

DIVISION I
GENERAL REQUIREMENTS AND COVENANTS

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SECTION 1 DEFINITIONS AND TERMS

1-1 General.

[Not Used]

1-2 Abbreviations.

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

AAN	American Association of Nurserymen, Inc.
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	The Associated General Contractors of America, Inc.
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects.
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
EASA	Electrical Apparatus Service Association
EPA	Environmental Protection Agency of the United States Government
FDOT	Florida Department of Transportation
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
ISO	International Organization for Standards
MSTCSD	Minimum Specifications for Traffic Control Signals and Devices
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NIST	National Institute for Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
OSHA	Occupational Safety and Health Administration
SAE	Society of Automotive Engineers

SI	International System of Units
SSPC	Steel Structures Painting Council
UL	Underwriters' Laboratories

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

1-3 Definitions.

This Section 1-3 defines certain terms used in the Technical Requirements, and supplements the definitions found in Appendix 1 of the Agreement.

Architect.

The Architect as defined in Section 481.203 (3) Florida Statutes.

Architect of Record.

The Architect or Architectural Firm registered in the State of Florida that performs services for the Concessionaire in connection with the design and construction of buildings.

Architecture.

The practice of architecture as defined in Section 481.203(6) Florida Statutes.

Article.

Unless specified otherwise, the numbered prime subdivision of a Section of the Specifications.

Bridge.

Has the meaning set forth in Appendix 1 of the Agreement.

Calendar day.

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

Change Order.

A written order issued by the Department and accepted by the Concessionaire, covering minor changes in the plans, specifications, or quantities of Work, within the scope of the Contract Documents, when prices for the items of Work affected are previously established in the Contract Documents.

Claim Deductible.

Has the meaning set forth in Appendix 1 of the Agreement.

Completion Deadline(s).

Has the meaning set forth in Appendix 1 of the Agreement.

Concessionaire.

Has the meaning set forth in Appendix 1 of the Agreement.

Concessionaire Default.

Has the meaning set forth in Appendix 1 of the Agreement.

Construction Work.

Has the meaning set forth in Appendix 1 of the Agreement.

Consultant.

The Professional Engineer or Engineering Firm, or the Architect or Architectural Firm, registered in the State of Florida and under contract to the Concessionaire to perform professional services. The consultant may be the Engineer of Record or Architect of Record or may provide services through and be subcontracted to the Engineer of Record or Architect of Record.

Contaminated Materials.

Has the meaning set forth in Appendix 1 of the Agreement.

Contract Claim (Claim).

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

Contract Documents.

Has the meaning set forth in Appendix 1 of the Agreement.

Contract Time.

The number of calendar days allowed for completion of the D&C Work calculated from the number of days between the date identified in NTP 1 and the Final Acceptance Deadline, including authorized time extensions.

Contractor.

Has the meaning set forth in Appendix 1 of the Agreement.

Controlling Work Item.

Has the meaning set forth in Appendix 1 of the Agreement.

Culverts.

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

D&C Work.

Has the meaning set forth in Appendix 1 of the Agreement.

Delay.

Has the meaning set forth in Appendix 1 of the Agreement.

Department or FDOT.

Has the meaning set forth in Appendix 1 of the Agreement.

Design and Construction Costs.

Has the meaning set forth in Appendix 1 of the Agreement.

Design Criteria (Design Standards)

Standards, measures and expectations used in evaluating and verifying design performance for the Project, as set forth in the Technical Requirements.

Designer of Record.

The Architect of Record or the Engineer of Record.

Engineer.

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

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

Engineer of Record (EOR).

The Professional Engineer or Engineering Firm registered in the State of Florida that performs the design and analysis, and is responsible for the preparation of the Design Documents. The Engineer of Record shall be subcontracted to the Concessionaire.

Equipment.

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

Extra Work.

Has the meaning set forth in Appendix 1 of the Agreement.

Final Acceptance.

Has the meaning set forth in Appendix 1 of the Agreement.

Final Acceptance Deadline.

Has the meaning set forth in Appendix 1 of the Agreement.

Final Design Documents.

Has the meaning set forth in Appendix 1 of the Agreement.

Force Majeure Events.

Has the meaning set forth in Appendix 1 of the Agreement.

Highway, Street, or Road.

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

Holidays.

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

Inspector.

An authorized representative of the Engineer, assigned to make official inspections of the materials furnished and of the Work.

Laboratory.

The official testing laboratory used by the Department.

Lead Contractor.

Has the meaning set forth in Appendix 1 of the Agreement.

Maximum Availability Payment (MAP).

Has the meaning set forth in Appendix 1 of the Agreement.

Materials.

Any substances to be incorporated in, or encountered during the execution of, the Work under the Contract Documents.

Median.

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

O&M Security.

Has the meaning set forth in Appendix 1 of the Agreement.

NTP 1.

Has the meaning set forth in Appendix 1 of the Agreement.

NTP 2.

Has the meaning set forth in Appendix 1 of the Agreement.

Payment Bond.

Has the meaning set forth in Appendix 1 of the Agreement.

Plans.

The signed and sealed plans prepared by the EOR and accepted by the Department, including reproductions thereof, showing the location, character, dimensions, and details of the

Work. Upon review by the Department, the Plans will be stamped “Released for Construction” dated and initialed by the reviewer.

Performance Security.

Has the meaning set forth in Appendix 1 of the Agreement.

Project.

Has the meaning set forth in Appendix 1 of the Agreement.

Resident Engineer.

Engineer’s authorized representative responsible for oversight and inspections of the day-to-day Work of the Concessionaire.

Right-of-Way, Project Right of Way or Project ROW.

Has the meaning set forth in Appendix 1 of the Agreement.

Roadbed.

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

Roadway.

The portion of a highway within the limits of construction.

Schedule of Values.

Has the meaning set forth in Appendix 1 of the Agreement.

Secretary.

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

Section.

Unless specified otherwise, a numbered prime division of the Specifications.

Shoulder.

The paved or unpaved portion of the roadbed outside the edges of the traveled way or back of curb, and extending to the top of front slopes.

Special Provisions.

See definition for Specifications.

Specialty Engineer.

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing preparation of components, systems, or installation methods and equipment for specific temporary portions of the Work or for special items of the permanent Work not fully detailed in the plans and required to be furnished by the Concessionaire such as but not limited to pot bearing designs, non-standard expansion joints, MSE wall designs and other specialty items. The Specialty Engineer may also provide designs and details for items of the permanent Work declared by the State

Construction Office to be “minor” or “non-structural”. The Specialty Engineer may be an employee or officer of the Concessionaire or a fabricator, an employee or officer of an entity providing components to a fabricator, or an independent consultant.

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

(1) Registration as a Professional Engineer in the State of Florida.

(2) The education and experience necessary to perform the submitted design as required by the Florida Department of Business and Professional Regulation.

Concessionaire requests for acceptance for non-complying Work, repair procedures, shop drawing review, or review of activities directly affecting public safety must be prepared by a firm independent from both the Specialty Engineer and EOR if Specialty and EOR are same entity. If the Specialty Engineer and EOR are separate entities, either party may initiate the action; the other shall check and certify the Work as being complete and correct prior to submittal to the Engineer. If the Specialty Engineer and EOR are the same entity, the Specialty Engineer/EOR will initiate the action of the independent firm contracted to prepare these requests and the Specialty Engineer/EOR will check and certify the Work of the independent firm as being complete and correct prior to submittal to the Engineer.

Specifications.

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

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

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

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

D. Technical Special Provisions: Specifications, of a technical nature, prepared, signed, and sealed by an Engineer registered in the State of Florida other than the State Specifications Engineer or his designee.

Standard Specifications.

See definition for Specifications.

Subarticle.

Unless specified otherwise, a headed and numbered subdivision of an Article of a Section of the Specifications.

State.

State of Florida.

Subgrade.

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

Substantial Completion.

Has the meaning set forth in Appendix 1 of the Agreement.

Substructure.

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

Superstructure.

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

Supplemental Agreement.

Has the meaning set forth in Appendix 1 of the Agreement.

Supplemental Specifications.

See definition for Specifications.

Surety.

The surety furnishing the applicable Performance Security, Payment Bond or O&M Security.

Technical Special Provisions Requirements.

See definition for Specifications.

Termination Date

Has the meaning set forth in Appendix 1 of the Agreement.

Traveled Way.

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

Unilateral Payment.

Has the meaning set forth in Appendix 1 of the Agreement.

Work.

Has the meaning set forth in Appendix 1 of the Agreement.

Working Day.

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

**SECTION 2
PROPOSAL REQUIREMENTS AND CONDITIONS**

2-1 Prequalification of Bidders. [Not Used]

2-2 Proposals. [Not Used]

2-3 Interpretation of Estimated Quantities. [Not Used]

2-4 Examination of Plans, Specifications, Special Provisions and Site of Work. [Not Used]

2-5 Preparation of Proposals. [Not Used]

2-6 Rejection of Irregular Proposals. [Not Used]

2-7 Guaranty to Accompany Proposals. [Not Used]

2-8 Delivery of Proposals. [Not Used]

2-9 Withdrawal or Revision of Proposals. (Bid Proposal Only) [Not Used]

2-10 Opening of Proposals. [Not Used]

2-11 Disqualification of Bidders. [Not Used]

2-12 Material, Samples and Statement. [Not Used]

**SECTION 3
AWARD AND EXECUTION OF CONTRACT**

3-1 Consideration of Bids. [Not Used]

3-2 Award of Contract. [Not Used]

3-3 Cancellation of Award. [Not Used]

3-4 Release of Proposal Guaranty. [Not Used]

3-5 Performance Security, Payment Bond and O&M Security Required.

3-5.1 General Requirements: The general requirements for the Performance Security, Payment Bond and O&M Security are set forth in Section 17.2 of the Agreement.

3-5.2 Continued Acceptability of Surety: [Not Used]

3-5.3 Default by Concessionaire: In case of a Concessionaire Default, the Department will charge against the applicable Performance Security, Payment Bond and O&M Security all

expenses for services incidental to ascertaining and collecting losses under the Performance Security, Payment Bond and O&M Security, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Agreement.

3-5.4 Surety to Furnish Legal Defense: The Surety shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to payment or performance issues arising out of the applicable portion of the Work. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the amount required under Section 17.2 of the Agreement, which amount may be increased by subsequent Supplemental Agreements.

3-5.5 Liability for Wrongful or Criminal Act by Concessionaire: The principal and Surety executing the Performance Security and O&M Security shall be liable to the State in any civil action that might be instituted by the Department or any officer of the State authorized in such cases, for double any amount in money or property the State might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the principal, his contractor, agent or employee.

3-6 Execution of Contract and Bond. [Not Used]

3-7 Failure by Concessionaire to Execute Contract and Furnish Bond. [Not Used]

3-8 Audit of Concessionaire's Records.

In addition to any other auditing rights under the Contract Documents, upon execution of the Agreement, the Department reserves the right to conduct an audit of the Concessionaire's records pertaining to the Project. The Department or its representatives may conduct an audit, or audits, at any time prior to the Termination Date, or thereafter pursuant to 5-13. The Department may also require submittal of the records from the Concessionaire, its Contractors, or both. As the Department deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the Work.

If the Concessionaire fails to comply with these requirements, the Department may disqualify or suspend the Concessionaire from any opportunity in participating on future contracts with the Department.

Ensure that the Contractors provide access to their records pertaining to the Project upon request by the Department.

3-9 Public Records.

Allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Concessionaire in conjunction with the Agreement. Failure to grant such public access will be grounds for immediate termination of the Agreement by the Department pursuant to the Agreement.

SECTION 4 SCOPE OF THE WORK

4-1 Intent of Contract Documents.

The intent of the Contract Documents is to provide for the engineering services, furnishing of materials, construction, and completion in every detail of the Work described in the Contract Documents. The Concessionaire shall furnish all engineering and all of its associated direct and indirect costs, construction labor, materials, equipment, supervision, tools, transportation, and supplies required to complete the Work in accordance with the requirements of the Contract Documents.

4-2 Work not covered by Standard Specifications. [Not Used]

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

4-3.1 General: The Engineer reserves the right to make, at any time prior to or during the progress of the Work, alterations or changes, whether a significant change or not, and such alterations in the details of the Work, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such alterations or changes shall not constitute a breach of the Agreement, shall not invalidate the Agreement, nor release the Surety from any liability arising out of this Agreement or the Performance Security, Payment Bond and O&M Security. The Concessionaire agrees to perform the work, as altered or changed, the same as if it had been a part of the original Agreement.

The term “significant change” applies only when the Engineer determines that the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed Work. The allowance due to the Concessionaire will be in accordance with 4-3.2, below.

In the instance of an alleged “significant change”, the determination by the Engineer shall be conclusive and shall not be subject to challenge by the Concessionaire in any forum, except upon the Concessionaire establishing by clear and convincing proof that the determination by the Engineer was without any reasonable and good faith basis.

4-3.2 Increase, Decrease or Alteration in the Work: The Engineer reserves the right to make alterations in the character of the Work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of contract, shall not invalidate the Agreement or release the Surety.

Notwithstanding that the Concessionaire shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Concessionaire for any cause unless and until the Concessionaire follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Concessionaire may at any time, after having otherwise timely provided a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Concessionaire shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data provided are accurate and complete to the Concessionaire’s best knowledge and belief, and that the amount of the request accurately reflects what the Concessionaire in good faith believes to be the Department’s responsibility. Such certification must be made by an officer or director of the Concessionaire with the authority to bind the Concessionaire. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly

certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Concessionaire or the Department, the Department will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

Except as specifically provided in Article 10 of the Agreement, the monetary compensation provided for below constitutes full and complete payment for additional work entitling Concessionaire to seek compensation under the Agreement and the Concessionaire shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Concessionaire shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a Controlling Work Item and the performance of such Controlling Work Item actually extends completion of the Project due to causes that are expressly identified in the Agreement to be the Department’s responsibility. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Concessionaire shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a Controlling Work Item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

4-3.2.1 Allowable Costs for Extra Work: The Engineer may direct in writing that Extra Work be done and, at the Engineer’s sole discretion, the Concessionaire will be paid pursuant to an agreed Supplemental Agreement or in the following manner for Extra Work attributable to causes expressly assumed under the Agreement to be the Department’s responsibility, all subject to any other limitations or deductibles provided in the Contract Documents:

(a) Labor and Burden: The Concessionaire will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the Work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a Controlling Work Item and the performance of such Controlling Work Item actually extends completion of the Project due to no fault of the Concessionaire. Compensation for project supervisory personnel, but in no case higher than a Project Manager’s position, shall only be for the pro-rata time such supervisory personnel spent on the Work. In no case shall an officer or director of the Concessionaire, nor those persons who own more than 1% of the Concessionaire, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

Table 4-3.2.1	
Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual

Table 4-3.2.1	
Item	Rate
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Concessionaire's actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual

*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).

As a condition to NTP 2, certify to the Engineer the following:

- (1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
- (2) Actual Rate for items listed in Table 4-3.2.1,
- (3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
- (4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Concessionaire with authority to bind the Concessionaire. Timely certification is a condition precedent to any right of the Concessionaire to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Concessionaire of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such Extra Work.

(b) Materials and Supplies: For materials accepted by the Engineer and used on the Project, the Concessionaire will receive the actual cost of such materials incorporated into the Work, including Concessionaire paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the Work, the Concessionaire will receive the actual cost of such supplies.

