

January 26, 2024

Construction Contract for Sanibel Fire Station No. 172

This Contract is made and entered into by and between the Sanibel Island Fire & Rescue District ("District"), a Florida independent special District, whose address is 2351 Palm Ridge Rd, Sanibel FL 33957, and _____, a Florida _____ corporation ("Contractor"), whose address is _____ ("Contract"). The Contractor and the District agree as follows:

Article 1. Incorporated Documents

The following documents are incorporated and are part of this Contract:

- Exhibit A – Scope of Work
- Exhibit B – Contract Price
- Exhibit C – Performance and Payment Bond Form
- Exhibit D – Bond and Insurance Requirements
- Exhibit E – Requirements for Projects Using Federal Funds
- Exhibit F – Invitation to Bid No. 24-001, and Contractor's response to it.
- Other documents which may be delivered or issued on or after the Effective Date of the Contract including the Notice to Proceed, Work Change Directives, Change Orders, and Field Orders.

Article 2. The Work

Contractor shall perform the work for construction of a new Fire Station in compliance with this Contract including the Scope of Work provided in **Exhibit A** (the "Work"). The Site of the Work includes property located at 5171 Sanibel Captiva Rd, Sanibel, FL 33957 (the "Site").

Article 3. Contract Times

A. *Contract Times.*

This contract is in full force and effect upon execution by District and will remain in effect until final inspection and final payment by the District unless earlier terminated as provided in this Contract. The Work will be substantially complete within **517 days** after the Effective Date of the Contract and completed and ready for final payment within **547 days** after the Effective Date of the Contract.

B. *Calculation of Days.*

"Day" or "day" means calendar day unless otherwise specifically defined. "Business Day" means any day other than a Saturday, Sunday, or legal holiday on which the State of Florida is open for business to the public.

C. *Liquidated Damages.*

Contractor and The District recognize that time is of the essence in the performance of the Contract, and that The District will incur damages if Contractor does not complete the Work according to the times provided in this Contract. Because such damages would be difficult and costly to determine, The District and Contractor agree that as liquidated damages for delay in

completion (but not as a penalty) Contractor shall pay the District **\$500** for each day that expires after the Contract Time for substantial completion.

Article 4. Contract Price

For performance of the Work the District shall pay to the Contractor, the lump sum amount of \$_____, ("Contract Price") as provided in **Exhibit B** which also identifies items the District will purchase according to its Owner Direct Purchase Policy.

Article 5. Bonds and Insurance

A. *Performance and Payment Bond.*

As required by section 255.05, Florida Statutes, before commencing the work Contractor shall provide to the District a certified copy of the recorded bond substantially in the form provided in **Exhibit C**. The bond must be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract and must comply with the requirements listed in **Exhibit D**. The bond must remain in effect until the completion of the correction period specified in Article 7 but, in any case, not less than one year after the date when final payment becomes due.

B. *Insurance.*

When Contractor delivers the signed Contract to the District, Contractor shall furnish certificates, endorsements, and any other evidence of insurance showing that Contractor has obtained and will maintain insurance that meets the requirements provided in **Exhibit D**. Insurance must be provided by companies with a minimum A.M. Best rating of A-VII or better or be otherwise reasonably acceptable to the District.

Article 6. Contractor's Responsibilities

A. General.

1. Contractor shall perform the Work as required under this Contract.
2. Contractor will not be relieved of its obligations to perform the Work in accordance with the Contract either by activities or duties in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

B. *Contractor's Means and Methods of Construction.*

Contractor is solely responsible for the means, methods, techniques, sequences, and procedures of construction.

C. *Supervision and Superintendence*

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.
2. The Contractor, as soon as practicable after the award of the contract, shall furnish in writing to the District through the Architect the name and qualifications of a proposed superintendent. The District through the Architect will reply within 14 days to the Contractor in writing stating

whether the District or the Architect has reasonable objection to the proposed superintendent. The Contractor shall not employ the proposed superintendent if the District or Architect has made a reasonable and timely objection. Contractor will not change the superintendent without the District's consent.

3. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will be on the Site at all times and will not be replaced without notice to and approval by the District and its Architect except under extraordinary circumstances.
4. Contractor shall maintain good discipline and order at the Site.
5. Except as otherwise required for the safety or protection of the Work or persons or property at the Site or adjacent thereto, and except as otherwise stated in the Contract, all Work at the Site will be performed during regular working hours, Monday through Friday.

D. *Other Work at the Site*

1. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of the District, any other contractor, or any utility owner performing other work at or adjacent to the Site.
2. Contractor shall notify the District, the owners of adjacent property, the owners of underground facilities and other utilities (if the identity of such owners is known to Contractor), and other contractors and utility owners performing work at or adjacent to the Site when Contractor knows that prosecution of the Work may affect them; and Contractor shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

E. *Construction and Submittal Schedules*

1. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the District's and Architect's information a Contractor's construction schedule of the Work. The schedule must not exceed the time limits current under the Contract, must be revised at appropriate intervals as required by the conditions of the Work and Project, must be related to the entire Project to the extent required by the Contract, and must provide for expeditious and practicable execution of the Work.
2. The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current Contractor's submittal schedule and shall submit the schedules for the Architect's approval. Contractor must ensure that its submittal schedule is (1) coordinated with the Contractor's construction schedule and (2) allows the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor will not be entitled to any increases in Contract Price or extension of Contract Time based on the time required for review of submittals.
3. The Contractor shall perform the Work in general accordance with the most recent construction schedule and submittal schedule submitted to the District and Architect
4. Contractor shall update and submit the schedules to the District's Architect each month. The District may withhold payment if Contractor fails to submit the schedules.

F. *Shop Drawings*

1. Shop drawings are drawings, schedules, and other data specially prepared for the Work by the Contractor or Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work ("Shop Drawings").
2. **Shop Drawings, Product Data, Samples and similar submittals are not part of the Contract.** Their purpose is to demonstrate the way by which the Contractor proposes to

- conform to the information given in the design concept expressed in the Contract including the Scope of Work for those portions of the Work for which the Contract requires submittals.
3. The Contractor shall review for compliance with the Contract, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract in accordance with the submittal schedule approved by the Architect.
 4. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined, and verified materials, field measurements, and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract.
 5. The Contractor must not perform any portion of the Work for which the Contract requires Architect review of Shop Drawings, Product Data, Samples or similar submittals until the submittal has been approved by the Architect.
 6. The Contractor will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect's approval thereof.

