with required insurance shall be a minimum financial size category of VII according to the AM Best Rating Guide, latest edition. An A or better Best Rating is "preferred"; however, other ratings if "Secure Best Ratings" may be considered. Within ten (10) calendar days after Notice of Award is received by Contractor and prior to the commencement of work, Contractor shall provide County with properly executed Certificates of Insurance to evidence Contractor's compliance with the insurance requirements of the Contract Documents. Said Certificates of Insurance shall be on forms approved by City, such as "Accord Form 25". The Certificates of Insurance shall be personally, manually signed by the authorized representatives of the insurance company/companies shown on the Certificates of Insurance, with proof that they are authorized representatives thereof. Certificates of Insurance shall be mailed to City of Milton, P.O. Box 909, Milton, Florida 32572. In addition, certified, true

and exact copies of all insurance policies required hereunder shall be provided to City, on a timely basis, when requested by City.

- 9.4** The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice by registered or certified mail shall be given City of any cancellation, intent not to renew, or reduction in the policies or coverages, except in the application of the aggregate limits provisions. In the event of a reduction in the aggregate limit of any policy, Contractor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.
- 9.5** All insurance coverages of the Contractor shall be primary to any insurance or self-insurance program carried by the City applicable to this Project. The acceptance by City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Contract Documents. No work shall commence unless and until the required Certificates of Insurance are received by the City.
- 9.6** Contractor shall require each of its subcontractors to procure and maintain, until the completion of the subcontractor's work, insurance of the types and to the limits specified, unless such insurance requirements for the subcontractor is expressly waived in writing by the City. All liability insurance policies, other than professional liability, worker's compensation and employer's liability policies, obtained by Contractor to meet the requirements of the Contract Documents shall name City of Milton as an additional insured and shall contain Severability of Interest provisions. City of Milton shall also be designated as certificate holder with the address of 6738 Dixon Street, Milton, Florida 32570. If any insurance provided pursuant to the Contract Documents expires prior to the completion of the Work, renewal Certificates of Insurance and, if requested by City, certified, true copies of the renewal policies shall be furnished by Contractor within thirty (30) days prior to the date of expiration.
- 9.7** All liability policies shall be underwritten on the "occurrence" basis, unless otherwise approved in writing by the City Manager or City Management. "Claims made" policies, if approved by the City Manager and subsequent insurance certificates shall provide a "retro-date" which shall include the effective date of the contract. "Claims-made" renewals or carrier and policy replacements shall reflect the original "retro-date."
- 9.8** Should at any time the Contractor not maintain the insurance coverage's required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage's and charge the Contractor for such coverage's purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the

coverages purchased or the insurance company or companies used.

- 9.9** The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract Documents.
- 9.10** Contractor shall submit to City a copy of all accident reports arising out of any injuries to its employees or those of any firm or individual to whom it may have subcontracted a portion of the Work, or any personal injuries or property damages arising or alleged to have arisen on account of any work by Contractor under the Contract Documents.
- 9.11** Duty to Provide Legal Defense. The Contractor agrees to pay, to City of Milton, as well as provide a legal defense for the City, which shall include attorney's fees and costs, both of which will be done only if and when requested by the City, for all claims as described in paragraph 9.1. Such payment on behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.
- 9.12 Contractor may be required to provide a performance and payment bond in accordance with 44 CFR 13.36

Section 10. COMPLIANCE WITH LAWS.

10.1 Compliance with Federal Law, Regulations, and Executive Orders Clause. This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

10.1.1 Contractor agrees to comply, at its own expense, with state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, worker's compensation, equal employment and safety. If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify City in writing. Compliance with the above laws shall include but is not limited to: (1) the Occupational Safety and Health Act, 29 CFR 1910 and 1926, respectively, General Industry Standards and Construction Industry Standards, including regulations regarding Trenching and Shoring; (2) the Florida Workers' Compensation Law, Chapter 440, Florida Statutes; (3) Rules 38F and 38I, Florida Administrative Code; and (4) Section 102, Standard Specifications for Road and Bridge Construction, Florida Department of Transportation.

- 10.2 No Obligation by Federal Government Clause.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- 10.3 Equal Employment Opportunity (EEO):** During the performance of this contract, the Contractor agrees as follows:
- 10.3.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 10.3.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- 10.3.3 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided 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.
- 10.3.4 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.
- 10.3.5 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.
- 10.3.6 In the event of the Contractor's noncompliance with the nondiscrimination clauses of 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 as 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.