(c) Equipment: For any machinery or special equipment (other than small tools), including fuel and lubricant, the Concessionaire will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

- x Adjustment Factors x 100%.
 Cost x 100%.
 Equipment Rate + Allowable Hourly Operating Cost.
 Rate x 50%.
- (1) Allowable Hourly Equipment Rate = Monthly Rate/176
 - (2) Allowable Hourly Operating Cost = Hourly Operating
 - (3) Allowable Rate Per Hour = Allowable Hourly
 - (4) Standby Rate = Allowable Hourly Equipment

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the Engineer to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight hours. Standby payment will not be made on days that are not normally considered work days on the project.

The Department will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Department will pay for the time to perform this work at the rate for standby equipment.

Equipment may include vehicles utilized only by Labor, as defined above.

(d) Indirect Costs, Expenses, and Profit: Compensation for all indirect costs, expenses, and profit of the Concessionaire, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (1) or (2) below:

(1) Solely a mark-up of 17.5% on the payments in (a) through (c), above.

(i) Bond: The Concessionaire will receive compensation for any premium for acquiring a Performance Security, Payment Bond and O&M Security for such additional or unforeseen work at the original Concessionaire bond rate paid by the Concessionaire.

(ii) The Concessionaire will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any Contract directly related to the additional or unforeseen work. Any such Concessionaire mark-up will be allowed only by the Concessionaire and a first tier Contractor, and the Concessionaire must elect the markup for any eligible first tier Contractor to do so.

(2) Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of the number of cumulative calendar days (as defined below) that is identified in the Claim Deductible.

$$D = \frac{A \times C}{B}$$

Where A = Original Design and Construction Costs

B = Original Contract Time
C = 6.5%
D = Average Overhead Per Day

Cumulative Calendar Days is defined as the cumulative total number of calendar days granted for time extension due to delay of a Controlling Work Item caused solely by the Department, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a Controlling Work Item caused solely by the Department is otherwise ultimately determined in favor of the Concessionaire to be.

Further, in the event there are concurrent delays to one or more Controlling Work Items, one or more being caused by the Department and one or more being caused by the Concessionaire, the Concessionaire shall be entitled to a time extension for each day that a Controlling Work Item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent Delay. No compensation, whatsoever, will be paid to the Concessionaire for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a Controlling Work Item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a Controlling Work Item caused solely by the Department is otherwise ultimately determined in favor of the Concessionaire to be, equal to or less than ten calendar days and the Concessionaire also fully assumes all monetary risk of any and all partial or single calendar day Delay periods, due to delay of a Controlling Work Item caused solely by the Department, that when cumulatively totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, and days granted for performing additional work.

(e) Engineering Services: For professional engineering services, the Concessionaire will receive actual costs of such engineering services necessary to perform the work. Direct cost of such engineering services shall be prepared utilizing the current "Standard Scope and Staff Hour Estimation Handbook" developed jointly between the Florida Institute of Consulting Engineers (FICE) and the FDOT. Should the Engineering Firm be a Joint Venture Partner of the Concessionaire, no markup will be allowed on engineering services.

4-3.2.2 Subcontracted Work: For work performed by a Contractor, compensation for the additional or unforeseen work shall be solely limited to as provided for in 4-3.2.1 (a), (b), (c) and (d)(1), with the exception of, in the instance of Contractor performed work only, the Contractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional Contractor bond will only be paid upon presentment to the Department of clear and convincing proof that the Contractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount.

The Concessionaire shall require the Contractor to provide a certification, in accordance with 4-3.2.1(a), as part of the cost proposal and provide such to the Engineer. Such certification must be made by an officer or director of the contractor with authority to bind the contractor. Timely certification is a condition precedent to any right of the Concessionaire to recover compensation for such Contractor costs, and failure to timely submit the certification

will constitute a full, complete, absolute and irrevocable waiver by the Concessionaire of any right to recover such Contractor costs.

4-3.3 No Waiver of Contract Documents: Changes made by the Engineer will not be considered to waive any of the provisions of the Contract Documents, nor may the Concessionaire make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work actually performed. All work shall be performed as directed by the Engineer and in accordance with the Contract Documents.

4-3.4 Conditions Requiring a Supplemental Agreement: A Supplemental Agreement will be used to settle documented Claims in accordance with the intent of the original Contract Documents and subsequent amendments thereto.

No payment will be made on a Supplemental Agreement or Unilateral Payment prior to the Department's approval of the document.

4-3.5 Extra Work: Extra Work authorized in writing by the Engineer or attributable to causes expressly assumed under the Agreement to be the Department's responsibility will be paid in accordance with the formula in 4-3.2. Except as specifically provided in Article 10 of the Agreement, such payment will be the full extent of all monetary compensation entitlement due to the Concessionaire for such Extra Work. Any entitlement to a time extension due to such Extra Work will be limited solely to that provided for in 4-3.2 for additional work.

4-3.6 Connections to Existing Pavement, Drives and Walks: Generally adhere to the Project ROW at the beginning and end of the Project as detailed in the plans. However, if the Engineer determines that it is necessary to extend the Work in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing. For necessary connections to existing walks and drives that are not indicated on the plans, the Engineer will provide direction regarding the proper connections in accordance with the Design Standards.

4-3.7 Differing Site Conditions: [Not Used]

4-3.8 Changes Affecting Utilities: The Concessionaire shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Concessionaire, and the Concessionaire shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities. Department approval of the Concessionaire's proposed change does not relieve the Concessionaire of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Concessionaire initiated changes in the design or construction activities from those in the Specifications, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the utility plans, or joint project agreements.

4-3.9 Value Engineering Incentive: Not applicable.

4-4 Unforeseeable Work.

The Concessionaire shall be solely responsible and bear the full risk of unforeseeable work, except to the extent such responsibility and risk are expressly assumed by the Department under the Agreement.

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

4-5.1 Ownership and Disposal of Existing Materials: Take ownership and dispose of all materials that are not designated as the property of other parties, in both roadway and

structures, found on the right-of-way, and all material in structures designated for removal. The Concessionaire is responsible to determine if any existing materials are the property of others and so indicate it on the plans. Additionally it is the Concessionaire's responsibility to coordinate with the property owner for proper removal, handling, storage, transportation and disposal to perform the Work.

Disposal of the existing bridge components shall be the responsibility of the Concessionaire.

4-5.2 Ornamental Trees and Shrubs: Take ownership of all ornamental trees or shrubs existing in the right-of-way that is required to be removed for the construction operations. Coordinate with adjacent property owners concerning disposition of ornamental trees and shrubs. Designate on the plans those to be reset, or to be removed by others prior to the construction operations.

4-5.3 Removal and Disposal of Structures and Obstructions. Existing structures such as bridges, culverts or drainage pipes found within the location lines, which are to be replaced or rendered useless by new construction shall be removed and suitably disposed of by the Concessionaire, at no additional compensation or extension of the Completion Deadlines or any other deadlines that are subject to extension pursuant to the Agreement. When their location is such as not to interfere with the Work, the removal shall not be done until the new structures replacing them are ready for traffic or other purpose for which the replaced structures are designed, or until the Engineer shall permit.

All material of existing structures requiring removal shall become the property of the Concessionaire. The material shall be removed from the Site by the Concessionaire in accordance with 4-5.1, or as directed by the Engineer.

4-5.4 Salvaged Material. The Concessionaire shall maintain adequate property control records for materials or equipment specified in the Technical Volumes to be salvaged for the Department or other designated parties. The Concessionaire shall be responsible for the adequate handling, storage, transportation and removal and protection of salvaged materials and equipment. The Concessionaire shall replace, at no cost to the Department, salvaged materials and equipment broken or damaged during salvage operations as the result of the Concessionaire's negligence.

4-5.5 Rights In the Use of Materials Found on the Work. The Concessionaire, with the prior written approval of the Engineer, may take suitable ledge, gravel, sand, loam, clay or other material from within the Project ROW and use it on the Project for other purposes than for forming embankments. If such use necessitates securing additional material for forming embankments, the Concessionaire shall replace such material(s) with material of a satisfactory quality as approved by the Engineer at no additional compensation or extension of the Completion Deadlines or any other deadlines that are subject to extension pursuant to the Agreement. The Concessionaire shall not excavate or remove any material which is not within the excavation as indicated by the slope stakes and grade lines without written approval. No excavated material suitable for use shall be wasted unless otherwise directed.

Nothing in the Contract Documents shall be construed as vesting in the Concessionaire any right of property in the materials used after they have been attached or affixed to the Work or the soil; but all such materials shall, upon being so attached or affixed, become the property of the Department.

4-6 Temporary and Interim Structures, Facilities, and Systems.

The Concessionaire shall be responsible for providing and maintaining all temporary and interim structures, facilities, and systems. Temporary and interim structures, facilities and systems may include but will not be limited to, interim water supply, interim power and light.

4-7 Final Cleaning Up of Right-of-Way.

Upon completion of the Work, and before Final Acceptance,, remove from the right-of-way and adjacent property all falsework, equipment, surplus and discarded materials, rubbish and temporary structures; restore in an acceptable manner all property, both public and private, that has been damaged during the prosecution of the Work; and leave the waterways unobstructed and the roadway in a neat and presentable condition throughout the entire length of the Project, all in accordance with the Contract Documents.

4-8 Maintenance of Right-of-Way, Staging Area and Adjacent Properties.

Do not dispose of materials of any character, rubbish or equipment, on property abutting the Project ROW, with or without the consent of the property owners. The Engineer will allow the Concessionaire to temporarily store equipment, surplus materials, usable forms, etc., on a well-kept site owned or leased by the Concessionaire, adjacent to the Project ROW. However, do not place or store discarded equipment, materials, or rubbish on such a site.

Shape and dress areas adjacent to the Project ROW that were used as plant sites, materials storage areas or equipment yards when they are no longer needed for such purposes. Grass these areas as necessary.

When working adjacent to or over travel lanes, ensure that dust, mud and other debris do not interfere with normal traffic operations or adjacent properties.

Remove all debris from the area where the Work is performed and clear zone of the Project before work ends for the day.

Pick up and remove trash from the job daily.

SECTION 5 CONTROL OF THE WORK

5-1 Plans and Working Drawings.

5-1.1 Contract Documents: Have available on the worksite, at all times, one copy of the Contract Documents.

5-1.2 Plans: Plans consist of general drawings showing such details as are necessary to give a comprehensive idea of the Work contemplated. In general, roadway plans will show alignment, profile grades, typical cross-sections and general cross-sections. In general, structure plans will show in detail all dimensions of the work contemplated. When the structure plans do not show the dimensions in detail, they will show general features and such details as are necessary to give a comprehensive idea of the structure.

Grades shown are finished grades, and B.M. Datum is North American Vertical Datum 1988 (NAVD-1988) National Geodetic Vertical Datum of 1929 (NGVD-1929) or other datum as noted in the plans.

The Specifications, the Plans, Special Provisions, and all supplementary documents are integral parts of the Contract Documents; a requirement occurring in one is as binding as though occurring in all. In addition to the Work specifically called for in the Contract Documents and any additional incidental Work, not specifically mentioned, when so shown in

the Plans, or if indicated, or obvious and apparent, as being necessary for the proper completion of the Work will be required under the Contract Documents without additional compensation or extension of the Completion Deadlines or any other deadlines that are subject to extension pursuant to the Agreement.

5-1.3 Alterations in Plans: Not applicable.

5-1.4 Shop Drawings:

5-1.4.1. Definitions:

(a) Shop Drawings: All working, shop and erection drawings, associated trade literature, calculations, schedules, manuals and similar documents submitted by the Concessionaire to define some portion of the Work. The type of Work includes both permanent and temporary works as appropriate to the Project.

(b) Permanent Works: All the permanent structures and parts thereof required of the completed Project.

(c) Temporary Works: Any temporary construction work necessary for the construction of the permanent works. This includes falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, special erection equipment and the like.

(d) Construction Affecting Public Safety: Construction that may jeopardize public safety such as structures spanning functioning vehicular roadways, pedestrian walkways, railroads, navigation channels of navigable waterways and walls or other structure foundations located in embankments immediately adjacent to functioning roadways. It does not apply to those areas of the site under the Concessionaire's control and outside the limits of normal public access.

(e) Major and Unusual Structures: Bridges of complex geometry and/or complex design. Generally, this includes the following types of structures:

1. Bridges with an individual span longer than 300 feet.
2. Structurally continuous superstructures with spans over 150 feet.
3. Steel box and plate girder bridges.
4. Steel truss bridges.
5. Concrete segmental and longitudinally post-tensioned continuous girder bridges.
6. Cable stayed or suspension bridges.
7. Arch bridges.
8. Tunnels.
9. Movable bridges (specifically electrical and mechanical components).
10. Rehabilitation, widening, or lengthening of any of the above.

(f) Special Erection Equipment includes launching gantries, beam and winch equipment, form travelers, stability towers, strong-backs, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction equipment such as cranes.

(g) Falsework includes any temporary construction work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams, girders, columns, piles and foundations, and any proprietary equipment including modular shoring frames, post shores, and adjustable horizontal shoring.

(h) Formwork includes any structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials such as

wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets. Formwork may be either permanent formwork requiring a shop drawing submittal such as stay-in-place metal or concrete forms, or may be temporary formwork which requires certification by the Specialty Engineer for Construction Affecting Public Safety and for Major and Unusual Structures.

(i) Scaffolding is an elevated work platform used to support workmen, materials and equipment, but not intended to support the structure.

(j) Shoring is a component of falsework such as horizontal, vertical or inclined support members. In this Section, this term is interchangeable with falsework.

(k) Concessionaire Originated Designs: Items, which the Contract Documents require the Concessionaire to design, detail and incorporate into the permanent works.

(l) Specialty Engineer versus Engineer of Record: See 1-3 for a detailed definition. For the purpose of the shop drawing review process as set forth in this article, the term "Specialty Engineer" will apply to the initiator or producer of shop drawings regardless of whether or not that party is normally the Engineer of Record or the Specialty Engineer and the term "Engineer of Record" will apply to the shop drawing checker and certifier regardless of whether or not that party is normally the Engineer of Record or the Specialty Engineer.

5-1.4.2 Work Items Requiring Shop Drawings: In general, the Department requires shop drawings for items of Work not fully detailed in the plans which require additional drawings and coordination prior to constructing the item, including but not limited to:

(a) Bridge components not fully detailed in the plans, i.e. segments, steel girder details, post-tensioning details, handrails, etc.

(b) Retaining wall systems

(c) Precast Box Culverts

(d) Non-standard lighting, signalization and signing structures and components

(e) Building structures

(f) Drainage structures, attenuators, and other nonstructural items

(g) Design and structural details furnished by the Concessionaire in compliance with the Contract Documents.

(h) Temporary Works affecting public safety

5-1.4.7. Other provisions of the Contract Documents may waive the requirement for submittals for certain items; i.e., items constructed from standard drawings or those complying with alternate details for prestressed members under Section 450. Review the Contract Documents to determine the submittals required.

5-1.4.3 Schedule of Submittals: Prepare and submit a schedule of submittals that identifies the Work for which shop drawings apply. For each planned submittal, define the type, and approximate number of drawings or other documents that are included and the planned submittal date, considering the processing requirements herein. Submit the schedule of submittals to the Department's Shop Drawing Review Office and the Engineer of Record 30 days prior to the submission of the first shop drawings.