G. *Services, Materials, and Equipment*

1. Unless otherwise specified in the Contract, Contractor shall provide and assume full responsibility for everything necessary for the performance, testing, start-up, and completion of the Work.
2. The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether incorporated or to be incorporated in the Work.
3. All materials and equipment incorporated into the Work must be new and of good quality, and be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract.

H. *Owner Direct Purchase*

For those items purchased directly by the District that will be included in the Work, Contractor shall comply with the District Owner Direct Purchase Policy contained in the District Procurement Policy.

I. *Subcontractors and Suppliers*

1. Just as Contractor is responsible for its own acts and omissions, Contractor shall be fully responsible to the District and the District's Architect for all acts and omissions of Contractor's employees; of suppliers and subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work. The Contractor's retention of a subcontractor or supplier for the performance of parts of the Work will not relieve Contractor's obligation to the District to perform and complete the Work in accordance with the Contract.
2. The Contractor, as soon as practicable after the award of the Contract, shall furnish in writing to the District through the Architect the names of persons or entities, including those who are to furnish materials or equipment fabricated to a special design, proposed for each principal portion of the Work. The District, through the Architect will reply within 14 days to the Contractor in writing stating whether the District or the Architect has reasonable objection to any such proposed person or entity. The Contractor will not contract with the proposed person or entity if the District or Architect has made a reasonable and timely objection.
3. The Contractor will not substitute a Subcontractor, person or entity previously selected if the District or Architect makes reasonable objection to such substitution.

J. *Licenses, Fees and Permits*

1. Contractor shall pay all license fees and assume all costs incident to performing the Work.
2. Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy necessary for Contractor's operations.

K. *Laws and Regulations; Taxes*

1. Contractor shall give all notices required by, and shall comply with, all local, state, and federal laws and regulations applicable to the performance of the Work. Neither the District nor the District's Architect shall be responsible for monitoring Contractor's compliance with any laws or regulations.
2. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to laws or regulations, Contractor shall bear all resulting costs and losses, and to the fullest extent permitted by law Contractor shall indemnify and hold harmless the District and the District's Architect, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all such claims, costs, losses, and damages.
3. Contractor shall pay all applicable sales, consumer, use, and other similar taxes for items it purchases.

L. *Record Documents*

Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings, product data, and samples in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to the District's Architect upon completion of the Work.

M. *Safety and Protection*

1. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
2. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
3. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, will be remedied by Contractor at its expense (except damage or loss attributable to the fault of the Contract or to the acts or omissions of the District or the District's Architect and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).

N. *Cleaning Up.*

Contractor will keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the work. At the completion of the Work, Contractor will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the District. Contractor will restore to their original condition those portions of the site not designated for alteration by the Contract. If Contractor fails to clean up as provided in the

Contract, the District may do so and will deduct the costs from the final retainage due the Contractor.

O. *Warranties and Guarantees*

Contractor warrants and guarantees to the District that all Work will be in accordance with the Contract and will not be defective. The District's Architect and its consultants are entitled to rely on Contractor's warranty and guarantee.

P. *Correction Period*

If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site or adjacent areas is found to be defective, then Contractor shall promptly correct any such defective Work and repairs, at no cost to the District.

Q. *Compliance With Federal Laws, Regulations, and Executive Orders*

The Work may be funded with federal financial assistance from the Federal Emergency Management Agency (FEMA). Contractor shall comply with all applicable federal laws, regulations, executive orders, and FEMA requirements. Per 2 C.F.R. § 200.326, as provided in **Exhibit D** in accordance with Appendix II to 2 C.F.R. Part 200.

R. *Compliance with State Funding Requirements*

The Work may be funded with financial assistance from the State of Florida. Contractor shall comply with all applicable terms provided in a funding agreement as required by the State of Florida.

Article 7. Indemnification

- A. As provided in section 725.06, Florida Statutes, Contractor shall indemnify and hold harmless the District, and 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 intentionally wrongful conduct of the Contractor and persons employed or utilized by the Contractor in the performance of the contract. The Contractor expressly understands and agrees that any insurance protection required by this agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless, the District or its officers, employees, agents, and instrumentalities as herein provided.
- B. Nothing in this agreement will affect the rights, privileges, and sovereign immunities of the District as set forth in Section 768.28, Florida Statutes. Each party assumes the risk of personal injury and property damage attributable to the acts or omissions of that party and its officers, employees and agents.
- C. In no event shall either party be liable for any indirect, special, consequential or punitive damages in connection with work performed under this Contract.

Article 8. District's Responsibilities

- A. The District shall make payments to Contractor as provided in this Contract.

- B. The District shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or for related safety precautions and programs, or for any failure of Contractor to comply with laws and regulations applicable to the performance of the Work. the District will not be responsible for Contractor's failure to perform the Work in accordance with the Contract.

Article 9. Architect's Status During Construction

- A. The District's Architect ("Architect") will be the District's representative during construction.
- B. Neither Architect's authority or responsibility under any provision of this Contract, nor any decision made by Architect in good faith either to exercise or not exercise such authority or responsibility, or the undertaking, exercise, or performance of any authority or responsibility by Architect, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Architect to Contractor, its subcontractors, suppliers, or sureties, or to any employee or agent of any of them.
- C. Architect will make visits to the Site at intervals appropriate to the various stages of construction. Architect will not be required to make exhaustive or continuous inspections to check the quality or quantity of the Work.
- D. Architect will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or for related safety precautions and programs, or for any failure of Contractor to comply with laws and regulations applicable to the performance of the Work. Architect will not be responsible for Contractor's failure to perform the Work in accordance with the Contract.
- E. The District and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants must be through the Architect. Communications by and with Contractor's Subcontractors and material suppliers must be through the Contractor. Communications by and with other District contractors must be through the District.
- F. The Architect will review and respond to requests for information about the Contract from Contractor within **5** Business Days of receiving it. Requests for Information (RFIs) received by Architect after 1:00 PM will be considered as received the following working day. The Architect will prepare and issue supplemental Drawings and Specifications in response to the request for information if Architect determines it is needed. The Drawings are the graphic and pictorial portions of the contract prepared by the Architect showing the design, location and dimensions of the Work, generally, including plans, elevations, sections, details, schedules, and diagrams ("Drawings"). The Specifications are that portion of the Contract prepared by the Architect consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work and performance of related services ("Specifications").