10.3.7 The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 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 enter into such litigation to protect the interests of the United States.

10.4 Davis Bacon Act and Copeland Anti-Kickback Act – required for construction contracts exceeding \$2,000 award under a Federal grant.

10.4.1 **Contractor.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

10.4.2 **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, 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 of these contract clauses.

10.4.3 **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

10.5 Contract Work Hours and Safety Standards Act – required for contracts over \$100,000 with work involving the employment of mechanics or laborers.

10.5.1 **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 daily 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.

10.5.2 **Violation** liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable, 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 paragraph (1) of this section, 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 paragraph (1) of this section.

10.5.3 **Withholding for unpaid wages and liquidated damages**. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any money payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

10.5.4 **Subcontracts**. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in the paragraphs of this section 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 this section.

10.6 Clean Air Act and Federal Water Pollution Control Act – required if the contract or the subgrant amount exceeds \$150,000.

- 10.6.1 **Clean Air Act.** The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401.
- 10.6.2 The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 10.6.3 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- 10.6.4 **Federal Water Pollution Control Act.** The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq.
- 10.6.5 The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 10.6.6 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

10.7 Debarment and Suspension.

- 10.7.1 This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 10.7.2 The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

- 10.7.3 This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 10.7.4 The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."
(See EXHIBIT B at the end of this document)

10.8 Byrd Anti-Lobbying Amendment – required for contracts exceeding \$100,000.00.

10.8.1 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient (EXHIBIT B at end of this document).

10.9 Procurement of Recovered Materials – encourages contractors to maximize the use of said materials as practicable, unless the contract does not require the use of materials.

- 10.9.1 In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with

the contract performance; meeting contract performance requirements; or at a reasonable price.

- 10.9.2 Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

10.10 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Areas - The City of Milton will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

- 10.10.1 The City will encourage participation in this RFP and will take affirmative steps to include:
- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

10.11 Access to Records – All contractors, successors, transferees, etc. shall have the following access to records requirements apply to this contract:

- 10.11.1 The contractor agrees to provide the City, the State of Florida, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- 10.11.2 The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 10.11.3 The contractor agrees to provide the FEMA administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

10.12 DHS Seal, Logo, and Flags –The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

10.13 Program Fraud and False or Fraudulent Statements or Related Acts. “The contractor acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

Section 11. CLEANUP AND PROTECTIONS.

11.1. At the completion of the Work, Contractor shall remove all debris, rubbish and waste materials from and about the Project sites, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project sites clean and ready for occupancy by City. Non-compliance with directives of this section may serve as a basis of rejection of Application for Payment.

Section 12. ASSIGNMENT.

12.1. Contractor shall not assign this Agreement or any part thereof.

Section 13. PERMITS, LICENSES AND TAXES.

13.1. All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Contractor. All permits or fees, including but not limited to, all license fees, permit fees, impact fees or inspection fees payable by Contractor to City have been disclosed to Contractor in the bidding documents or other request for proposal at the time the Project was let for bid. If Contractor performs any Work without obtaining, or contrary to, such permits or licenses, Contractor shall bear all costs arising there from. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

13.2. Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during

the performance of the Work.

Section 14. TERMINATION FOR DEFAULT.

- 14.1.** Contractor shall be considered in material default of the Agreement and such default shall be considered cause for City to terminate the Agreement, in whole or in part, as further set forth in this Section, if Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by the City or as provided for in the approved Progress Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.
- 14.2.** The City shall notify Contractor in writing of Contractor's default(s). If City determines that Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Contractor of said written notice, then City, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, subcontracts and purchase orders, and complete all or any portion of Contractor's Work by whatever means, method or agency which City, in its sole discretion, may choose.
- 14.3.** If the City deems any of the foregoing remedies necessary, Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees) or damages incurred by City incident to such completion, shall be deducted from the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Contractor agrees to pay promptly to City on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by the City to complete the Work, such excess shall be

paid to the Contractor. The amount to be paid to the Contractor or City, as the case may be, and this obligation for payment shall survive termination of the Agreement.

14.4. The liability of Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by City in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

14.5. If, after notice of termination of Contractor's right to proceed pursuant to this Section, it is determined for any reason that Contractor was not in default, or that its default was excusable, or that City is not entitled to the remedies against Contractor provided herein, then Contractor's remedies against City shall be the same as and limited to those afforded Contractor below under Subsection 15.1, Termination for Convenience.

14.6. If the Contractor refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Agreement then the City may, without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven (7) days written notice, during which period Contractor still fails to allow access, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Contractor, and may finish the project by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished. Reasonable terminal expenses incurred by the City may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).