Coordinate subsequent submittals with construction schedules to allow sufficient time for review and re-submittal as necessary.

5-1.4.4 Style, Numbering, and Material of Submittals:

5-1.4.4.1 Drawings: Furnish nine (9) clearly legible photographic or xerographic copies of all shop drawings that are necessary to complete the structure in compliance with the design shown on the plans. Prepare all shop drawings using the same units of measure as those used in the Department's plans. Use sheets no larger than 11 by 17 inches. Consecutively number each sheet in the submittal series, and indicate the total number in the series (i.e., 1 of 12, 2 of 12, . . . , 12 of 12). Include on each sheet the following items as a minimum requirement: the complete Financial Project Identification Number, Bridge Number(s), drawing title and number, a title block showing the names of the fabricator or producer and the Concessionaire for which the Work is being done, the initials of the person(s) responsible for the drawing, the date on which the drawing was prepared, the location of the item(s) within the Project, the signature and embossed seal of the Specialty Engineer or Concessionaire's Engineer/Architect of Record (when applicable), the Concessionaire's approval stamp with date and initials, and the Engineer/Architect of Record's approval stamp with date and initials. A re-submittal will be requested when any of the required information is not included.

5-1.4.4.2 Other Documents: Provide four sets of original documents or clearly legible photographic or xerographic copies of documents other than drawings, such as trade literature, catalogue information, calculations, and manuals. Provide sheets no larger than 11 by 17 inches. Clearly label and number each sheet in the submittal to indicate the total number of sheets in the series (i.e., 1 of 12, 2 of 12, . . . 12 of 12). Provide an additional three sets of documentation for items involved with precast prestressed components. Provide an additional two sets of documentation for items involving structural steel components.

Prepare all documents using the same units of measure as those used in the plans. Bind and submit all documents with a Table of Contents cover sheet. List on the cover sheet the total number of pages and appendices, and include the complete Financial Project Identification Number, a title referencing the submittal item(s), the name of the firm and person(s) responsible for the preparation of the document, the signature and embossed seal of the Specialty Engineer or Concessionaire's Engineer of Record (when applicable), the Concessionaire's or Lead Contractor's approval stamp with date and initials, and the Engineer of Record's approval stamp with date and initials.

Submit appropriately prepared and checked calculations and manuals that clearly outline the design criteria. Include on the internal sheets the complete Financial Project Identification Number and the initials of the person(s) responsible for preparing and checking the document.

Clearly label trade literature and catalogue information on the front cover with the title, Financial Project Identification Number, date and name of the firm and person(s) responsible for that document.

5-1.4.5 Submittal Paths and Copies:

5-1.4.5.1 General: Shop drawings are not required for prequalified items. For non-prequalified items, submit shop drawings to the Department Shop Drawing Review Office with a copy of the letter of transmittal sent to the Resident Engineer. For work requiring other information (e.g., catalog data, procedure manuals, fabrication/welding procedures, and maintenance and operating procedures), submit the required number of copies to the Department Shop Drawing Review Office. Provide copies of material certifications and material tests to the Resident Engineer.

5-1.4.5.2 Building Structures: Submit working, shop and erection drawings, and all correspondence related to building structures, such as Rest Area Pavilions, Office Buildings, and Maintenance Warehouses, to the Architect of Record for review and approval. Send a copy of the transmittal to the Resident Engineer. Prior to NTP 2, the Department will notify the Concessionaire of any changes to the standard submittal process. The Department's red ink review stamp will signify an officially reviewed shop drawing and will state either "Released for Construction" or "Released for Construction as Noted".

5-1.4.5.3 Concessionaire -Originated Design: [Not Used]

5-1.4.5.4 Temporary Works: For Construction Affecting Public Safety, submit to the Engineer of Record shop drawings and the applicable calculations for the design of special erection equipment, falsework, scaffolding, etc. Ensure that each sheet of the shop drawings and the cover sheet of the applicable calculations is signed and sealed by the Specialty Engineer. Transmit the submittal and copies of the transmittal letters in accordance with the requirements of 5-1.4.5.1 through 5-1.4.5.2, as appropriate.

5-1.4.5.5 Formwork and Scaffolding: The Concessionaire is solely responsible for the safe installation and use of all formwork and scaffolding. The Department does not require any formwork or scaffolding submittals unless such work would be classified as Construction Affecting Public Safety.

5-1.4.5.6 Other Miscellaneous Design and Structural Details

Furnished by the Concessionaire in Compliance with the Contract Documents: Submit, to the Engineer of Record, shop drawings and the applicable calculations. Ensure that each sheet of the shop drawings and the cover sheet of the applicable calculations is signed and sealed by the Specialty Engineer. Transmit the submittal and copies of the transmittal letters in accordance with the requirements of 5-1.4.5.1 through 5-1.4.5.2, as appropriate.

5-1.4.6 Processing of Shop Drawings:

5-1.4.6.1 Concessionaire Responsibility for Accuracy and

Coordination of Shop Drawings: Coordinate, schedule, and control all submittals, with a regard for the required priority, including Concessionaire's Contractors to provide for an orderly and balanced distribution of the Work.

Coordinate, review, date, stamp, approve and sign all shop drawings prepared by the Concessionaire or its Contractors prior to submitting them to the Department for review. Submittal of the drawings confirms verification of the Work requirements, units of measurement, field measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers, and other similar data. Indicate on each series of drawings the specification section and page or drawing number of the plans to which the submission applies. Indicate on the shop drawings all deviations from the drawings and itemize all deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the plans, clearly state so in the transmittal letter.

Schedule the submission of shop drawings to allow a Department review period as specified in the Contract Documents. The review period commences upon the Department's receipt of the valid submittal or re-submittal and terminates upon the transmittal of the submittal back to the Concessionaire. A valid submittal includes all the minimum requirements outlined in 5-1.4.4.

Submit shop drawings to facilitate expeditious review. The Concessionaire is discouraged from transmitting voluminous submittals of shop drawings at one

time. For submittals transmitted in this manner, allow for the additional review time that may result.

Only shop drawings distributed with the “red ink” stamps are valid and all Work that the Concessionaire performs in advance of the Department’s release of shop drawings will be at the Concessionaire’s risk.

5-1.4.6.2 Scope of Review by the Engineer of Record: The Engineer of Record’s review of the shop drawings is for conformity to the requirements of the Contract Documents and to the intent of the design.

5-1.4.6.3 Special Review by the Engineer of Record of Shop Drawings for Construction Affecting Public Safety: For Construction Affecting Public Safety, the Engineer of Record, will make an independent design review of all relevant shop drawings and similar documents. Do not proceed with construction of the permanent works until receiving the Engineer of Record’s approval. Send a copy of the approval letter to the Resident Engineer.

5-1.4.7 Other Requirements for Shop Drawings for Bridges:

5-1.4.7.1 Shop Drawings for Structural Steel and Miscellaneous Metals: Furnish shop drawings for structural steel and miscellaneous metals. Shop drawings shall consist of working, shop, and erection drawings, welding procedures, and other working plans, showing details, dimensions, sizes of material, and other information necessary for the complete fabrication and erection of the metal work.

5-1.4.7.2 Shop Drawings for Concrete Structures: Furnish shop drawings for concrete components that are not cast-in-place and are not otherwise exempted from submittal requirements. Also, furnish shop drawings for all details that are required for the effective prosecution of the concrete work and are not included in the Contract Documents such as: special erection equipment, masonry layout diagrams, and diagrams for bending reinforcing steel, in addition to any details required for concrete components for the permanent work.

5-1.4.7.3 Shop Drawings for Major and Unusual Structures: In addition to any other requirements, 30 days prior submission of the first shop drawings, submit information to the Engineer outlining the integration of the Major and Unusual Structure into the overall approach to the project. Where applicable to the project, include, but do not limit this information to:

(1) The overall construction program for the duration of the Agreement. Clearly show the Milestone dates. (For example, the need to open a structure by a certain time for traffic operations.)

(2) The overall construction sequence. The order in which individual structures are to be built, the sequence in which individual spans of girders or cantilevers are erected, and the sequence in which spans are to be made continuous.

(3) The general location of any physical obstacles to construction that might impose restraints or otherwise affect the construction, and an outline of how to deal with such obstacles while building the structure(s). (For example, obstacles might include road, rail and waterway clearances, temporary diversions, transmission lines, utilities, property, and the Concessionaire’s own temporary works, such as haul roads, cofferdams, plant clearances and the like.)

(4) The approximate location of any special lifting equipment in relation to the structure, including clearances required for the operation of the equipment. (For example, crane positions, operating radii and the like.)

(5) The approximate location of any temporary falsework, and the conceptual outline of any special erection equipment. Provide the precise locations and details of attachments, fixing devices, loads, etc. in later detailed submittals.

(6) An outline of the handling, transportation, and storage of fabricated components, such as girders or concrete segments. Provide the precise details in later detailed submittals.

(7) Any other information pertinent to the proposed scheme or intended approach.

Clearly and concisely present the above information on as few drawings as possible in order to provide an overall, integrated summary of the intended approach to the Project. The Department will use these drawings for information, review planning, and to assess the Concessionaire's approach in relation to the intent of the original design. The delivery to and receipt by the Engineer does not constitute any Department acceptance or approval of the proposals shown thereon. Include the details of such proposals on subsequent detailed shop drawing submittals. Submit timely revisions and re-submittals for all variations from these overall scheme proposals.

5-1.4.8 Modifications for Construction: Where the Engineer allows the Concessionaire to make modifications to the permanent works for the purposes of expediting the Concessionaire's chosen construction methods, the Concessionaire shall submit proposals to the Engineer of Record for review and approval prior to modifying the works. Submit proposals for minor modifications under the shop drawing process. Indicate on all drawings the deviations from the Contract Documents and itemize all deviations in the letter of transmittal. The Department will require additional submittals for major modifications.

Minor modifications are those items that, in the opinion of the Engineer, do not significantly affect the quantity of measured Work, or the integrity or maintainability of the structure or its components. (For example, adjusting concrete dimensions, substituting steel plate sizes, changing reinforcing bar size and spacing, etc., all within the acceptable limits of the design.)

Major modifications are any modifications that, in the opinion of the Engineer, significantly affect the quantity of measured Work, or the integrity or maintainability of the structure or its components. (For example, substituting alternative beam sizes and spacings, changing material strength or type, and the like.)

Provide signed and sealed revised sheets to the Engineer for any required revisions to the plans prior to submitting shop drawings.

The Engineer's decision on the delineation between a minor and a major modification and the disposition of a proposal is final.

5-1.4.9 Cost of Shop Drawings: Include the cost of furnishing shop and working drawings in the MAP for the Work requiring the shop and working drawings. The Department will not pay the Concessionaire additional compensation for such drawings.

5-1.5 Certifications:

5-1.5.1 Special Erection Equipment: Prior to its use, ensure that the Specialty Engineer personally inspects the special erection equipment and certifies to the Engineer in writing that the equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, ensure that the Specialty Engineer observes the equipment in use and certifies to the Engineer in writing that it is being used as intended and in

accordance with the submitted drawings and calculations. In each case, ensure that the Specialty Engineer also signs and seals the letter of certification.

5-1.5.2 Falsework and Shoring Requiring Shop Drawings: After its erection or installation but prior to the application of any superimposed load, ensure that the Specialty Engineer personally inspects the falsework and certifies to the Engineer in writing that the falsework has been constructed in accordance with the materials and details shown on the submitted drawings and calculations. Ensure that the Specialty Engineer also signs and seals the letter of certification.

5-1.5.3 Temporary Formwork: For Construction Affecting Public Safety and for Major and Unusual Structures, prior to the placement of any concrete, ensure that the Specialty Engineer inspects the formwork and certifies to the Engineer in writing that the formwork has been constructed to safely withstand the superimposed loads to which it will be subjected. Ensure that the Specialty Engineer signs and seals the letter of certification.

5-1.6 Corrections for Construction Errors: For Work that the Concessionaire constructs incorrectly or does not meet the requirements of the Contract Documents, the Concessionaire has the prerogative to submit an acceptance proposal to the Engineer for review and disposition. The acceptance proposal shall describe the error or defect and either describe remedial action for its correction or propose a method for its acceptance. In either case, the acceptance proposal shall address structural integrity, aesthetics, maintainability, and the effect on the Project Schedule. The Department will judge any such proposal for its effect on these criteria and also for its effect on Contract Administration.

When the Engineer judges that a proposal infringes on the structural integrity or maintainability of the structure, the Concessionaire's Engineer of Record will perform a technical assessment and submit it to the Engineer for approval. Do not take any corrective action without the Engineer's approval.

Carry out all approved corrective construction measures at no expense to the Department.

Notwithstanding any disposition of the compensation aspects of the defective work, the Engineer's decision on the technical merits of a proposal is final.

5-2 Coordination of Contract Documents. [Not Used]

5-3 Conformity of Work with Contract Documents.

Perform all Work in conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances, as specified in the Contract Documents.

In the event that the Engineer finds, in its discretion, that the Concessionaire has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, but that the Concessionaire has produced reasonably acceptable D&C Work, the Engineer will determine if the Department will accept the D&C Work in place. In this event, the Engineer will document the basis of acceptance by modification of the Agreement. The Engineer, in its discretion, may provide for an appropriate reduction in payments owed to Concessionaire for such work or materials included in the accepted D&C Work as deemed necessary to conform to the determination based on engineering judgment.

In addition to any other rights and remedies under the Contract Documents, in the event that the Engineer finds that the Concessionaire has used material or produced a finished product for performing the D&C Work that is not in conformity with the Contract Documents, and that

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

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

5-4 Errors or Omissions in Contract Documents.

Errors and omissions discovered in the Plans or Final Design Documents are the total responsibility of the Concessionaire. The errors and omissions shall be brought to the attention of the Engineer of Record as well as the Engineer. Resolution of the question by the Engineer of Record is intended, and will be at no additional cost to the Department. All such modifications are subject to approval of the Engineer.

5-5 Authority of the Engineer.

Perform all Work to the satisfaction of the Engineer.

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

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

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

5-7 Engineering and Layout.

Not Applicable.

5-8 Concessionaire's Supervision.

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

5-8.2 Concessionaire's Supervisory Personnel: Maintain a competent Project Manager or one of its FDOT-approved designees at the site at all times while Work is in progress to act as the Concessionaire's agent. Such supervisory personnel must be competent and capable of properly interpreting the Contract Documents and is thoroughly experienced in the type of work being performed. Such supervisory personnel must have the full authority to receive instructions from the Engineer and to execute the orders or directions of the Engineer, including promptly

supplying any materials, tools, equipment, labor, and incidentals that may be required. Furnish such supervisory personnel regardless of the amount of Work sublet.

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

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

5-9 General Inspection Requirements.

5-9.1 Cooperation by Concessionaire: Furnish the Engineer with every reasonable facility for ascertaining whether the D&C Work performed and materials used are in accordance with the requirements and intent of the Contract Documents. If the Engineer so requests at any time before Final Acceptance of the D&C Work, remove or uncover such portions of the finished D&C Work as directed. After examination, restore the uncovered portions of the D&C Work to the standard required by the Contract Documents. If the Engineer determines that the D&C Work so exposed or examined is unacceptable, perform the uncovering or removal, and the replacing of the covering or making good of the parts removed, at no expense to the Department. However, if the Engineer determines that the D&C Work thus exposed or examined is acceptable, the Department will pay for the uncovering or removing, and the replacing of the covering or making good of the parts removed in accordance with 4-4.