Article 10. Changes In The Work

A. *Authority to Change the Work*

Without invalidating the Contract and without notice to any surety, the District may, at any time or from time to time, order additions, deletions, or revisions in the Work.

B. *Change Orders*

1. The District and Contractor shall execute appropriate Change Orders covering:
 - a. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - b. Changes in the Work which are: (a) ordered by the District or (b) agreed to by the parties or (c) resulting from the Architect's decision, subject to the need for Architect's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other Architectural or technical matters
2. The Contractor shall keep and present in such a form as the Architect may prescribe, an itemized accounting together with appropriate supporting data including costs for labor, materials, supplies and equipment, including transportation, rental cost of machinery and equipment and additional cost for supervision and field office personnel directly attributable to the requested change.
3. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

C. *Work Change Directive*

A Work Change Directive may be issued by the Architect and signed by the District to Contractor ordering an addition, deletion, or revision in the Work. A Work Change Directive will not change the Contract Price or Contract Times but is evidence that the parties expect that the modification ordered or documented by the Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on Contract Price or Contract Times.

D. *Field Orders*

1. The Architect may issue a Field Order to authorize minor changes in the Work, provided that the changes do not involve an adjustment in the Contract Price or Contract Times.
2. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then Contractor shall request such adjustment before proceeding with the Work.

Article 11. Differing Site Conditions Process

- A. If Contractor believes that any subsurface or physical condition (including but not limited to utilities or other underground facilities) that is uncovered or revealed at the Site either (1) differs materially from that shown or indicated in the Contract, or (2) is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract, then Contractor shall promptly notify the District and Architect about such condition. Contractor shall not further disturb such condition or perform any Work in connection with the condition (except with respect to an emergency) until receipt of authorization to do so.
- B. Once the District has investigated the issue identified by the Contractor, the District will issue a written statement to Contractor regarding the condition in question, addressing the resumption of Work in connection with such condition and indicating whether any change in Work is needed.

Article 12. Claims And Dispute Resolution

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Architect promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim must be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, the District or Contractor shall give notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the District and Contractor both agree to an alternative dispute resolution process.

Article 13. Tests and Inspections; Correction of Defective Work

A. Tests and Inspections

- 1. The District and Architect will have access to the Site and the Work at reasonable times for observation, inspection, and testing. Contractor shall provide proper and safe conditions for such access.
- 2. Contractor shall give Architect timely notice of readiness of the Work for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- 3. Except as otherwise provided in the Contract, Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required: (1) by the Contract; (2) by codes, laws, or regulations; (3) to attain the District's and Architect's acceptance of materials or equipment; and (4) to obtain Architect's approval prior to purchase of materials, mix designs, or equipment.
- 4. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Architect, Contractor shall, if requested by Architect, uncover such Work for observation. Such uncovering will be at Contractor's expense.

B. Defective Work

- 1. Contractor warrants that the Work is not defective.
- 2. Architect has the authority to determine whether Work is defective, and to reject defective Work.
- 3. Prompt notice of all defective Work of which the District or Architect has actual knowledge will be given to Contractor.
- 4. The Contractor shall promptly correct all defective Work.
- 5. When correcting defective Work, Contractor shall take no action that would void or otherwise impair the District's warranty and guarantee on said Work.
- 6. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment or fails to perform the Work in such a way that the completed Work

will conform to the Contract, then the District may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

C. *Uncovering and Correction of Work*

1. If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.
2. The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. The cost of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

Article 14 – Payments to Contractor

A. *Progress Payments*

Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form acceptable to Architect. Each application for payment must be based on the most recent schedule of values in accordance with the Contract. The schedule of values must allocate the entire Contract Price. Lump sum items will be broken into units that allow for measurement of Work in progress.

B. *Applications for Payments*

Contractor shall submit signed applications for payment to the Architect monthly, in a form acceptable to the District. Contractor shall provide supporting documentation required by the Contract. The District will pay for Work completed as of the date of the application for payment.

C. *Retainage*

The District will retain **5%** of each progress payment until the Work is substantially complete.

D. *Review of Payment Applications*

1. Within 10 days after receipt of each application for payment, Architect will either recommend payment and present the application for payment to the District or return the application for payment to Contractor indicating Architect's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and may resubmit the application for payment.
2. Architect will recommend reductions in payment (set-offs) which, in the opinion of the Architect, are necessary to protect the District from loss because the Work is defective and requires correction or replacement.
3. The District is entitled to impose set-offs against payment based on any claims that have been made against the District, or any incurred costs, losses, or damages, on account of Contractor's conduct in the performance of the Work; for defective Work; or for liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

E. *Contractor's Warranty of Title*

Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to the District free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by the District.

F. *Substantial Completion*

1. When Contractor considers the Work ready for its intended use, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment ("punch list"). Failure to include an item on Contractor's punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract. At the same time Contractor submits its punch list, Contractor shall request that Architect issue a certificate of substantial completion.
2. Promptly after Contractor's request, Architect will inspect the Work with the District and Contractor to determine the status of completion. If Architect does not consider the Work substantially complete, Architect will notify Contractor and the District of the reasons for Architect's decision.
3. If Architect considers the Work substantially complete, or upon resolution of all reasons for non-issuance of a certificate, Architect will deliver to the District and Contractor a certificate of substantial completion that will fix the date of substantial completion and include Architect's approved punch list of items to be completed or corrected before final payment.

G. *Final Inspection*

Upon notice from Contractor that the entire Work is complete, Architect will promptly make a final inspection and will notify Contractor of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work and remedy such defects.

H. *Final Payment*

1. Contractor may make application for final payment after satisfactorily completing all Work, including providing all maintenance and operating instructions, schedules, warranties, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, and other documents.
2. Contractor shall provide the following items with its final application for payment (except as previously delivered):
 - a. All documentation called for in the Contract;
 - b. Complete As-Built drawings dated in PDF and AutoCAD;
 - c. 2 copies of any Operation and Maintenance Manuals;
 - d. Training of District personnel on system and equipment operation;
 - e. Finish Floor Elevation Certificate;
 - f. Consent of the surety to final payment;
 - g. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to the District free and clear of any liens or other title defects, or will so pass upon final payment;
 - h. A list of all pending claims; and
 - i. Complete and legally effective releases or waivers (satisfactory to the District) of all lien rights arising out of the Work, and of liens filed in connection with the Work.

3. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Architect's written recommendation of final payment and issuance of notice of the acceptability of the Work.

Article 15. Suspension of Work and Termination

A. The District May Suspend Work

At any time and without cause, the District may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by notice to Contractor and Architect. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be entitled to an adjustment in the Contract Price or Contract Times, to the extent directly attributable to any such suspension.

B. The District May Terminate for Cause

1. Contractor's failure to perform the Work in accordance with the Contract or other failure to comply with a material term of the Contract will constitute a default by Contractor and justify termination for cause.
2. If Contractor defaults in its obligations, then after giving Contractor and any surety 10 days' notice that the District is considering a declaration that Contractor is in default and the termination of the Contract, the District may proceed to:
 - a. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
 - b. Enforce the rights available to the District under any applicable performance bond.
3. The District may not proceed with termination of the Contract for cause under this paragraph if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
4. Subject to the terms and operation of any applicable performance bond, if the District has terminated the Contract for cause, the District may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which the District has paid Contractor but which are stored elsewhere, and complete the Work as the District may deem expedient.
5. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to the District.
6. If Contractor has provided a performance bond, the provisions of that bond will govern over any inconsistent provisions of this paragraph.

C. The District May Terminate for Convenience

1. Upon 7 days' notice to Contractor, the District may, without cause and without prejudice to any other right or remedy of the District, terminate the Contract. In such case, the District will pay Contractor for the following, without duplication of any items:
 - a. Completed and acceptable Work executed in accordance with the Contract prior to the effective date of termination, less any set-offs, and including fair and reasonable sums for overhead and profit on such Work;
 - b. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

- c. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
2. The District will not pay Contractor for any loss of anticipated profits, or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

D. *Contractor May Stop Work or Terminate*

If, through no act or fault of Contractor, (1) the Work is suspended for more than 60 consecutive days by the District or under an order of court or other public authority, or (2) the District fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' notice to the District, and provided the District does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the District.

Article 16. Contractor's Representations and Warranties.

Contractor represents and warrants to the District as follows:

- A. Contractor has examined and carefully studied the Contract.
- B. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. The Contract is generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- D. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract.
- E. *Scrutinized Companies.* Contractor certifies that it is in compliance with section 287.135, Florida Statutes. The District may terminate this Agreement if Contractor is found to be out of compliance with this statute. Contractor certifies that (1) it is not on any of the following lists: Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in Iran Terrorism Sectors, or Scrutinized Companies that Boycott Israel, and (2) it is not engaged in business operations in Cuba or Syria. The District may terminate this Agreement if Contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. The District may terminate this Agreement if Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes or has been placed on a list created pursuant to section 215.473, Florida Statutes relating to scrutinized active business operations in Iran. Contractor acknowledges the remedies provided in subsection 287.135(5), Florida Statutes against anyone found to have submitted a false certification including civil penalties.
- F. *Public Entity Crimes.* Contractor understands the requirements of sections 287.132 and 287.133, Florida Statutes. Neither Contractor nor any of its Affiliates are currently on the convicted vendor list for public entity crimes maintained by the Florida Department of Management Services and neither of them has been on the convicted vendor list within the past 36 months. Contractor is in full compliance with sections 287.132 and 287.133, Florida Statutes, will remain in compliance with them throughout the term of this Agreement, and will notify the District if it becomes non-

compliant.

- G. *E-Verify*. Contractor is in compliance with section 448.095, Florida Statutes. As required by subsection 448.095(5)(a), Florida Statutes, Contractor has registered with and uses the E-Verify System to verify the work authorization status of all newly hired employees. As required by subsection 448.095(5)(b), F.S. Contractor shall require any subcontractors to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract.

Article 17. Public Records

Contractor shall comply with Florida public records laws, specifically to:

- A. Keep and maintain public records required by the District to perform the service.
- B. Upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the District.
- D. Upon completion of the Contract, transfer, at no cost, to the District all public records in possession of the Contractor or keep and maintain public records required by the District to perform the service. If the Contractor transfers all public records to the District upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.
- E. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE SANIBEL ISLAND FIRE & RESCUE District, 2351 PALM RIDGE RD, SANIBEL FL 33957. THE CUSTODIAN OF PUBLIC RECORDS MAY BE CONTACTED BY PHONE AT (239) 472-5525, OR BY EMAIL AT CJACKSON@SANIBELFIRE.COM.**

Article 18. Miscellaneous Provisions

- A. *Notice.* All notices or other communications permitted or required under this Agreement must be in writing and must be sent to the party at that party's address set forth below or at whatever other address the party specifies in writing. Notices must be personally delivered, sent by certified or registered mail, sent by overnight courier, postage prepaid, or sent to all email addresses listed below for each party.

As to the District:

Sanibel Island Fire & Rescue District 2351 Palm Ridge Rd,
Sanibel FL 33957

Attn: Fire Chief

Email #1: _____

Email #2: _____

Email #3: _____

As to the Contractor:

Attn.: _____

Email #1: _____

Email #2: _____

Email #3: _____

- B. *Headings.* The headings contained in this Contract are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Contract.
- C. *Effective Date.* The effective date of this Contract is the last date on the signature page when both parties have executed it.
- D. *Assignment.* Neither this Contract nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.
- E. *Counterparts and Transmission.* To facilitate execution, this Contract may be executed in as many counterparts as may be convenient or required, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The executed signature page(s) from each original may be joined together and attached to one such original and it shall constitute one and the same instrument. In addition, said counterparts may be transmitted electronically (i.e., via facsimile or .pdf format document sent via electronic mail), which transmitted document shall be deemed an original document for all purposes hereunder.
- F. *Severability.* If any part of this Contract shall be declared unlawful or invalid, the remainder of the Contract will continue to be binding upon the parties.
- G. *Venue.* This agreement will be governed by and construed in accordance with the laws of the State of Florida. In the event of any litigation with respect to this Contract, the parties agree that venue will be in Lee County, Florida.
- H. *Cumulative Remedies.* The duties and obligations expressly imposed by this Contract, and the rights and remedies expressly available to the parties under this Contract, are in addition

to, and are not to be construed in any way as a limitation of, any duties, obligations, rights, or remedies otherwise imposed or available by laws or regulations, by warranty or guarantee, or by other provisions of the Contract.

- I. *Limitation of Damages.* Neither the District, the Architect, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.
- J. *No Waiver.* A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- K. *Survival of Obligations.* All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

[The remainder of this page is intentionally blank]

The parties have executed this Contract on the dates written below.