Section 15. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.

15.1. City shall have the right to terminate this Agreement without cause upon seven (7) calendar day's written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against City shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and actual reasonable termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against City, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

15.2. City shall have the right to suspend all or any portions of the Work upon giving Contractor two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds three (3) months, the Contractor shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.

Section 16. SUPERVISION AND SUPERINTENDENTS.

16.1. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

16.2. Contractor shall keep on the Work at all times during its progress a competent resident superintendent acceptable to the City, who shall not be replaced without prior written notice to City except under extraordinary circumstances. The resident superintendent shall possess Florida Department of Transportation approved training and certifications applicable to the Work, including but not limited to National Pollutant Discharge Elimination System (NPDES) Stormwater Management and Maintenance of Traffic Control Devices. The superintendent shall be Contractor's representative at the Project site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. City shall have the right to direct Contractor to remove and replace its Project superintendent, with or without cause.

Section 17. SAFETY.

17.1. The Contractor shall designate in writing the individual responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- 17.1.1 All employees of the Work and other persons and/or organizations who may be affected thereby;
- 17.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site;
- 17.1.3 Other property on Project site or adjacent thereto, including

trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and any underground structures or improvements not designated for removal, relocation or replacement in the contract documents.

- 17.2.** The Contractor shall comply with all applicable codes, laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Contractor shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of underground structures and improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by City has occurred.
- 17.3.** The Contractor shall adhere at all times to the minimum safety guidelines for construction and renovation projects.

Section 18. PROJECT MEETINGS.

- 18.1.** Prior to the commencement of Work, the Contractor shall attend a pre-work conference with the City to discuss the Progress Schedule, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, the Contractor shall attend any and all meetings convened by the City with respect to the Project, when directed to do so by City. Contractor shall have its subcontractors and suppliers attend all such meetings (including the pre-construction conference) as may be directed by the City.

EXHIBIT A
PERFORMANCE AND PAYMENT BOND

BOND NO. _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That

(Insert name, address, and phone number of contractor)

as Principal, and _____

(Insert full name, home office address and phone number of surety)

as Surety, are held and firmly bound unto the City of Milton, Florida, 6738 Dixon Street,
Milton, Florida 32570, (850) 983-5400, as Obligee in the sum of _____

_____ Dollars

(\$_____), for the payment whereof we bind ourselves, our heirs, executors, personal
representatives, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, Principal has entered into a contract dated as of the ____ day
of _____, 20__, with Obligee for Contract No. _____,

(Insert name of project, including legal description, street address of property and

general description of improvement)

in accordance with drawings and specifications, which contract is by reference made a
part hereof, and is hereinafter referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the
Contract; and

2. Pays Obligee any and all losses, damages, costs and attorneys' fees that Obligee sustains because of any default by Principal under the Contract; and
3. Performs the guarantee of all work and materials furnished under the Contract applicable to the work and materials, then this bond is void; otherwise it remains in full force; and
4. Principal understands and agrees that this bond shall remain in full force and effect throughout the two (2) year warranty period after substantial completion of the work.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anywise affect its obligation under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the specifications.

This instrument shall be construed in all respects as a common law bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penalty sum of this Performance Bond, regardless of the number of suits that may be filed by Obligee.

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

Signed, sealed and delivered

in the presence of:

PRINCIPAL:

By: _____

Name:

Its:

Witnesses as to Principal

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____, of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification and did (did not) take an oath.

My Commission Expires:

(AFFIX OFFICIAL SEAL)

ATTEST:

Witness

Witness

(Signature)

Name:

(Legibly Printed)

Notary Public, State of

Serial No., If Any:

SURETY: _____

(Printed Name)

(Business Address)

(Authorized Signature)

(Printed Name)

OR

As Attorney In Fact (Attach Power)

Witness's

(Business Address)

(Printed Name)

(Telephone Number)

EXHIBIT B

BYRD ANTI-LOBBYING AMENDMENT COMPLIANCE AND CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Name	Project Name
Title	Project Number
Firm	Street Address
City, State, Zip	

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED
DEBARMENT, AND OTHER RESPONSIBILITY MATTERS
(FIRST TIER SUBCONTRACTOR)

For all orders above the limit specified in FAR Section 52.209-6(e)(currently \$30,000) and in accordance with the requirements of FAR 52.209-6, the Offeror must complete and sign the following:

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

Name

Project Name

Title

Project Number

Firm

Street Address

City, State, Zip