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

5-9.3 Failure to Remove and Renew Defective Materials and Work: Subject to the applicable cure periods set forth in the Contract Documents, if the Concessionaire fails or refuses to remove and renew any defective D&C Work, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the Contract Documents within the time indicated in writing, the Engineer has the authority to repair, remove, or renew the unacceptable or defective D&C Work as necessary, all at the Concessionaire's expense. The Department will obtain payment for any expense it incurs in making these repairs, removals, or renewals, that the Concessionaire fails or refuses to make, by deducting such expenses from any moneys due or which may become due the Concessionaire, or by charging such amounts against the Performance Security, except to the extent such expenses were previously recovered by the Department under the Contract Documents.

5-9.4 Inspection by Federal Government: When the United States Government pays a portion of the cost of construction, its representatives may inspect the D&C Work, as they deem necessary. However, such inspection will in no way make the Federal Government a party to the Agreement.

5-10 Inspection for Substantial Completion.

5-10.1 Maintenance until Substantial Completion: [Not Used]

5-10.2 Inspection: The procedures for inspection for Substantial Completion are set forth in Section 4.10.2 of the Agreement.

5-10.3 Partial Substantial Completion: [Not Used]

5-10.4 Conditional Substantial Completion: The Engineer will not make, or consider requests for conditional Substantial Completion of the Project.

5-11 Final Acceptance.

The requirements and procedures for Final Acceptance are set forth in Section 4.10.3 of the Agreement.

5-12 Claims by Concessionaire.

5-12.1 General: When the Concessionaire deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to Delay, Extra Work, or for any other cause, the Concessionaire shall follow the procedures set forth herein for preservation, presentation and resolution of the Claim.

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

5-12.2 Notice of Claim:

5-12.2.1 Claims For Extra Work: Where the Concessionaire deems that additional compensation or a time extension is due for Extra Work attributable to causes expressly assumed under the Agreement to be the Department's responsibility or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Concessionaire shall notify the Engineer in writing of the intention to make a Claim for additional compensation before beginning the Work on which the Claim is based, and if seeking a time extension, the Concessionaire shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a Delay and a request for time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the Delay. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Concessionaire waives the Claim for additional compensation or a time extension. Such notice by the Concessionaire, and the fact that the Engineer has kept account of the labor, materials and equipment, and time, shall not in any way be construed as establishing the validity of the Claim or method for computing any compensation or time extension for such Claim. Within 90 calendar days after completion of such Extra Work, the Concessionaire shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9.

If the Concessionaire fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Concessionaire in writing. The Concessionaire shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without

change, with a certificate of Claim as described in 5-12.9, without regard to whether the resubmission is within the 90 calendar day deadline for submission of full and complete claim documentation. Failure by the Concessionaire to comply with the ten calendar day notice shall constitute a waiver of the Claim.

5-12.2.2 Claims For Delay: Where the Concessionaire deems that additional compensation or a time extension is due on account of Delay attributable to causes expressly assumed under the Agreement to be the Department's responsibility, the Concessionaire shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a Controlling Work Item expressly notifying the Engineer that the Concessionaire intends to seek additional compensation, and if seeking a time extension, the Concessionaire shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a Controlling Work Item, as to such Delay and providing a reasonably complete description as to the cause and nature of the Delay and the possible impacts to the Concessionaire's Work by such Delay, and a request for time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the Delay. Within 90 calendar days after elimination of such Delay, the Concessionaire shall submit full and complete documentation as described in 5-12.3 and duly certified pursuant to 5-12.9.

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

There shall be no Concessionaire entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a Controlling Work Item, and then as to any such delay to a Controlling Work Item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 4-3 or 5-12, except that in the instance of delay to a non-Controlling Work Item, the Concessionaire may be compensated for the direct costs of idle labor or equipment only, at the rates set forth in 4-3.2.1(c), and then only to the extent the Concessionaire could not reasonably mitigate such idleness. Nothing in this 5-12.2.2 shall prejudice the Concessionaire's right to seek additional compensation expressly provided in the Agreement with respect to Delays.

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

- (a) A detailed factual statement of the Claim providing all necessary dates, locations, and items of work affected and included in each Claim;
- (b) The date or dates on which actions resulting in the Claim occurred or conditions resulting in the Claim became evident;
- (c) Identification of all pertinent documents and the substance of any material oral communications relating to such Claim and the name of the persons making such material oral communications;

(d) Identification of the provisions of the Contract Documents which support the Claim and a statement of the reasons why such provisions support the Claim, or alternatively, the provisions of the Contract Documents which allegedly have been breached and the actions constituting such breach;

(e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:

- (1) documented additional job site labor expenses;
- (2) documented additional cost of materials and supplies;
- (3) a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
- (4) any other additional direct costs or damages and the documents in support thereof;
- (5) any additional indirect costs or damages and all documentation in support thereof.

(f) A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the Delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

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

5-12.4 Action on Claim: Except to the extent the Agreement provides for a different time period, the Engineer will respond within 120 calendar days of receipt of a complete Claim submitted by Concessionaire in compliance with 5-12.3. Failure by the Engineer to respond to a claim within 120 calendar days after receipt of a complete Claim in compliance with 5-12.3 constitutes a denial of the Claim by the Engineer. If the Engineer finds the Claim or any part thereof to be valid, such partial or whole Claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract Documents. For Claims related to the D&C Work, no circuit court or arbitration proceedings on any Claim, or a part thereof, may be filed until after Final Acceptance or denial hereunder, whichever occurs last.

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

Department's receipt of a certified written Claim in full compliance with 5-12.3 and ending on the date of final settlement or formal ruling.

5-12.6 Compensation for Extra Work or Delay: The compensation set forth in this 5-12.6 is subject to any other limitations or deductibles set forth in the Contract Documents.

5-12.6.1 Compensation for Extra Work: Notwithstanding anything to the contrary contained in the Contract Documents, the Concessionaire shall not be entitled to any compensation beyond that provided for in 4-3.2.

5-12.6.2 Compensation for Delay: Except as specifically provided in Article 10 of the Agreement, the additional compensation set forth in 5-12.6.2.1 shall be the Concessionaire's sole monetary remedy for any Delay other than to perform Extra Work caused by the Department unless the Delay shall have been caused by acts constituting willful or intentional interference by the Department with the Concessionaire's performance of the Work and then only where such acts continue after Concessionaire's written notice to the Department of such interference. The parties anticipate that Delays may be caused by or arise from any number of events during the term of the Agreement, including, but not limited to, Work performed, Work deleted, Change Orders, Supplemental Agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, Extra Work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of Work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the Project to make it functional, weather, weekends, holidays, special events, suspension of the Work, or other events, forces or factors sometimes experienced in construction work. Such Delays or events and their potential impacts on the performance by the Concessionaire are specifically contemplated and acknowledged by the parties in entering into this Concessionaire, and shall not be deemed to constitute willful or intentional interference with the Concessionaire's performance of the Work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Concessionaire's performance.

5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay: For any Delay Claim, the Concessionaire shall be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(d) and solely for costs incurred beyond what reasonable mitigation thereof the Concessionaire could have undertaken.

5-12.7 Mandatory Claim Records: After giving the Engineer notice of intent to file a Claim for Extra Work or Delay as allowed under the Agreement, the Concessionaire must keep daily records of all labor, material and equipment costs incurred for operations affected by such Extra Work or Delay. These daily records must identify each operation affected by such Extra Work or Delay and the specific locations where Work is affected by such Extra Work or Delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by such Extra Work or Delay. The Concessionaire shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Concessionaire's daily records and be likewise entitled to receive a copy of the Department's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

5-12.8 Claims For Acceleration: The Department shall have no liability for any constructive acceleration of the Work, nor shall the Concessionaire have any right to neither make any claim for constructive acceleration nor include the same as an element of any Claim

the Concessionaire may otherwise submit under the Agreement. If the Engineer gives express written direction for the Concessionaire to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

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

5-12.10 Non-Recoverable Items: Except to the extent expressly recoverable under the Agreement, the parties agree that for any Claim the Department will not have liability for the following items of damages or expense:

- a. Loss of profit, incentives or bonuses;
- b. Any claim for other than Extra Work or Delay;
- c. Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
- d. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Concessionaire in writing, "to accelerate at the Department's expense"; nor
- e. Attorney fees, claims preparation expenses and costs of litigation.

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

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

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

5-12.14 Auditing of Claims: All Claims filed against the Department shall be subject to audit at any time following the filing of the Claim, whether or not such Claim is part of a suit

pending in the Courts of this State. The audit may be performed, at the Department's sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Concessionaire or its Contractors, as applicable. The Concessionaire and its Contractors shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any Claim, the Concessionaire, and its Contractors must retain sufficient records, and provide full and reasonable access to such records, to allow the Department's auditors to verify the Claim and failure to retain sufficient records of the Claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such Claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Concessionaire submitting a written Claim, the Department shall have the right to request and receive, and the Concessionaire shall have the affirmative obligation to provide to the Department, copies of any and all documents in the possession of the Concessionaire or its Contractors as may be deemed relevant by the Department in its review of the basis, validity or value of the Concessionaire's Claim.

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

1. Daily time sheets and foreman's daily reports and diaries;
2. Insurance, welfare and benefits records;
3. Payroll register;
4. Earnings records;
5. Payroll tax return;
6. Material invoices, purchase orders, and all material and supply acquisition contracts;
7. Material cost distribution worksheet;
8. Equipment records (list of company owned, rented or other equipment used);
9. Vendor rental agreements and subcontractor invoices;
10. Contractor payment certificates;
11. Canceled checks for the project, including, payroll and vendors;
12. Job cost report;
13. Job payroll ledger;
14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on the Project;
17. Income tax returns for all years reflecting the operations on the Project;
18. All documents which reflect the Concessionaire's actual profit and overhead during the years the Work was being performed and for each of the five years prior to the effective date of the Agreement;

19. All documents related to the preparation of the Concessionaire's pricing for the Work including the final calculations on which the pricing was based;
20. All documents which relate to each and every Claim together with all documents, which support the amount of damages as to each Claim;
21. Worksheets used to prepare the Claim establishing the cost components for items of the Claim including, but not limited to, labor, benefits and insurance, materials, equipment, Contractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

5-13 Recovery Rights for Discovered Errors and Defects.

The Department reserves the right, if it discovers an error in the partial or final estimates for the Work, or if it discovers that the Concessionaire performed defective Work or used defective materials, after the Termination Date, to claim and recover from the Concessionaire or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work and materials.

In addition to any other obligations under the Agreement, retain all records pertaining to the Work for a period of three years from the Termination Date. Upon request, make all such records available to the Department or its representative. For the purpose of this Article, records include all books of account, supporting documents, and papers that the Department deems necessary to ensure compliance with the Contract Documents

5-14 Concessionaire Guaranteed Project Features. [Not Used]

SECTION 6 CONTROL OF MATERIALS

6-1 Acceptance Criteria.

6-1.1 General: Acceptance of materials is based on the following criteria. All requirements may not apply to all materials. Use only materials in the Work that meet the requirements of the Specifications. The Engineer may inspect and test any material, at points of production, distribution and use.

6-1.2 Sampling and Testing: Use the Department's current sample identification and tracking system to provide related information and attach the information to each sample. Restore immediately any site from which material has been removed for sampling purposes to the pre-sampled condition with materials and construction methods used in the initial construction, at no additional cost to the Department.

Ensure when a material is delivered to the location as described in the Contract Documents, there is enough material delivered to take samples, at no expense to the Department.

6-1.2.1 Pretest by Manufacturers: Submit certified manufacturer's test results to the Engineer for qualification and use on Department projects. Testing will be as specified in the Contract Documents. The Department may require that manufacturers submit samples of materials for independent verification purposes.

6-1.2.2 Point of Production Test: Test the material during production as specified in the Contract Documents.

6-1.2.3 Point of Distribution Test: Test the material at Distribution facilities as

specified in the Contract Documents.

6-1.2.4 Point of Use Test: Test the material immediately following placement as specified in the Specifications. After delivery to the project, the Department may require the retesting of materials that have been tested and accepted at the source of supply, or may require the testing of materials that are to be accepted by Producer Certification. The Department may reject all materials that, when retested, do not meet the requirements of the Specifications.

6-1.3 Certification:

6-1.3.1 Producer Certification: Provide complete certifications for materials as required. Furnish to the Engineer for approval, Producer Certifications for all products listed on the Qualified Products List and when required by the applicable material Specification(s). Do not incorporate any manufactured products or materials into the project without approval from the Engineer. Materials will not be considered for payment when not accompanied by Producer Certification. Producers may obtain sample certification forms through the Department's website. Ensure that the certification is provided on the producer's letterhead and is signed by a legally responsible person from the producer and notarized.

6-1.3.1.1 Qualified Products List: The Product Evaluation Section in the State Specifications and Estimates Office publishes and maintains a Qualified Products List. This list provides assurance to contractors, consultants, designers, and Department personnel that specific products and materials are approved for use on Department facilities. The Department will limit the Concessionaire's use of products and materials that require pre-approval to items listed on the Qualified Products List effective at the time of placement.

Manufacturers seeking evaluation in accordance with Departmental procedures of an item must submit a Product Evaluation Application, available on the Department's website www.dot.state.fl.us/specificationsoffice/QPLDefault2.htm, with supporting documentation as defined and detailed by the applicable Specifications and Standards. This may include certified test reports from an independent test laboratory, certification that the material meets all applicable specifications, signed and sealed drawings and calculations, quality control plans, samples, infrared scans, or other technical data.

Manufacturers successfully completing the Department's evaluation are eligible for inclusion on the Qualified Products List. The Department will consider any marked variations from original test values for a material or any evidence of inadequate field performance of a material as sufficient evidence that the properties of the material have changed, and the Department will remove the material from the Qualified Products List.

6-1.3.1.2 Approved Products List: The State Traffic Operations Office maintains the Approved Products List of Traffic Control Signal Devices. Traffic Monitoring Site Equipment and Materials are also included on the Approved Products List. This list provides assurance to Maintaining Agencies, contractors, consultants, designers, and Department personnel that the specific items listed are approved for use on Department facilities. The Department will limit the Concessionaire's procurement and use of Traffic Control Signal Devices, and Traffic Monitoring Site equipment and materials to only those items listed on the Approved Products List that is effective at the time of procurement, except as provided in Section 603.

The approval process is described in detail on the State Traffic Operation website, www.dot.state.fl.us/trafficoperations/terl/apl2.htm. Manufacturers seeking evaluation of a specific device must submit an application which can be obtained from the State Traffic Operations Office.

6-1.3.2 Concessionaire Installation Certification: Provide installation certifications as required by the Contract Documents.

6-1.3.3 Lump Sum Project General Requirements: [Not Used]

6-1.3.4 Certification on Qualified Products List (QPL) Products: Submit to the Engineer a notarized manufacturer's certification on each QPL product that will be incorporated in the Project. Submit the certification prior to utilization of the material on the Project. Each certification will have the manufacturer letterhead, product name, batch number, FPID, Contract Number, category, county, title of certification person and test results in each product listed in the Department Specification. This letter will also provide the following statement: "This product meets the material specifications as provided in the Contract Documents." Ensure that the date of the manufacturer's certification is current to the shelf life of the product. This letter will be delivered to the jobsite prior to placement or utilization. Retain test results for a minimum of three years.