SANIBEL FIRE RESCUE District

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form and Legal Sufficiency

By: _____

Name: _____

Exhibit A Scope of Work

This work is for construction of a new two-story Fire Station to replace the existing one-story fire station deemed structurally unstable after Hurricane Ian. The District will demolish the existing station and adjacent landscaping as part of another permit. Demolition of the remaining site, as indicated in the drawings, is part of this scope of Work.

The new fire station will have 3 apparatus bays with new concrete aprons. The ground level will have a new public lobby, public restroom, treatment room, decontamination room with restroom, turnout gear storage and medical storage. The ground floor will also have an electrical room, mechanical room, and mechanical yard with a generator. The second floor of the station will have the bunk rooms, firefighter restrooms, laundry, fitness room, kitchen, dayroom, and outdoor patio. The flat roof portion on the second floor will be used for fire training activities.

The new ground floor level of the structure will be elevated at 13' NAVD as required per FEMA 500-year flood. The apparatus level is to be below the ground floor base flood elevation due to existing road elevation and safety access for fire trucks entry and exiting. The apparatus level is to be wetproof. The scope of work also includes new sitework, public parking, staff parking, landscaping and the renovation of the existing storage building with updated finishes.

The fire department intends to operate out of the existing trailer on site and will continue to use the existing one-story detached storage building, along with the existing communication tower that will remain. All work performed must be coordinated with the fire department to maintain the fire department operations during the duration of Work.

The Work must be performed in accordance with the attached Architectural Plans.

The Work includes the following:

- 1) 100% Construction Documents dated 12.22.23
- 2) Specification book (Vol 1 & Vol 2)

Exhibit B

Contract Price

(with Owner Direct Purchase Items identified)

Exhibit C

BOND NO. [Surety to enter bond #]

PERFORMANCE AND PAYMENT BOND

**PUBLIC CONSTRUCTION BOND
authorized by section 255.05, Florida Statutes**

By this bond, we [Name of Contractor], as **Principal**, and [Name of Surety], as **Surety**, are bound to **Sanibel Fire & Rescue District ("District")**, an independent special district in the State of Florida, herein called **Owner**, in the sum of **[Total Contract Price]**, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs this contract dated _____, 20____, between Principal and Owner for construction of improvements known as **[Name of Project]** located at **[Street Address or Legal Description]**, under District Solicitation No. [Solicitation number], the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05 (1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and (10), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes do not affect Surety's obligation under this bond.

	OWNER	PRINCIPAL	SURETY
NAME	Sanibel Fire & Rescue District	[Name of Contractor]	[Name of Surety]
ADDRESS	2351 Palm Ridge Rd. Sanibel, Florida 33957	[Principal Business Address of Contractor]	[Principal Business Address of Surety]
PHONE NUMBER	(239) 472-5525	[Principal Business Phone of Contractor]	[Principal Business Phone of Surety]

[Name of Contractor]

DATED THIS _____ DAY

OF _____, 2_____

By: _____

[Printed Name and Title of Signer]

PUBLIC CONSTRUCTION PERFORMANCE AND PAYMENT BOND

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this ___ day of _____, _____, by [name of person acknowledging].

Signature of Notary Public
[Name of Notary Typed, Printed, or Stamped]

(NOTARY SEAL)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced:

_____ [Name of Surety]	DATED THIS _____ DAY OF _____, 2 _____
---------------------------	---

By: _____
[Printed Name] as Attorney in Fact

Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this ___ day of _____, _____, by [name of person acknowledging].

Signature of Notary Public
[Name of Notary Typed, Printed, or Stamped]

(NOTARY SEAL)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced:

Exhibit D
Construction Contract for Fire Station
Bonds and Insurance Requirements

1.1. *Performance and Payment Bonds*

- A. All Bonds must be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Bureau of the Fiscal Service, Surety Bond Branch, U.S. Department of the Treasury. Additionally, the surety shall:
1. hold a certificate of authority authorizing it to write surety bonds in Florida
 2. have twice the minimum surplus and capital required by the Florida insurance code at the time of the Effective Date of the Contract;
 3. be in compliance with the provisions of the Florida insurance code;
 4. hold a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. Sections 9304 to 9308; and
 5. provide an affidavit executed by an officer of the surety bond insurer as evidence that the surety company is in compliance with the foregoing requirements.
- B. All Bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in Florida or it ceases to meet the requirements provided in this Exhibit, Contractor shall within twenty (20) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of this Exhibit.

1.2 *Licensed Sureties and Insurers*

All Bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor must be obtained from surety or insurance companies that are duly licensed or authorized to conduct business in the state of Florida. In addition, such sureties and insurance companies shall have an A.M. Best company rating of "A -" or better.

1.3 *Certificates of Insurance*

- A. On or before the Effective Date of the Contract, Contractor shall furnish and deliver to the District, with copies to each additional insured and loss payee, certificates of insurance (and other evidence of insurance requested by the District or any other additional insured or loss payee) which Contractor is required to purchase and maintain.

- B. Failure of the District to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of the District to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- C. the District does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the District and others in the Contract Documents.

1.4 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor or any other Contractor-Related Entity:
 - 1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;
 - 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) by any other person for any other reason;
 - 5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.
- B. The policies of insurance required by paragraph 1.04.A shall:
 - 1. With respect to insurance required by paragraphs 1.04.A.2 through 1.04.A.6 inclusive, be written on an occurrence basis and include as additional insureds, on a primary and non- contributory basis, the District and all of its representatives, appointed and elected officials, officers, employees, and authorized agents (subject to any customary exclusion in respect of professional liability), all of whom must be listed as additional insureds (through a blanket endorsement or otherwise) and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby. The endorsement for such additional insured status shall specifically include completed operations coverage for the District and all of its representatives, appointed and elected officials, officers, employees, and authorized agents;
 - 2. Include at least the specific overages and be written for not less than the limits of liability provided in this Exhibit J or required by Applicable Laws, whichever is greater;
 - 3. Include contractual liability insurance covering Contractor's obligations under the Contract.
 - 4. Contain a provision or endorsement that the coverage afforded will not be canceled, renewal refused, or reduced in coverage or limits, until at least thirty days' prior written notice has been given to the District and each other additional insured to whom a certificate of insurance has been issued (and the certificates

of insurance furnished by Contractor will so provide);

5. Remain in effect at least until Final Completion and at all times thereafter when Contractor may be correcting, removing, or replacing defective Construction in accordance with the Contract; and
 6. Include completed operations coverage:
 - a. Such insurance shall remain in effect for five (5) years after Final Completion.
 - b. Contractor shall furnish the District and each other additional insured to whom a certificate of insurance has been issued evidence satisfactory to the District and any such additional insured of continuation of such insurance at Final Completion and five (5) years thereafter.
- C. Each Subcontractor performing any Work on the Project Site shall provide insurance that complies with the insurance requirements set forth in paragraphs 1.04.A, 1.04.B.1 and 1.04.B.2.