6-1.3.5 Certification on all Other Materials Not Specified: Submit to the Engineer a notarized manufacturer's certification on each product that will be incorporated in the project. Submit the certification prior to utilization on the project. Each certification will have the manufacturer letterhead, identification and type of material, FPID, Contract Number, county, test results of the material and notarized signature from the manufacturer. This letter will also provide the following statement: "This product meets the material specifications as provided in the Contract Documents." Ensure that the date of the manufacturer's certification is current to the shelf life of the product. Retain test results for a minimum of three years.

6-2. Designation of a Specific Product as a Criterion ("Or Equal" Clause).

Reference in the Contract Documents to any proprietary article, device, product, material or fixture, or any form or type of construction, by name, make, or catalog number, with or without the words "or equal", establishes a standard of quality and is not intended to limit competition. The Concessionaire may use any article, device, product, material or fixture, or any form or type of construction, that, in the judgment of the Engineer (expressed in writing), is equal, for the purpose intended, to that named.

6-3 Applicable Documented Authorities other than Specifications.

6-3.1 General: Details on individual materials are identified in various material specific Sections of the Specifications that may refer to other documented authorities for requirements. When specified, meet the requirements as defined in such references.

6-3.2 Test Methods: Methods of sampling and testing materials are in accordance with the Florida Methods (FM). If a Florida Method does not exist for a particular test, perform the testing in accordance with the method specified in the Specification. When test methods or other standards are referenced in the Specifications without identification of the specific time of issuance, use the most current issuance, including interims or addendums thereto, at the time of proposal opening.

6-3.3 Construction Aggregates: Aggregates used on Department projects must be in accordance with Rule 14-103, FAC.

6-4 Documentation.

6-4.1 Submission of Materials Certification and Reporting Test Results: Provide certifications prior to placement of materials. Report test results at completion of the test and

meet the requirements of the applicable Specifications.

6-4.2 Database(s): Obtain access to the Department's databases prior to testing and/or material placement. Database access information is available through the Department's website. Enter all required and specified documentation and test results in the Department databases.

6-4.3 Worksheets: Make available to the Department, when requested, worksheets used for collecting test information. Ensure the worksheets as a minimum contain the following:

- a. Project Identification Number,
- b. Time and Date,
- c. Laboratory Identification and Name,
- d. Training Identification Numbers (TIN) and initials,
- e. Record details as specified within the test method.

6-4.4 Retention: Meet the requirements of Section 105.

6-5 Inspections to Assure Compliance with Acceptance Criteria.

6-5.1 General: The Department is not obligated to make an inspection of materials at the source of supply, manufacture, or fabrication. Provide the Engineer with unrestricted entry at all times to such parts of the facilities that concern the manufacture, fabrication, or production of the ordered materials. Bear all costs incurred in determining whether the material meets the requirements of the Specifications.

6-5.2 Quality Control Inspection: Provide all necessary inspection to assure effective Quality Control of the operations related to materials acceptance. This includes but is not limited to sampling and testing, production, storage, delivery, construction and placement. Ensure that the equipment used in the production and testing of the materials provides accurate and precise measurements in accordance with the applicable Specifications. Maintain a record of all inspections, including but not limited to, date of inspection, results of inspection, and any subsequent corrective actions taken.

6-5.3 Notification of Placing Order: Order materials sufficiently in advance of their incorporation in the work to allow time for sampling, testing and inspection. Provide notification, to the Engineer prior to placing orders for materials.

Submit to the Engineer a fabrication schedule for all items requiring commercial inspection, before or at the preconstruction meeting. These items include, but is not limited to steel bridge components, overhead cantilevered sign supports with cantilevered arms exceeding 41 feet, moveable bridge components or any other item identified as an item requiring commercial inspection in the Contract Documents.

Notify the Engineer at least 30 days before beginning any production and include a production schedule.

6-6 Additional Requirements for Lump Sum Projects.

[Not Used]

6-7 Personnel Qualification Programs.

Meet the requirements of Section 105 of Division 2 of the Standard Specifications and ensure that qualifications are maintained during the course of sampling, testing and inspection. Continued personnel qualifications are subject to satisfactory results from the Department's Independent Assurance evaluations.

6-8 Quality Control Program.

6-8.1 General: Meet the requirements of the Department's approved Quality Control Program for the production and construction of hot mix asphalt, Portland cement concrete (Structural), earthwork, cementitious materials, timber, steel and miscellaneous metals, galvanized metal products, prestressed and/or precast concrete products and drainage products. Also include transportation, storage, placement and other related construction operations required by the Contract Documents.

Steel and Miscellaneous Metal products, including aluminum, are defined as the metal components of bridges, including pedestrian and moveable bridges, overhead and cantilevered sign supports, ladders and platforms, bearings, end wall grates, roadway gratings, drainage items, expansion joints, roadway decking, shear connectors, handrails, galvanized products, fencing, guardrail, light poles, high mast light poles, standard mast arm assemblies and Monotube assemblies, stay in-place forms, casing pipe, strain poles, fasteners, connectors and other hardware.

Exceptions to these materials are hot mix asphalt Traffic Levels A and B only when the Concessionaire has selected Option 2 Mixture Acceptance.

When accreditation or certification is required, make supporting documents from the two previous inspections performed by the accrediting or certifying agency available to the Department upon request.

Obtain Department approval prior to beginning production. Meet and maintain the approved Quality Control Program requirements at all times. Production and construction of these products without the Department's prior approval of a Quality Control Program may result in rejection of the products. Continued approval will be subject to satisfactory results from Department evaluations, including the Independent Assurance program. In cases of non-compliance with the approved Quality Control Program, identify all affected material and do not incorporate or supply to the Department projects. The following conditions may result in suspension of a Quality Control Program:

- a. Failure to timely supply information required.
- b. Repeated failure of material to meet Standard Specification requirements.
- c. Failure to take immediate corrective action relative to deficiencies in the performance of the Quality Control Program.
- d. Certifying materials that are not produced under an approved Quality Control Program for use on Department projects.
- e. Failure to correct any deficiencies related to any requirement of the Quality Control Program, having received notice from the Department, within the amount of time defined in the notice.

6-8.2. Hot Mix Asphalt , Portland Cement Concrete (Structural), Earthwork, Cementitious Materials, Timber, Steel and Miscellaneous Metals, Galvanized Metal Products, Prestressed and/or Precast Concrete Products and Drainage Products Quality Control Program: Have an accepted Quality Control Program, developed in accordance with Section 105, during the production of materials to be used on Department projects.

6-8.3 Prestressed Concrete Quality Control Program: Ensure that prestressed concrete plants participating in the Department's Acceptance Program are qualified.

Obtaining qualification will require a current Precast/Prestressed Concrete Institute (PCI) certification and an approved Quality Control Plan, developed in accordance with Section 105 of Division 2 of the Standard Specifications.

6-8.4 Steel and Miscellaneous Metals Quality Control Program: Ensure that the

fabricators of Steel and miscellaneous metal products participating in the Department's Quality Control Acceptance Program are qualified. Obtaining qualification requires an accepted Quality Control Plan, developed in accordance with Section 105 of Division 2 of the Standard Specifications. A current American Society of Steel Construction, Inc (AISC) certification is a requirement for the Quality Control Acceptance Program of the steel and miscellaneous metal fabricators, provided that AISC certification program is available for the category of the fabrication products.

6-8.5 Producers Quality Control Plan Submittal: Depending on the type of products, the producers shall submit their proposed Quality Control Plans to the State Materials Office or to the District Materials Office, as described below:

6-8.5.1 State Materials Office: Producers of cementitious materials, steel and miscellaneous metals, galvanized metal products, and aggregates must submit their proposed Quality Control Plan to the State Materials Office for review and acceptance.

6-8.5.2 District Materials Office: Producers of hot mix asphalt, Portland cement concrete (Structural), earthwork, timber, prestressed and/or precast concrete products and drainage products must submit their proposed Quality Control Plan to the local District Materials Office for acceptance. Producers located outside the State must contact the State Materials Office for address information of the District Materials Office responsible for the review of the proposed Quality Control Program.

6-8.6 Quality Control Plan Review and Acceptance: The Department will respond to the producer within 21 calendar days of receipt of the proposed Quality Control Program. The Department may perform evaluation activities to verify compliance with submitted documents prior to acceptance.

If the Quality Control Program must be revised for any reason, including non-compliance, submit the revision to the Department. The Department will respond to the producer within 7 calendar days of receipt of the revised Quality Control Program.

6-8.7 Concessionaire's Quality Control Plan. Have an approved Quality Control Plan meeting the requirements of Section 105 for the transportation, storage, placement, and other related construction operations required by the Contract Documents.

6-9 Lab Qualification Program.

Testing Laboratories participating in the Department's Acceptance Program must have current Department qualification when testing materials that are used on Department projects. In addition, they must have one of the following :

- a. Current AASHTO (AAP) accreditation.
- b. Inspected on a regular basis per ASTM D 3740 for earthwork, ASTM D 3666 for asphalt and ASTM C 1077 for concrete for test methods used in the Acceptance Program, with all deficiencies corrected, and under the supervision of a Specialty Engineer.
- c. Current Construction Materials Engineering Council (CMEC) program accreditation or other independent inspection program accreditation acceptable to the Engineer and equivalent to a. or b. above.

After meeting the criteria described above, submit a Laboratory Qualification Application to the Department. The application is available from the Department's website. Obtain the Department's qualification prior to beginning testing. The Department may inspect the laboratory for compliance with the accreditation requirements prior to issuing qualification.

Meet and maintain the qualification requirements at all times. Testing without Department's qualification may result in a rejection of the test results. Continued qualifications

are subject to satisfactory results from Department evaluations, including Independent Assurance evaluations. In case of suspension or disqualification, prior to resumption of testing, resolve the issues to the Department's satisfaction and obtain reinstatement of qualification. The following conditions may result in suspension of a laboratory's qualified status:

- a. Failure to timely supply required information.
- b. Loss of accredited status.
- c. Failure to correct deficiencies in a timely manner.
- d. Unsatisfactory performance.
- e. Changing the laboratory's physical location.
- f. Delays in reporting the test data in the Department's database.
- g. Incomplete or inaccurate reporting.
- h. Using unqualified technicians performing testing.

It is prohibited for a non-Department laboratory to perform Concessionaire Quality Control testing and any other Acceptance Program testing on the same contract.

6-10 Storage of Materials and Samples.

6-10.1 Method of Storage: Store materials in such a manner as to preserve their quality and fitness for the Work, to facilitate prompt inspection, and to minimize noise impacts on sensitive receivers. More detailed specifications concerning the storage of specific materials are prescribed under the applicable Specifications. The Department may reject improperly stored materials.

6-10.2 Use of Right-of-Way for Storage: If the Engineer allows, the Concessionaire may use a portion of the right-of-way for storage purposes and for placing the Concessionaire's plant and equipment. Use only the portion of the right-of-way that is outside the clear zone, which is the portion not required for public vehicular or pedestrian travel. When used, restore the right-of-way as specified in the Contract Documents. Provide any additional space required at no expense to the Department.

6-10.3 Responsibility for Stored Materials: Accept responsibility for the protection of stored materials. The Department is not liable for any loss of materials, by theft or otherwise, or for any damage to the stored materials.

6-10.4 Storage Facilities For Samples: Provide facilities for storage of samples as described in the Contract Documents and warranted by the test methods and Specifications.

6-11 Defective Materials.

All materials not meeting the requirements of the Specifications; segregated materials, even though previously tested and approved; materials that are or have been improperly stored; and materials that are mixed with an excess of clay, coal, sticks, burlap, hay, straw, loam or earth, or other debris will be considered defective. Do not use defective materials. The Engineer will reject all such materials, whether in place or not. Remove all rejected material immediately from the site of the Work and from storage areas, at no expense to the Department.

Do not use material that has been rejected and the defects corrected, until the Engineer has approved the material's use. In addition to any other rights and remedies under the Contract Documents, upon failure to comply promptly with any order of the Engineer made under the provisions of this Article, the Engineer may remove and replace defective material and deduct the cost of removal and replacement from any moneys due or to become due the Concessionaire.

As an exception to the above, the Concessionaire may submit, upon approval of the Engineer, an engineering and/or laboratory analysis to evaluate the effect of defective in place

materials. A Specialty Engineer, who is an independent consultant or the Concessionaire's Engineer of Record as stated within each individual Section shall perform any such analysis. The Engineer will determine the final disposition of the material after review of the information submitted by the Concessionaire. No additional monetary compensation or time extension will be granted for the impact of any such analysis or review.

6-12 Products and Source of Supply.

6-12.1 Source of Supply–Convict Labor (Federal-Aid Contracts Only): Do not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway construction projects unless the prison facility has been producing convict-made materials for Federal-aid highway construction projects before July 1, 1987.

Use materials that were produced prior to July 2, 1991, by convicts on Federal-aid highway construction projects free from the restrictions placed on the use of these materials by 23 U.S.C. 114. The Department will limit the use of materials produced by convict labor for use in Federal-aid highway construction projects to:

1 materials produced by convicts on parole, supervised release, or probation from a prison or,

2 materials produced in a qualified prison facility.

The amount of such materials produced for Federal-aid highway construction during any 12-month period shall not exceed the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

6-12.2 Source of Supply-Steel (Federal-Aid Contracts Only): For Federal-aid Contracts, only use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the total Design and Construction Costs or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Concessionaire uses but does not incorporate into the finished work. Provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended. Such certification shall also include (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual value). Furnish each such certification to the Engineer prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, furnish invoices to document the cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the Project.

6-12.3 Unfit, Contaminated, and Dangerous Materials: Do not use any material that, after approval and/or placement, has in any way become unfit for use. Do not use materials containing any substance that has been determined to be hazardous by the State of Florida Department of Environmental Protection or the U.S. Department of Environmental Protection. Provide workplaces free from serious recognized hazards and to comply with occupational safety and health standards, as determined by the U.S. Department of Labor Occupational Safety and Health Administration.

SECTION 7 LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC

7-1 Laws to be Observed.

7-1.1 General: Become familiar with and comply with all Federal, State, county, and city laws, by-laws, ordinances, and regulations that control the action or operation of those engaged or employed in the Work or that affect materials used. Pay particular attention to the safety regulations promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). In addition, comply with Chapter 403, of the Florida Statutes, regarding control of air pollution. Direct special attention to that portion of Chapter 17-5 of the Rules and Regulations, pertaining to open burning in land clearing operations. Where work or structures included in the Contract Documents are in “Navigable Waters of the U.S.,” (reference 33 of the Code of Federal Regulations, Part 329); “Waters of the U.S.,” (reference 33 of the Code of Federal Regulations, Parts 323 and 328); or “Waters of the State,” (reference Part 4, Chapters 253 and 373 of the Florida Statutes and Section 62-340 of the Florida Administrative Code); comply with the regulatory provisions of Section 404 of the Federal Clean Water Act of 1977; Sections 9 and 10 of the Federal River and Harbor Act of 1899; Chapter 161 of the Florida Statutes; and any local authority having jurisdiction over such waters.