1.5 *Property Insurance*

- A. Contractor shall purchase and maintain property insurance upon Construction at the Site. Such insurance is in the amount of the full replacement cost. Such insurance must:
1. include the interests of the District, Contractor, and any other persons or entities identified as a loss payee, each of whom is deemed to have an insurable interest to the extent of their actual loss.
 2. be written as a Builder's Risk Policy or equivalent form to cover all risks of direct physical loss or damage to property insured, in the amount of not less than the full replacement cost and shall insure at least against the perils of fire, lightning, explosion, windstorm, and hail, smoke, wildfire, convective storm, aircraft (except aircraft, including helicopter, operated by or on behalf of named insured and vehicles), riot and civil commotion, theft, vandalism, malicious mischief, debris removal, demolition occasioned by enforcement of Applicable Laws, flood, earthquake, earth movement as defined by the Builder's Risk Policy, water damage, wind, testing if applicable, collapse, and damage resulting from defective design, workmanship, or material (LEG 2/96 or equivalent).
 3. include expenses incurred in the repair or replacement of any the District's property (including but not limited to fees and charges of the District's Advisor, Engineer, and Construction Manager);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by the District prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by the District;
 5. include the hazards usually contained in a boiler and machinery policy, and any additional property insurance as may be required by Applicable Laws;
 6. remain in effect and not be excluded by a "force majeure clause," whether in these General Conditions or otherwise; and
 7. be maintained in effect until Final Completion unless otherwise agreed to in writing by the District and

Contractor with thirty days' written notice to each other person or entity that is identified as a loss payee.

- B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Contractor in accordance with this paragraph 1.05 will contain a provision or endorsement that the coverage afforded will not be canceled, renewal refused, or reduced in coverage or limits, until at least 30 days' prior written notice has been given to the District and to each other loss payee.
- C. the District is not responsible for purchasing and maintaining any property insurance to protect the interests of Contractor or any Contractor-Related Entity. The risk of loss within any deductible amount will be borne by Contractor or the Contractor-Related Entity suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at their own expense.

1.6 *Insurance Amounts and Other Requirements*

A. Contractor shall obtain and maintain the following insurance and shall deliver to the District certificates of insurance or other evidence acceptable to the District when Contractor executes the Contract. Contractor shall purchase and maintain such insurance as will provide protection from claims which may arise out of or result from Contractor's performance of the Work and other obligations under the Contract, whether it is to be performed by Contractor, Contractor's employees or Contractor's Subcontractors, Suppliers, and anyone for whose acts any of them may be legally or contractually responsible.

- 1. Workers Compensation. Coverage must provide statutory limits in compliance with applicable state and federal laws. In addition, the policy must include the following:
 - a. Employer's Liability with a minimum limit of \$1,000,000 per accident in accordance with statutory requirements.
 - b. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the District with thirty (30) days written notice of cancellation and/or restriction.
 - c. Contractor must be in compliance with all applicable state and federal workers' compensation laws, including but not limited to, US Longshore and Harbor Workers Compensation Act, Jones Act, and Federal Employers Liability Act.
- 2. Commercial or Comprehensive General Liability. Coverage must include:
 - a. \$2,000,000 combined limit per occurrence for bodily injury, personal injury, and property damage.
 - b. Contractual coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement, broad form property damage, explosion, collapse, and underground hazard coverage and independent's coverage.
 - c. Additional Insured. the District must be specifically included as an additional insured.
 - d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the District with thirty (30) days written notice of cancellation and/or restriction.
- 3. Contractor's General Liability Coverage shall include completed operations and product liability coverages and must include property under the care, custody, and control of Contractor:
 - a. General Aggregate \$2,000,000
 - b. Products – Completed Operations Aggregate per Job \$2,000,000
 - c. Personal and Advertising Injury \$2,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage) \$2,000,000
 - e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.

4. Comprehensive Automobile Liability. Coverage must be afforded on a form no more restricted than the latest edition of the Comprehensive Automobile Liability Policy filed by the Insurance Services Office and must include:
 - a. \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - b. Owned Vehicle.
 - c. Hired and Non-Owned Vehicles.
 - d. Employee Non-Ownership.
 - e. Additional Insured. the District must be specifically included as additional insured.
 - f. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the District with thirty (30) days written notice of cancellation and/or restriction.

5. Contractor's Property Insurance. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof.
 - a. This insurance shall:
 - i. include the interest of the District, Contractor, Subcontractors and Suppliers, and the officers, directors, partners, employees, agents and other consultants and Subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
 - ii. be written on a Builder's Risk or Installation Floater, as appropriate "all-risk" policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage for, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Applicable Laws, water damage (other than that caused by flood) and such other perils or causes of loss as may be specifically required by the Contract;
 - iii. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 - iv. cover materials and equipment stored at the Site or at another location that was agreed to in writing by the District prior to being incorporated in the Work;
 - v. allow for partial utilization of the Work by the District;
 - vi. include testing and startup; and
 - vii. be maintained in effect until Final Completion unless otherwise agreed to in writing by the District and Contractor with thirty (30) calendar days written notice to each other additional insured to whom a certificate of insurance has been issued.
 - b. Contractor shall be responsible for any deductible or self-insured retention.