Comply with the Resources Conservation and Recovery Act (RCRA), the Hazardous and Solid Waste Amendments of 1984 (HSWA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the associated Superfund Amendments and Reauthorization Act (SARA).

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

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

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

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

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

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

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

The Concessionaire shall indemnify, defend, and save harmless the Department and all of its officers, agents, and employees against all claims or liability arising from or based on the violation of any such laws, by-laws, ordinances, regulations, order, or decrees as set forth in Section 17.4 of the Agreement.

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

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

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

The Executive Order 11246 Electronic version, dated September 24, 1965 is posted on the Department's website at the following URL address: www.dot.state.fl.us/specificationsoffice/federal/deo11246.pdf . Take responsibility to obtain the information posted on this website up through five calendar days before the opening of bids and comply with the provisions contained in Executive Order 11246.

Comply with the provisions contained in FHWA-1273 as set forth in Appendix 18 of the Agreement and certify monthly compliance with the EEO provisions of FHWA-1273 (Section II. Nondiscrimination and Section III. Nonsegregated Facilities).

If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4113.

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

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

Obtain quarantine regulations and related information from the following:

Animal and Plant Health Inspection Service
U.S. Department of Agriculture
3031 Lake Alfred Road
Winter Haven, Florida 33881

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

7-1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds: Do not introduce or release prohibited aquatic plants, plant pests, or noxious weeds into the Project ROW as a result of clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, or other such activities. Immediately notify the Engineer upon discovery of all prohibited aquatic plants, plant pests, or noxious weeds within the Project ROW. Do not move prohibited aquatic plants, plant pests, or noxious weeds within the Project ROW or to locations outside of the Project ROW without the Engineer's permission. Maintain all borrow material brought onto the project site free of prohibited aquatic plants, plant pests, noxious weeds, and their reproductive parts. Refer to Rule 6C-52 and Rule 5B-57, of the Florida Administrative Code for the definition of prohibited aquatic plants, plant pests, and noxious weeds.

7-1.4 Compliance with Federal Endangered Species Act and other Wildlife Regulations: The Federal Endangered Species Act requires that the Department investigate the potential impact to a threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation determines that there is a potential impact to a protected, threatened or an endangered species, the Department will conduct an evaluation to determine what measures may be necessary to mitigate such impact. When mitigation measures and/or special conditions are necessary, these measures and conditions will be addressed on the plans or in permits as identified in 7-2.1.

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

These guidelines are posted at the following URL address:
www.dot.state.fl.us/specificationsoffice/endangeredwildlifeguidelines.pdf .

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

Prior to establishing any off-project activity in conjunction with a project, notify the Engineer of the proposed activity. Covered activities include but are not necessarily limited to borrow pits, concrete or asphalt plant sites, disposal sites, field offices, and material or equipment storage sites. Include in the notification the Financial Project ID, a description of the activity, the location of the site by township, range, section, county, and city, a site location map including the access route, the name of the property owner, and a person to contact to arrange a site inspection. Provide this notification sufficiently in advance of planned commencement of the

off-site activity, to allow a reasonable period of time for the Engineer to conduct an investigation without delaying job progress.

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

7-1.5 Occupational Safety and Health Requirements: Take all precautions necessary for the protection of life, health, and general occupational welfare of all persons, including employees of both the Concessionaire and the Department, until the Concessionaire has completed the work required under the Contract Documents.

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

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

7-1.7 Insecticides and Herbicides: Contact the Local County Extension Office for a list of approved Insecticides or Herbicides. Only use products registered with the Florida Department of Agriculture for use in the State of Florida. The use of restricted products is prohibited. Do not use any products in the sulfonylurea family of chemicals. Herbicide application by broadcast spraying is not allowed.

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

Ensure that all employees applying insecticides and herbicides possess a current Florida Department of Agriculture Commercial Applicator license with the categories of licensure in Right-of-Way Pest Control and Aquatic Pest Control. Provide a copy of current certificates upon request, to the Engineer.

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

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

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

Maintain all permits until Work is accepted by the Department.

Complete daily herbicide reports on the forms provided by the Department for each location and submit to the Department weekly, when herbicide applications are occurring. Adhere to all labeling instruction.

If damage to desirable vegetation occurs as a result of herbicide use, the Department will monitor the impacted vegetation to determine if damage is temporary or permanent. If the damage is determined to be permanent, replace damaged vegetation at no expense to the Department.

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

Before undertaking any off-project activity associated with any federally assisted undertaking, ensure that the proposed site does not represent a public park, recreation area, wildlife or waterfowl refuge, or a historic site (according to the results of the Cultural Resources Survey discussed in 120-6.2). If such a site is proposed, notify the Engineer and provide a description of the proposed off-site activity, the Financial Project ID, the location of the site by township, range, section, a county or city map showing the site location and including the access route and the name of the property. It is the Concessionaire's responsibility to provide justification for use of Section 4(f) property that is sufficient for the Florida Department of Transportation and the Federal Highway Administration to make a Section 4(f) determination. Provide this notification sufficiently in advance of planned commencement of the off-site activity to allow a reasonable time for the Engineer to conduct an investigation without delaying job progress. Do not begin any off-project activity without obtaining written clearance from the Engineer.

7-1.9 Florida Minority Business Loan Mobilization Program: The Loan Mobilization Program is established by Section 288.706 of the Florida Statutes, and has as its goal to assist minority business enterprises by facilitating working capital loans to those eligible businesses that are contractors or subcontractors on Department contracts.

The limits of such advances under this program shall be as specified in Section 288.706 of the Florida Statutes. In the case of a Contractor, the amount of the advance will be based on the subcontract unit prices, not the contract unit prices.

All prime contractor vendors shall be required to incorporate the designated loan mobilization payment procedures in subcontract agreements with minority business enterprise vendors participating in this program and to cooperate in the release of designated loan mobilization payments to achieve the objective of providing working capital for minority business enterprise subcontract vendors.

When the contract has been awarded or, in the case of a subcontractor, a subcontract has been signed with the prime contractor, application for participation in this program will be made in writing to the Engineer. Such application must be made prior to commencement of the Work. If the application is made on behalf of a subcontractor, it shall be considered incomplete if not accompanied by a copy of the subcontract with the unit prices of the Work clearly delineated.

When all applicable conditions have been met, approval for participation will be made by the Office of the Comptroller and the applicant will be notified of the approval action taken.

Once approval has been obtained and the NTP 1 has been issued, disbursement of the monies will be made at the request of the applicant. The designated loan mobilization payment may be paid prior to the commencement of work on the contract. However, if the work on the contract has not commenced and the payment has not been made, then the Contract Time may not commence until the payment is made. All designated loan mobilization payments will be made payable jointly to the prime contractor and the participating financial institution. When a subcontractor is the participant in the program, such payments shall be paid to the participant within 10 business days after receipt of the funds from the Department.

Repayment of monies advanced through this program will be made after the value of the work accomplished by the participant reaches 50 percent. Contractors are encouraged to make weekly or bi-weekly payments to subcontractors participating in this program.

7-2 Permits and Licenses.

7-2.1 General: Procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work.

Acquire all permits for Work performed outside the right-of-way or easements for the Project.

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

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

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

Whenever the Work under or incidental to the Contract Documents requires structures or dredge/fill/construction activities in “Navigable Waters of the U.S.,” “Waters of the U.S.,” and “Waters of the State,” the Federal, State, county, and local regulatory agencies may require a permit.

Acquire any modifications or revisions to an original permit when such modifications or revisions are necessary to complete the construction operations specified in the Contract Documents and within the Project ROW.

Acquire all permits for Work performed outside the Project ROW for the Project.

In carrying out the Work in the Contract Documents, when under the jurisdiction of any environmental regulatory agency, comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to construction activities of all permits

issued to the Department as though such conditions were issued to the Concessionaire. Post all permit placards in a protected location at the worksite.

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

The "State of Florida Department of Environmental Protection (DEP) Generic Permit for Stormwater Discharge from Large and Small Construction Activities" applies to the Work. Obtain a copy of the permit through the Department's website and comply with the requirements of the permit. The URL for obtaining a copy of the permit is www.dot.state.fl.us/specificationsoffice/DEPPermit.pdf.

In accordance with the requirements of the DEP generic permit, accept responsibility for the following:

(a) Preparation, execution and submission of DEP Generic Permit Notice of Intent (NOI) and payment of associated fee(s)

(b) Preparation and submission of Erosion Control Plan as outlined in Section 104.

(c) Any contractor initiated SWPPP modifications

(d) Performing inspections using a qualified inspector

(e) Completion of SWPPP construction inspection reports

(f) Executing associated certification forms provided by the Engineer

(g) Preparation, execution and submission of Notice of Termination

(NOT) of the DEP Generic Permit coverage.

Use the SWPPP Construction Inspection Form provided by the Engineer to report all inspection findings and to document all corrective actions taken as a result of the inspection. Sign each inspection report and submit it weekly to the Engineer.

7-3 Patented Devices, Materials and Processes.

Include all royalties and costs arising from patents, trademarks, and copyrights, in any way involved in the Work in the MAP. Whenever using any design, device, material, or process covered by letters patent or copyright, obtain the right for such use by suitable legal agreement with the patentee or owner of the copyright. File a copy of such agreement with the Engineer. However, whether or not such agreement is made or filed as noted, the Concessionaire and the Surety in all cases shall indemnify, defend, and save harmless, the Department from all claims for infringement by reason of the use of any such patented design, device, material, or process on work under the Contract Documents as set forth in Section 17.4 of the Agreement.

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

Except as otherwise stipulated in the Contract Documents, the Department will furnish all rights-of-way necessary for the proper completion of the Work at no expense to the Concessionaire.

7-4.1 Right-of-Way Furnished by the Department: Should Department-furnished areas for obtaining borrow material, contain limerock material; do not remove such material from the pit unless the Engineer gives specific approval.

7-4.2 Right-of-Way Furnished by the Concessionaire: [Not Used]

7-5 Restoration of Surfaces Opened by Permit.

Upon the presentation of a duly authorized and satisfactory permit that provides that all necessary repair work will be paid for by the party holding such permit, the Engineer may

authorize the Concessionaire to allow parties bearing such permits to make openings in the highway. Upon the Engineer's written order, perform, in an acceptable manner, all necessary repairs due to such openings, and such necessary work that the Engineer orders, subject to the requirements in the Contract Documents. The Department will pay the Concessionaire for such work either under a negotiated amount or in accordance with 4-3.

7-6 Sanitary Provisions.

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

7-7 Control of the Concessionaire's Equipment.

7-7.1 Traffic Interference: Do not allow equipment, while it is on or traversing a road or street, to unreasonably interfere with traffic. The Concessionaire's equipment on Department right-of-way shall clearly and legibly identify the Concessionaire.

7-7.2 Overloaded Equipment: Do not operate on any road or street any hauling unit or equipment loaded in excess of (1) the maximum weights specified in the Florida Uniform Traffic Control Law, or (2) lower weights legally established for any section of road or bridge by the Department or local authorities. The governmental unit having jurisdiction over a particular road or bridge may provide exceptions by special permit under the provisions of 7-7.3. This restriction applies to all roads and bridges inside and outside the Project Right of Way as long as these roads and bridges are open for public use. The Concessionaire may overload roads and bridges, which are to be demolished after they are permanently closed to the public. The Concessionaire is responsible for all loss or damages resulting from equipment operated on a structure permanently closed to the public.

7-7.3 Crossings: Where it is necessary to cross an existing road or street, including specifically the existing traveled lanes of a divided highway within the Project ROW; obtain permits from the Department, for crossing overloaded or oversized equipment. Cross-existing roads or streets only at Engineer-designated points. The Engineer may require the Concessionaire to protect the pavement or Roadway at the crossing by using lumber, planks, or fill. Provide flagging and watchman service, or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.

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

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

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

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

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

The Specialty Engineer shall determine the effect that equipment loads have on the bridge structure and develop the procedures for using the loaded equipment without exceeding the structure's design load capacity.

Submit to the Department for approval eight copies of design calculations, layout drawings, and erection drawings showing how the equipment is to be used so that the bridge structure will not be overstressed. The Specialty Engineer shall sign and seal one set of the eight copies of the drawings and the cover sheet of one of the eight copies of the calculations for the Department's Record Set.

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

7-8 Structures over Navigable Waters.

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

In the event of accidental blocking of the navigation channel, immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage. Submit work platform construction plans to the appropriate Coast Guard District for approval. Obtain approval prior to beginning construction on the platform.

7-8.2 Maintenance of Channel: Where the Work includes the excavation of a channel or other underwater areas to a required section, maintain the section from shoaling or other encroachment.

Submit work platform construction plans to the appropriate Coast Guard District for approval. Obtain approval prior to beginning construction on the platform.

7-9 Use of Explosives.

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

Store all explosives in a secure manner in compliance with all laws and ordinances, and clearly mark all such storage places with the words: "DANGEROUS - EXPLOSIVES". Place such storage in the care of a competent watchman. Where no local laws or ordinances apply,

provide storage satisfactory to the Engineer and, in general, not closer than 1,000 feet from the road or from any building, camping area, or place of human occupancy.

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

7-10 Forest Protection.

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

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

7-11 Preservation of Property.

7-11.1 General: Preserve from damage all property, which is in the vicinity of or is in any way affected by the Work, the removal or destruction of which is not specified in the Contract Documents. This applies to public and private property, public and private utilities (except as modified by the provisions of 7-11.6), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe and underground structures, and public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Concessionaire), etc., Whenever the Concessionaire's activities damage or injure such property, immediately restore it to a condition similar or equal to that existing before such damage occurred, at no expense to the Department.

Protect existing bridges during the performance of the Work from damage caused by the Concessionaire. Immediately repair, at no expense to the Department, all damage occasioned by the Work. In the event that the Concessionaire's Work result in damage to a bridge requiring repairs, the Concessionaire shall make such repairs with any equipment, materials, or labor at the Concessionaire's disposal prior to continuing the Work.

Direct special attention to the protection of all geodetic monuments, horizontal or vertical, located within the Project ROW.

7-11.2 Failure to Restore Damaged Property: In addition to any other rights and remedies under the Contract Documents, in case of failure on the part of the Concessionaire to restore such property, bridge, road or street, or to make good such damage or injury, the Engineer may, upon 48 hours notice, proceed to repair, rebuild, or otherwise restore such property, road, or street as may be deemed necessary, and the Department will deduct the cost thereof from any monies due or which may become due the Concessionaire under the Contract Documents.

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

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

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

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

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

7-11.4 Traffic Signs, Signal Equipment, Highway Lighting and Guardrail: Protect all existing roadside signs, signal equipment, highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting or guardrail lie within the Project ROW, or wherever so directed by the Engineer due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the Engineer.

The Concessionaire is responsible for any repairs, replacement, etc., for such temporary and permanent features and shall not be entitled to any compensation.

7-11.5 Operations Within Railroad Right-of-Way: [Not Used]

7-11.6 Utilities:

7-11.6.1 Arrangements for Protection or Adjustment: Not applicable.

7-11.6.2 Cooperation with Utility Owners: Not applicable.

7-11.6.3 Utility Adjustments: Not applicable.

7-11.6.4 Weekly Meetings: Conduct weekly meetings on the job site with all the affected utility companies and the Engineer in attendance to coordinate project construction and utility relocation.