6. Excess or Umbrella Liability. This insurance shall protect Contractor, Subcontractors and Suppliers, and the officers, directors, partners, employees, agents and other consultants and Subcontractors of any of them, and the District and all of its representatives, appointed and elected officials, officers, employees, and authorized agents, as additional insureds, against claims in excess of the limits provided under workers' compensation and employers' liability, comprehensive automobile liability, and commercial general liability policies. The umbrella policy shall follow the form of the primary insurance, including the application of the primary limits.
 - a. General Aggregate \$10,000,000
 - b. Each Occurrence \$10,000,000

Exhibit E
Requirements for Projects Using Federal Funds

FEDERAL SUPPLEMENT
APPLICABLE PROVISIONS

= Any Contract, if awarded, will be subject to the following federal provisions as selected below:

1. EQUAL EMPLOYMENT OPPORTUNITY
2. MAINTENANCE OF RECORDS
3. DHS SEAL, LOGO, AND FLAGS
4. LOCAL VENDOR PREFERENCE EXCLUSION
5. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS
6. NO OBLIGATION BY THE FEDERAL GOVERNMENT
7. FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS
8. SUBCONTRACTS
9. CONFLICT OF INTEREST
10. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)
11. ENERGY POLICY AND CONSERVATION ACT
12. SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS
13. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322)
14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216)
15. TERMINATION FOR CAUSE AND/OR CONVENIENCE
16. RECOVERED MATERIALS
17. SUSPENSION AND DEBARMENT
18. CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708)
19. BYRD ANTI-LOBBYING AMENDMENT
20. CLEAN AIR ACT
21. FEDERAL WATER POLLUTION CONTROL ACT
22. REMEDIES
23. OTHER RIGHTS AND REMEDIES
24. DAVIS-BACON REQUIREMENTS
25. COPELAND ANTI-KICKBACK ACT

The following clauses shall apply to any Purchase Orders issued under declaration of emergency and/or where federal funds apply [or may apply].

ANY/ALL THRESHOLD AMOUNTS

1. EQUAL EMPLOYMENT OPPORTUNITY:

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

- A. The CONSULTANT/CONTRACTOR/VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT/CONTRACTOR/VENDOR 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, sexual orientation, gender identity, 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 CONSULTANT/CONTRACTOR/VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- B. The CONSULTANT/CONTRACTOR/VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT/CONTRACTOR/VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The CONSULTANT/CONTRACTOR/VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT/CONTRACTOR/VENDOR's legal duty to furnish information.
- D. The CONSULTANT/CONTRACTOR/VENDOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONSULTANT/CONTRACTOR/VENDOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The CONSULTANT/CONTRACTOR/VENDOR 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.

- F. The CONSULTANT/CONTRACTOR/VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the CONSULTANT/CONTRACTOR/VENDOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONSULTANT/CONTRACTOR/VENDOR may be declared ineligible for further Government 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.
- H. The CONSULTANT/CONTRACTOR/VENDOR will include the provisions of paragraphs (a) through (h) 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 sub- CONSULTANT/CONTRACTOR/VENDOR.

The

CONSULTANT/CONTRACTOR/VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance:

Provided, however, that in the event the CONSULTANT/CONTRACTOR/VENDOR becomes involved in, or is threatened with, litigation with a sub-CONSULTANT/CONTRACTOR/VENDOR as a result of such direction, the CONSULTANT/CONTRACTOR/VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

The District further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the District so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The District agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The District further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the District agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. MAINTENANCE OF RECORDS:

- A. The CONSULTANT/CONTRACTOR/VENDOR will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this agreement. Said records and documentation will be retained by the CONSULTANT/CONTRACTOR/VENDOR for a minimum of five (5) years from the date of termination of this agreement, or for such period is required by law.
- B. CONSULTANT/CONTRACTOR/VENDOR shall provide, when requested, access by the District, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONSULTANT/CONTRACTOR/VENDOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- C. CONSULTANT/CONTRACTOR/VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- D. CONSULTANT/CONTRACTOR/VENDOR agrees to provide the GRANT AGENCY Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.
- E. CONSULTANT/CONTRACTOR/VENDOR shall retain all records associated with this solicitation and any agreements that are created in response to the solicitation for a period of no less than five (5) years after final payments and all other pending matters are closed.
- F. The District and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the District deems necessary during the period of this agreement, and during the period as set forth in the paragraphs above; provided, however, such activities shall be conducted only during normal business hours of the CONSULTANT/CONTRACTOR/VENDOR and at the expense of the District.

3. DHS SEAL, LOGO, AND FLAGS

The CONSULTANT/CONTRACTOR/VENDOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific GRANT AGENCY pre- approval.

4. LOCAL VENDOR PREFERENCE EXCLUSION

Local Vendor Preference requirements have been waived for this service/purchase request and any and all references contained herein are non-applicable to this request and subsequent contract and/or purchase order(s).

5. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS

This is an acknowledgment that GRANT AGENCY financial assistance will be used only to fund the services requested. The CONSULTANT/CONTRACTOR/VENDOR will comply with all applicable federal law, regulations, executive orders, GRANT AGENCY policies, procedures, and directives.

6. NO OBLIGATION BY THE FEDERAL GOVERNMENT

The Federal Government is not a party to this solicitation and is not subject to any obligations or liabilities to the non- Federal entity, CONSULTANT/CONTRACTOR/VENDOR, or any other party pertaining to any matter resulting from the Solicitation.

7. FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS

The CONSULTANT/CONTRACTOR/VENDOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT/CONTRACTOR/VENDORS actions pertaining to this solicitation.

8. SUBCONTRACTS

The selected firm must require compliance with all federal requirements of all sub-CONSULTANT/CONTRACTOR/VENDORS performing work for Prime CONSULTANT/CONTRACTOR/VENDOR under this Agreement, by including these federal requirements in all contracts with sub-CONSULTANT/CONTRACTOR/VENDORS.

9. CONFLICT OF INTEREST

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officers, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from CONSULTANT/CONTRACTOR/VENDORS or parties to subcontracts.

10. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)

- A. Statutes and Executive Orders require employers to abide by the Immigration laws of the United States and to employ only individuals who are eligible to work in the United States. The Employment Eligibility Verification System (E-Verify) operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) to provides an internet-based means of verifying employment eligibility of workers in the United States; it is not a substitute for any other employment eligibility verification requirements.
- B. Sub-CONSULTANT/CONTRACTOR/VENDOR requirement: Vendors shall require all subcontracted vendors to flow down the requirement to use E-Verify to sub-CONSULTANT/CONTRACTOR/VENDORS.
- C. It shall be the vendor's responsibility to familiarize themselves with all rules and regulations governing this program.
- D. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>.