Provide the approved Work Progress Schedule and Work Plan for the Project, as specified in 8-3.2, to document the schedule and plan for road construction and utility adjustments.

7-11.6.5 General Requirements: The Concessionaire shall be responsible for coordinating with all existing utility companies that have facilities within the Project ROW or which will be affected in any way by the Project and for coordinating all utility work with the Project schedule. The Concessionaire shall make every attempt to design around existing utilities, minimizing impacts. Plans shall be provided to the Department showing existing and proposed utility locations and their relationship to the proposed construction. All utility work shall be done in accordance with the criteria and standards contained in the Department's Utility Accommodation Manual.

7-11.6.6 Design/Build Agreements: [Not Used]

7-11.6.7 Utilities Without Utility Agreements: The Concessionaire shall be responsible for performing or arranging for the performance of all utility work in accordance with the Contract Documents. The Concessionaire's responsibilities shall include, but shall not be limited to the following:

1. Locate, by physical exposure and establishment of both vertical and horizontal limits, all existing facilities within Project ROW or impacted by the Project not within right-of-way.
2. Notify and keep informed all Utility Agency/Owner. Notification shall include, but not necessarily be limited to, sending statutory notices under Section 337.403, Florida Statutes, as agent for the Department, where necessary.
3. Determine what work is necessary for utilities that are impacted, including, but not limited to:
 - a. Design around if possible,
 - b. Protect,
 - c. Adjust,
 - d. Relocate,
 - e. Remove.
4. Make arrangements for any work necessary.
5. Obtain necessary Department permits from all other applicable agencies, and otherwise comply with other applicable laws, including, but not limited to, one call obligations under Chapter 556, Florida Statutes.
6. Coordinate the issuance of utility permits within the Project Right of Way for new utility work not necessarily related to the Project in order to assure consistency with the Project.

If the utility is impacted by the Project, the cost of relocation will be the responsibility of the Concessionaire unless the utility is obligated to pay the cost of the work pursuant to Section 337.403, Florida Statutes. If the utility is not being impacted by the Project, but the utility owner desires to have utility work performed in connection with the Project, the cost of the utility work will be the responsibility of the utility company. It will be the Concessionaire's responsibility to coordinate and resolve all utility impacts with each of the utility companies.

7-11.6.8 Claims Due to Utility Work: Except as expressly set forth in the Agreement, no payment, compensation or adjustment of any kind shall be made to the Concessionaire for damages because of hindrances or delays arising out of or connected with the

performance of utility work for the Project, regardless of the cause of such hindrance or delays and whether such hindrances or delays be avoidable or unavoidable, and the Concessionaire agrees that it will make no claim for compensation, damages or mitigation of liquidated damages for any such hindrances or delays.

7-12 Responsibility for Damages, Claims, etc.

7-12.1 Concessionaire to Provide Indemnification: The Concessionaire's indemnification obligations are set forth in Section 17.4 of the Agreement.

It is specifically agreed between the parties executing the Agreement that it is not intended by any of the provisions of any part of the Contract Documents to authorize anyone not a party to the Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract Documents.

7-12.2 Guaranty of Payment for Claims: The Concessionaire guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against him or any Contractor, in connection with the Work. The Department's final acceptance or payment does not release the applicable Performance Security, Payment Bond or O&M Security until all such claims are paid or released.

7-13 Insurance. The requirements for insurance are set forth in Section 17.1 of the Agreement.

7-14 Concessionaire's Responsibility for Work.

The Concessionaire shall take charge and custody of the Work, and take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the Work. Rebuild, repair, restore, and make good, without additional expense to the Department, all injury or damage to any portion of the Work occasioned by any of the above causes, except as set forth in Section 17.1.6 of the Agreement.

7-15 Opening Sections of Highway to Traffic.

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

7-16 Wage Rates for Federal-Aid Projects.

For the Work, payment of predetermined minimum wages applies.

The U.S. Department of Labor Wage Rates applicable to the Agreement are listed in Wage Rate Decision Number(s): (a) FL 37, which applies generally to the highway bridge construction and incidental items; (b) FL 45, which applies to dredging operations; and (c) FL 32, which applies to the construction of bulkheads and other items incidental to the canal/waterway, as modified up through ten days prior to the opening of proposals.

Obtain the applicable General Decision(s) (Wage Tables) through the Department's website and ensure that employees receive the minimum wages applicable. Review the General

Decisions for all classifications necessary to complete the Project. Request additional classifications through the Engineer's office when needed.

When multiple wage tables are assigned to the Agreement, general guidance of their use and examples of construction applicability is available on the Department's website. Contact the Department's Wage Rate Coordinator before bidding if there are still questions concerning the applicability of multiple wage tables. The URL for obtaining the Wage Rate Decisions is www.dot.state.fl.us/construction/wage.htm.

Contact the Department's Wage Rate Coordinator at (850) 414-4251 if the Department's website cannot be accessed or there are questions.

The use of an electronic certified payroll system may be used in lieu of the normally required hard copy submitted documents to satisfy the requirements of FHWA-1273 Section V "Statements and Payrolls" and any requirement related to certified payrolls and statements of compliance.

The Concessionaire may choose any software vendor to provide the above, provided the vendor has received written approval from FDOT for use of system on FDOT contracts. Approval from FDOT requires the software vendor to submit a request that states software to be used meets the following minimum requirements:

- (1) System and administrative requirements
 - (a) Must be web based
 - (b) Vendor to host database and application
 - (c) Vendor to provide system support and maintenance
 - (d) Vendor to provide regularly scheduled system backup to ensure no loss of data occurs.
 - (e) Vendor to ensure system help desk is available for use during normal business hours for the Eastern Time Zone.
- (2) Software must have the ability to export data in XML format as defined by FDOT for submittal by contractor to FDOT.
- (3) Vendor must provide assurance of the confidentiality of all sensitive information to be protected to the full extent of the law. Be able to produce public reports without name, race/gender, and SS #'s.
- (4) Software must be able to collect and store all information required by the USDOL Form WH-347 and the accompanying Statement of Compliance. In addition, must be able to capture gender and race of each individual employee on the payroll, to meet the FDOT requirement of such. Must be able to calculate and alert user of mathematical errors. Must also be able to allow weekly Federal project gross and total weekly gross pay of employees in column 7 of the above stated form.
- (5) Must have an electronically secure means of storing the signature of the contractor's representative to be used on the Statement of Compliance. Must have USDOL approval of the process used to secure the signature.

- (6) Must have ability to upload contractor's data from the company's internal payroll software into the labor compliance software. Must also be available via internet for use by contractors who don't have internal payroll software and who must enter data manually.
- (7) Must have the ability to utilize more than one wage table assigned to a contract, thereby assuring rates paid to workers meet the prescribed rate for the applicable table.
- (8) Must have the ability to allow additional classifications (when approved by FDOT and USDOL) to be entered into the system for that particular project by the Prevailing Wage Coordinator for FDOT.
- (9) Must have the ability to store and cross check with payrolls, the approved USDOL deductions for the contractor.
- (10) Must have the ability to alert prime and subcontractors of errors in the weekly certified payroll before the data is passed either from subcontractor to prime contractor or from prime contractor to FDOT. Must have means of retaining the history of each submitted payroll, for instance where errors are found by the system, returned to the prime or sub for correction, and resubmitted.
- (11) Automated system must allow for tracking of non-performance work weeks without the need to log onto system during those periods. The Concessionaire should be able to record when non-performance period begins and then later record when that same non-performance period ends. During time of non-performance work, contracting firms will not be required to compensate for periods of non-use.

7-17 Supplemental Agreements.

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

7-18 Scales for Weighing Materials.

7-18.1 Applicable Regulations: When determining the weight of material for payment, use scales meeting the requirements of Chapter 531 of Florida Statutes, pertaining to specifications, tolerances, and regulations, as administered by the Bureau of Weights and Measures of the Florida Department of Agriculture.

7-18.2 Base for Scales: Place such scales on a substantial horizontal base to provide adequate support and rigidity and to maintain the level of the scales.

7-18.3 Protection and Maintenance: Maintain all scale parts in proper condition as to level and vertical alignment, and fully protect them against contamination by dust, dirt, and other matter that might affect their operation.

7-19 Source of Forest Products.

[Not used]

7-20 Regulations of Air Pollution from Asphalt Plants.

7-20.1 General: Perform all work in accordance with all Federal, State, and local laws and regulations regarding air pollution and burning. In particular, pay attention to Chapters 17-2 and 17-5 of the Rules and Regulations of the Department of Environmental Protection, and to any part of the State Implementation Plan applicable to the project. See also 110-9.2 regarding burning of debris.

7-20.2 Dust Control: Ensure that excessive dust is not transported beyond the Project ROW in populated areas. The Concessionaire may control dust for embankments or other cleared or unsurfaced areas by applying water or calcium chloride, as directed by the Engineer. Use calcium chloride in accordance with 102-5. Install mulch, seed, sod, or temporary paving as early as practical. Control dust during the storage and handling of dusty materials by wetting, covering, or other means as approved by the Engineer.

7-20.3 Asphalt Material: Use only emulsified asphalt, unless otherwise stated in the plans and allowed by Chapter 17-2 of the Rules and Regulations of the Department of Environmental Protection. Store and handle asphalt materials and components so as to minimize unnecessary release of hydrocarbon vapors.

7-20.4 Asphalt Plants: Operate and maintain asphalt plants in accordance with Chapter 17-2 of the Rules and Regulations of the Department of Environmental Protection. Provide the plant site with a valid permit as required under Chapter 17-2 prior to start of work.

7-21 Dredging and Filling.

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

7-22 Available Funds. Provisions regarding the availability of funds for the Work are set forth in Section 12.4 of the Agreement.

7-23 Concessionaire's Motor Vehicle Registration.

The Concessionaire shall provide the Department with proof that all motor vehicles operated or caused to be operated by such Concessionaire is registered in compliance with Chapter 320 of the Florida Statutes. Submit such proof of registration in the form of a notarized affidavit to the Department.

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

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

7-24 Disadvantaged Business Enterprise Program.

7-24.1 General: Prior to award of the Agreement, have an approved DBE Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan and commitment to carry out the plan must be incorporated

into and become a part of the awarded contract. Failure to keep these commitments will be deemed noncompliance with the Specifications and a breach of the contract. Take all necessary and reasonable steps to ensure that FDOT Certified Disadvantaged Business Enterprises, as defined in 49 CFR Part 26 and DOT Rule Chapter 14-78, have the opportunity to participate in, compete for and perform subcontracts. Do not discriminate on the basis of age, race, color, religion, national origin, sex or disability in the award and performance of DOT assisted Contracts.

7-24.2 Plan Requirements: Include the following in the DBE Affirmative Action Program Plan:

(a) A policy statement, expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible. The policy making body must issue a policy statement signed by the chairperson, which expresses its commitment to utilize DBEs, outlines the various levels of responsibility, and states the objectives of the program. Circulate the policy statement throughout the Concessionaire's organization.

(b) The designation of a Liaison Officer within the Concessionaire's organization, as well as support staff, necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the program on a day-to-day basis for carrying out technical assistance activities for DBEs and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Contracts let by the Department.

Use techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

2. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

4. Encouraging eligible DBEs to apply for certification with the Department.

5. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the Department.

7-24.3 DBE Records and Reports: Submit the Anticipated DBE Participation Statement at or before NTP 2. Report monthly, through the Equal Opportunity Reporting System on the Department's Website, actual payments, retainage, of all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers. The Equal Opportunity Office will provide instructions on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:

(a) the procedures adopted to comply with the Specifications;

(b) the number of subordinated contracts on Department projects awarded to DBEs;

(c) the dollar value of the contracts awarded to DBEs;

(d) the percentage of the dollar value of all subordinated contracts awarded to DBEs as a percentage of the total Contract amount;

(e) a description of the general categories of contracts awarded to DBEs; and

(f) the specific efforts employed to identify and award Contracts to DBEs.

Upon request, provide the records to the Department for review.

All such records are required to be maintained for a period of five years following acceptance of final payment and have them available for inspection by the Department and the Federal Highway Administration.

7-25 Equal Employment Opportunity Requirements. (Non-Federal Aid Projects) [Not Used]

7-26 On-The-Job Training Requirements.

As part of the Concessionaire's equal employment opportunity affirmative action program, training shall be provided as follows:

The Concessionaire shall provide on-the-job training aimed at developing full journeymen in the type(s) of trade or job classification(s) involved in the work. In the event the Concessionaire subcontracts a portion of the construction work, he/she shall determine how many, if any, of the trainees are to be trained by the Contractor provided, that the Concessionaire shall retain the primary responsibility for meeting the training requirements imposed by this Special Provision. The Concessionaire shall apply the requirements of this Training Special Provision to such Contract. Where feasible, 25% of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees will be estimated on the number of calendar days in the Contract Time, the dollar value, and the scope of work to be performed. The trainee goal will be finalized at a Post-Preconstruction Trainee Evaluation Meeting and the goal will be distributed among the work classifications based on the following criteria:

1) Determine the number of trainees on Federal Aid Contract:

(a) No trainees will be required for Contracts with a Construction Time allowance of less than 225 calendar days.

(b) If the Contract Time allowance is 225 calendar days or more, the number of trainees shall be established in accordance with the following chart:

<u>Estimated Contract Amount</u>	<u>Trainees Required</u>
Under \$1,000,000	0
Over \$1,000,000 to 3,000,000	2
Over \$3,000,000 to 5,000,000	3
Over \$5,000,000 to \$10,000,000	5
Over 10,000,000 to 15,000,000	7
Over 15,000,000 to 20,000,000	9
Over 20,000,000 to *	12

* One Additional trainee per \$5,000,000 of estimated construction Contract amount over \$20,000,000.

Further, if the Concessionaire requests to utilize banked trainees (by either the Concessionaire or its Contractors) as discussed later in this Special Provision, a Banking Certificate will be validated at this meeting allowing credit to the Concessionaire for previously

banked trainees. The Concessionaire's Project Manager, the Resident Engineer and the Department's District Compliance Manager will attend this meeting. Within ten days after the Post-Preconstruction Training Evaluation Meeting, the Concessionaire shall submit to the Department for approval an On-The-Job Training Schedule indicating the number of trainees to be trained in each selected classification and the portion of the Contract Time during which training of each trainee is to take place. This schedule may be subject to change if the following occur:

1. when a start date on the approved On-The-Job Training Schedule has been missed by 14 or more days;
2. when there is a change(s) in previously approved classifications;
3. when replacement trainees are added due to voluntary or involuntary

termination

The revised schedule will be resubmitted to and approved by the Department's District Compliance Manager.

The following criteria will be used in determining whether or not the Concessionaire has complied with this Training Special Provision as it relates to the number of trainees to be trained:

1. Full credit will be allowed for each trainee that is both enrolled and satisfactorily completes training on the Agreement. Credit for trainees, over the established number for the Agreement, will be carried in a "bank" for the Concessionaire or its Contractors and credit will be allowed for those surplus trainees in subsequent, applicable projects. A "banked" trainee is described as an employee who has been trained on a project, over and above the established goal, and for which the Concessionaire desires to preserve credit for utilization on a subsequent project.

2. Full credit will be allowed for each trainee that has been previously enrolled in the Department's approved training program on another contract and continues training in the same job classification for a significant period and completes his/her training on the Agreement.