11. ENERGY POLICY AND CONSERVATION ACT

CONSULTANT/CONTRACTOR/VENDOR must follow any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

12. SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

CONSULTANT/CONTRACTOR/VENDOR shall, at a minimum, take the following five "affirmative steps" to assure that minority firms, small businesses, women's business enterprises, and Labor Surplus Area firms are used when possible:

- A. Place 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. 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.
- D. 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.
- E. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

13. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322)

As appropriate and to the greatest extent consistent with law, state and non-state entities should, to the greatest extent practicable under its GRANT AGENCY award, provide a

preference for the purchase of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. 2 C.F.R. § 200.322 also provides specific definitions for “Produced in the United States” and “manufactured products” that states should review.

14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216)

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming,

or interconnection arrangements; or Contract Provisions Guide 28

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; *and*

ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

OVER \$10K ADD THE FOLLOWING TO THE ABOVE

15. TERMINATION FOR CAUSE AND/OR CONVENIENCE:

A. The District, by written notice to the CONSULTANT/CONTRACTOR/VENDOR, may terminate this Agreement with or without cause (for convenience), in whole or in part, when the District determines in its sole discretion that it is in the District's best

interest to do so. In the event of termination the CONSULTANT/CONTRACTOR/VENDOR will not incur any new obligations for the terminated portion of the Agreement after the CONSULTANT/CONTRACTOR/VENDOR has received notification of termination.

- B. If the Agreement is terminated before performance is completed, the CONSULTANT/CONTRACTOR/VENDOR shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount that is the same percentage of the Agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the District and shall be turned over promptly by the CONSULTANT/CONTRACTOR/VENDOR.

16. RECOVERED MATERIALS

- A. In the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR shall make maximum use of products containing recovered material that are EPA-designated items unless the product cannot be acquired:
- Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- B. Information about this requirement is available EPA'S Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/> The list of EPA- designate items is available at <http://www.epa.gov/cpg/products/htm>

OVER \$25K ADD THE FOLLOWING TO THE ABOVE

17. SUSPENSION AND DEBARMENT

- A. 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 CONSULTANT/CONTRACTOR/VENDOR is required to verify that none of the CONSULTANT/CONTRACTOR/VENDOR, 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).
- B. The CONSULTANT/CONTRACTOR/VENDOR 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.
- C. This certification is a material representation of fact relied upon by the awarded CONSULTANT/CONTRACTOR/VENDOR. If it is later determined that the CONSULTANT/CONTRACTOR/VENDOR 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 Lee District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The CONSULTANT/CONTRACTOR/VENDOR 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.

OVER \$100K ADD THE FOLLOWING TO THE ABOVE

18. CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708)

Required contract provision 18 applies to all procurements over \$100,000 that involve the employment of mechanics, laborers, and construction work.

- A. 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.
- B. 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 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 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.
- C. Withholding for unpaid wages and liquidated damages. The State of Florida Division of Emergency Management 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 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 contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) 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 paragraphs (1) through (4) of this section.

19. BYRD ANTI-LOBBYING AMENDMENT

CONSULTANT/CONTRACTOR/VENDORS 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 nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

OVER \$150K ADD THE FOLLOWING TO THE ABOVE

20. CLEAN AIR ACT

- A. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the District, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

21. FEDERAL WATER POLLUTION CONTROL ACT

- A. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the District, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

OVER \$250K/SIMPLIFIED ACQUISITION THRESHOLD

22. REMEDIES

- A. In the event the CONSULTANT/CONTRACTOR/VENDOR fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the District may, upon fifteen (15) calendar days written notice to the CONSULTANT/CONTRACTOR/VENDOR and upon the CONSULTANT/CONTRACTOR/VENDOR's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:
 - 1. Withhold or suspend payment of all or any part of a request for payment.
 - 2. Require that the CONSULTANT/CONTRACTOR/VENDOR refund to the District any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
 - 3. Exercise any corrective or remedial actions, to include but not be limited to:
 - 4. Requesting additional information from the CONSULTANT/CONTRACTOR/VENDOR to determine the reasons for or the extent of non-compliance or lack of performance;
 - 5. Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;
 - 6. Advising the CONSULTANT/CONTRACTOR/VENDOR to suspend, discontinue or refrain from incurring costs for any activities in question; or
 - 7. Requiring the CONSULTANT/CONTRACTOR/VENDOR to reimburse the District for the amount of costs incurred for any items determined to be ineligible.

23. OTHER REMEDIES AND RIGHTS:

- A. Pursuing any of the above remedies will not keep the District from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the District waives any right or remedy in this Agreement or fails to insist on strict performance by the CONSULTANT/CONTRACTOR/VENDOR, it will not affect, extend or waive any other right or remedy of the District, or affect the later exercise of the same right or remedy by the District for any other default by the CONSULTANT/CONTRACTOR/VENDOR.
- B. Unless otherwise provided by the Contract, all claims, counter-claims, disputes and other matters in question between the District and the CONSULTANT/CONTRACTOR/VENDOR arising out of or relating to the Agreement between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida.

If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

REQUIRED PROVISIONS FOR ALL CONSTRUCTION CONTRACTS

24. DAVIS-BACON REQUIREMENTS

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent 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 paragraph (1)(iv) of this section; 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 (1)(ii) of this section) 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 easily be seen by the workers.

(ii)(A) The contracting officer 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 contracting officer shall approve 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;
- (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 contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting

officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (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.

2. Withholding.

The Federal Emergency Management Agency or the sponsor 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 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 work, all or part of the wages required by the contract, the Federal Emergency Management Agency may, after written notice to the Contractor, Sponsor, Applicant, or the District, 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. 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 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 that 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 that show the costs anticipated or the actual costs 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.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Emergency Management Agency if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or the District, as the case may be, for transmission to the Federal Emergency Management Agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. 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 at 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 address of each covered worker and shall provide them upon request to the Federal Emergency Management Agency if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or the District, as the case may be, for transmission to the Federal Emergency Management Agency, 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 sponsoring government agency (or the applicant, Sponsor, or the District).

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

(2) Each laborer and 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 Regulations 29 CFR Part 3;

(3) 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 Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (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 (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Emergency Management Agency, 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 Federal agency may, after written notice to the Contractor, Sponsor, applicant, or the District, 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 or to make such records available may be grounds for debarment action pursuant to 29 CFR 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, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his 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 Bureau of Apprenticeship and Training 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 that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor 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, 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 that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor 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 shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Emergency Management Agency 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 the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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 reference 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 contracting agency, 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).
- (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).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001

25. COPELAND "ANTI-KICKBACK" ACT

- A. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.
- B. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as 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.
- C. 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.