3. Full credit will be allowed for each trainee who, due to the amount of work available in his/her classification, is given the greatest practical amount of training on the Contract regardless of whether or not the trainee completes training.

4. Full credit will be allowed for any training position indicated in the approved On-The-Job Training Schedule, if the Concessionaire can demonstrate that he/she has made his/her good faith effort to provide training in that classification.

5. No credit will be allowed for a trainee whose employment by the Concessionaire is involuntarily terminated unless the Concessionaire can clearly demonstrate good cause for this action.

The Concessionaire shall, as far as is practical, comply with the time frames established in the approved On-The-Job Training Schedule. When this proves to be impractical, a revised schedule shall be submitted and approved as provided above. Training and upgrading of minorities, women and economically disadvantaged persons toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the Concessionaire shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent such persons are available within a reasonable area of recruitment. If a non-minority male is enrolled into

On-The-Job Training, the On-The-Job Training Notification of Personnel Action Form notifying the District Compliance Manager of such action shall be accompanied by a

disadvantaged certification or a justification for such action acceptable to the Department's District Compliance Manager. The Concessionaire will be given an opportunity and will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the Concessionaire is in compliance with this Training Special Provision. This training is not intended, and shall not be used, to discriminate against any applicant for training, whether a minority, woman or disadvantaged person. No employee shall be employed as a trainee in any classification in which he/she has successfully completed a training course leading to journeyman status, has been employed as a journeyman, or has had extensive experience in the classification being considered for training. The Concessionaire shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Concessionaire's records should document the findings in each case. The minimum length and type of training for each classification will be as established at the Post-Preconstruction Trainee Evaluation Meeting and approved by the Department. Graduation to journeyman status will be based upon satisfactory completion of Proficiency Demonstrations set up as milestones in each specific training classification, completion of the minimum hours in a training classification range and the employer's satisfaction that the trainee does meet journeyman status in the classification of training. Upon reaching journeyman status, the following documentation must be forwarded to the District Compliance Office; Trainee Enrollment and Personnel Action Form, the Proficiency Demonstration Verification Form signed at each milestone by a representative of both the Concessionaire and the Department and a letter stating that the trainee has sufficiently progressed in the craft and is being promoted to journeyman status.

The Department and the Concessionaire shall establish a program that is tied to the scope of the construction work in the Project and the length of operations providing it is reasonably calculated to meet the equal employment opportunity obligations of the Concessionaire and to qualify the average trainee for journeyman status in the classifications concerned, by at least, the minimum hours prescribed for a training classification. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal Aid Highway Construction Contract. Approval or acceptance of a training schedule shall be obtained from the Department prior to commencing work on the classifications covered by the program. A voluntary On-The-Job Training Program is available to a Concessionaire, which has been awarded a State funded project. Through this program, the Concessionaire or its Contractors will have the option to train employees on State funded projects for "banked credit" as discussed previously in this provision, to be utilized on subsequent Federal Aid Projects where training is required. Those Concessionaires availing themselves of this opportunity to train personnel on State funded projects and bank trainee hours for credit shall comply with all training criteria set forth in this Special Provision for Federal Aid Projects.

It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial type positions. Training is permissible in positions such as office engineers, estimators, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the District Compliance Office. Some offsite

training is permissible as long as the training is an integral part of an approved training program and does not compromise a significant part of the overall training.

As approved in advance by the District Compliance Manager, credit will be given for training of persons in excess of the number specified herein under the current Agreement or a contractor will be allowed to bank trainees who have successfully completed a training program and may apply those trainees to a training requirement in subsequent project(s) upon approval of the Department's District Compliance Manager. This credit will be given even though the Concessionaire may receive training program funds from other sources, provided such other source do not specifically prohibit the Concessionaire from receiving other form of compensation. Credit for offsite training indicated above may only be made to the Concessionaire where he does one or more of the following and the trainees are concurrently employed on a Federal Aid Project; contributes to the cost of the training, provides the instruction to the trainee and pays the trainee's wages during the offsite training period. No credit shall be given to the Concessionaire if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the Concessionaire and evidences a lack of good faith on the part of the Concessionaire in meeting the requirements of this Training Special Provision.

The Concessionaire shall compensate the trainee at no less than the laborer rate established in the Agreement at the onset of training. This compensation rate will be increased to the journeyman's wage for that classification upon graduation from the training program.

The Concessionaire shall furnish the trainee a copy of the program he will follow in providing the training. The Concessionaire shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The Concessionaire shall maintain records to document the actual hours each trainee is engaged in training on work being performed as a part of the Agreement.

The Concessionaire shall submit to the District Compliance Manager a copy of an On-The-Job Training Notification of Personnel Action form no later than seven days after the effective date of the action when the following occurs: a trainee is transferred on the Project, transferred from the project to continue training on another contract, completes training, upgraded to journeyman status or voluntary terminates or is involuntary terminated from the project.

The Concessionaire shall furnish to the District Compliance Manager a copy of a Monthly Time Report for each trainee. The monthly report for each month shall be submitted no later than the tenth day of the subsequent month. The Monthly Time Report shall indicate the phases and sub-phases of the number of hours devoted to each. Highway or Bridge Carpenter Helper, Mechanic Helper, Rodman/Chainman, Timekeeper, trainees will not be approved for the On-The-Job Training Program. Painters, Electricians, and Mechanics are identified as crafts under-utilized by minorities. All training classifications except Laborers are identified as under-utilized by females. Priority selection should also include those crafts under-utilized and/or void of minorities and/or female by that particular company's workforce.

If the Concessionaire does not select a training classification that has been targeted as an underutilized craft, and those classifications can be used for the selection of training for this project, the On-The-Job Training Schedule will not be approved unless written justification for exceptions is attached.

SECTION 8 PROSECUTION AND PROGRESS

8-1 Subletting or Assigning of Contracts. The Lead Contractor shall perform with its own organization the D&C Work amounting to no less than 30 percent of the original cost of performing the Construction Work as identified in the Schedule of Values, excluding Specialty Work. For normal road and bridge contracts, Specialty Work is defined as work of a type not normally performed by road and bridge contractors with their own organizations.

The following work is specifically designated as Specialty Work for normal road and bridge construction:

- Auxiliary Power Unit.
- Buildings, including Control House.
- Cleaning, Coating, Injection, Grouting, Grinding, Grooving, or Sealing Concrete Surfaces.
- Deep Well Installation.
- Electrical Work.
- Fencing.
- Highway Lighting.
- Installing Pipe or Pipe Liner, by Jacking or Boring.
- Installing Structural Plate Pipe Structures.
- Landscaping.
- Machinery and Castings for Movable Bridges.
- Navigation Lights.
- Painting.
- Plugging Water Wells.
- Pressure Grouting.
- Pumping Equipment.
- Roadway Signing and Pavement Marking.
- Riprap.
- Removal of Buildings.
- Rumble Strips.
- Scale Systems - Static and Weigh - In - Motion
- Sealing Wells by Injection.
- Septic Tank and Disposal System.
- Signalization.
- Utility Work.
- Vehicular Impact Attenuator.
- Water and Sewage Treatment Systems.

When the major work under the contract is of a type not normally performed by road and bridge contractors, the above-listed work will be considered as Specialty Work only as so listed in the Special Provisions.

8-2 Work Performed by Equipment-Rental Agreement.

For any Work proposed to be performed by equipment-rental agreement, notify the Engineer in writing of such intention before using the rented equipment, and indicate whether the equipment will be rented on an operated or non-operated basis. Include with the written notice a listing and description of the equipment and a description of the particular work to be performed

with such equipment. As an exception to the above requirements, the Department will not require written notice for equipment to be rented (without operators) from an equipment dealer or from a firm whose principal business is the renting or leasing of equipment.

The operators of all rented equipment, whether rented on an operated or a non-operated basis, are subject to all wage rate requirements applicable to the Project. When renting equipment without operators, the Concessionaire shall carry the operators on his own payroll. For equipment that is rented on an operated basis, and when required by the Contract Documents or requested by the Engineer, furnish payrolls from the lessor with the names of the operators shown thereon.

When a lessor provides rentals of equipment on an operated basis that exceed \$10,000, such lessor is subject to any Equal Employment Opportunity requirements that are applicable to the project.

8-3 Prosecution of Work.

8-3.1 Compliance with Time Requirements: Commence the D&C Work in accordance with the approved working schedule and provide sufficient labor, materials and equipment to complete the D&C Work within the time periods required under the Agreement.

8-3.2 General: For the D&C Work submit the following schedules and reports.

8-3.2.1 Project Schedule: Submit to the Engineer for acceptance a Critical Path Method (CPM) Project Schedule for the D&C Work pursuant to Sections 4.6.3 and 4.7.5 of the Agreement.

In addition to any other requirements in the Contract Documents, the Project Schedule shall include detailed schedule diagrams and schedule data as described below for the entire Contract Time. The Project Schedule shall be consistent with the Contract Maintenance of Traffic plan, showing activities for each discrete Contract activity to be accomplished within each Maintenance of Traffic phase. Include activities for deliverables and reviews in the Project Schedule. Sufficient liaison shall be conducted and information provided to indicate coordination with utility owners having facilities within the Project Right of Way. The Project Schedule must reflect any utility adjustment schedules.

Failure to include any element of the D&C Work or any activity relating to utility work will not relieve the Concessionaire from completing all D&C Work within the Completion Deadlines or any other deadlines that are subject to extension pursuant to the Agreement at no additional time or cost to the Department, notwithstanding the acceptance of the Project Schedule by the Department.

The Engineer will withhold any payments that may be due for failure of the Concessionaire to submit an acceptable Project Schedule or monthly updates within the time frame described herein.

8-3.2.2 Schedule Submissions: Develop the Project Schedule in Precedence Diagram Method (PDM) format. All schedule submittals, shall have a copy of the schedule files on a Windows compatible 3.5" diskette or CD attached. The files shall be in a format compatible with software utilized by the Department, which is currently Primavera Project Management (P5), Service Pack 2.

Each schedule submission and monthly update shall include a minimum of 4 items:

1) a CPM Network Diagram in time-scale logic diagram, by week starting on Monday, grouped (banded) by phase and sorted by early start days. Prominently identify the critical path activities, defined as the longest continuous path of work activities.

Submit the Network Diagram, printed in color on D size, 22 by 34 inch or E size, 34 by 44 inch paper. The network diagram shall contain, as a minimum, the following information for each schedule activity: identification, activity description, total duration, remaining duration, early start date, late finish date, and total float.

2) a report with the following schedule activity information for each construction activity: identification, description, original duration, remaining duration, early start, early finish, total float, percent complete, and budgeted cost. The bar chart diagram shall not be included in this report. It will be submitted on 8.5 by 11 inch paper.

3) a schedule narrative report describing current project schedule status and identifying potential delays. This report will include a description of the progress made since the previous schedule submission and objectives for the upcoming 30 calendar days. It will be submitted on 8.5 by 11 inch paper. This report shall at a minimum include the following information:

a) This report shall indicate if the D&C Work is on schedule, ahead of schedule or behind schedule. If the D&C Work is ahead of schedule or behind schedule, the report shall include the specific number of calendar days. If the D&C Work is behind schedule, the report shall include a detailed recovery plan that will put the D&C Work back on schedule or include a properly supported request for time extension.

b) The report will describe the current critical path of the D&C Work and indicate if this has changed in the last 30 calendar days. Discuss current successes or problems that have affected either the critical path's length or have caused a shift in the critical path within the last 30 calendar days. Identify specific activities, progress, or events that may reasonably be anticipated to impact the critical path within the next 30 calendar days, either to affect its length or to shift it to an alternate path.

c) List all schedule logic or duration changes that have been made to the schedule since the previous submission. For each change, describe the basis for the change and specifically identify the affected activities by identification number.

d) Identify any and all activities, either in progress or scheduled to occur within the following 30 days that require Department participation, review, approval, etc.

4) a copy of the schedule files on a Windows compatible 3.5" diskette or CD in either Primavera Project Planner (P5), Service Pack 2 in accordance with formats specified herein.

The Engineer will have 30 days to accept the Project schedule or to schedule a meeting with the Concessionaire to resolve any problems that prevent acceptance of the Project Schedule. Attend the meeting scheduled by the Engineer, and submit a corrected Project Schedule to the Engineer within seven days after the meeting. The process will be continued until a Project Schedule is accepted by the Engineer.

8-3.2.3 Schedule Content: All schedule submissions shall comply with the following content guidelines as appropriate to the specific submission:

Outline Schedule Diagrams and Data shall show the sequence, order, and interdependence of major construction milestones and activities. Include ordering and procurement of major materials and equipment, long-lead time items, and key milestones identified by the Contract Documents. Identify planned work schedule(s) and include all non-workdays. Provide a description of each major construction activity or key milestone.

Detailed Schedule Diagrams shall include activity number, description, early dates, float, and all relationships (i.e. logic ties), resources and costs. Show the sequence, order, and interdependence of activities in which the D&C Work is to be accomplished. Include allowance for Department oversight, acceptance and return of submittals, samples and shop drawings where Department acceptance is specifically required (in accordance with 5-1.4.6). In addition to construction activities, detailed network activities shall include the submittals, procurement, and Department or Utility activities impacting progress:

a. Submittal activities shall include oversight and acceptance of submittals. If the Department's action on any submittal is “Not Accepted” or “Revise and Resubmit”, a new series of submittal preparation activities shall be inserted into the schedule. Predecessor for the new submittal preparation activity will be the original acceptance activity and the successor of the new acceptance activity will be the fabrication/delivery activity for the equipment or material.

b. Procurement activities shall include all materials and equipment, receipt of materials, fabrication of special material and equipment, and their installation and testing.

c. Show activities of the Department or Utilities that affect progress and contract-required dates for completion of all or parts of the D&C Work.

Detailed Schedule Data: shall conform to the following:

a. All activities shall be assigned to a specific calendar within the software. Specific calendars will be defined within the software to include planned work days and working hours. These calendars will include both Concessionaire and contractually defined holidays and suspension days as non-workdays.

b. Each schedule activity shall be cost loaded. Activity cost loading shall be consistent with the Schedule of Values. The sum total of the activity cost loading shall be equal to the current Design and Construction Costs.

c. At a minimum, each schedule activity shall contain codes by:

1. Responsibility: including, but not be limited to, Department, Utility, Concessionaire/Contractor, Supplier/Vendor, Consultant, etc.

2. Phasing: identify the appropriate Maintenance of Traffic phase or subphase.

d. Key milestones as identified by the Contract Documents. At a minimum, the Completion Deadlines and start and finish of each Maintenance of Traffic phase or subphase shall be represented by a milestone activity.

e. All non-procurement activities must be less than or equal to 20 workdays unless approved by the Engineer to be greater by the Engineer.

f. Detailed description of each activity. In each activity, give quantity and unit of measure so that the amount of work the activity involves is clearly communicated.

g. Only two (2) open-ended activities (the first and the last) are allowed.

h. Constraints shall only be used for “Project Start,” and “Project Completion.” Constraints cannot override logic. The use of any other imposed constraints is not allowed without specific approval by the Engineer. Any other desired constraints must be submitted to the Engineer with the rationale for the use of each desired additional constraint. If

allowed by the Engineer, the rationale should be recorded in the activity's log field. Mandatory constraints (start and finish) violate network logic and shall not be used.

i. Out of sequence progress, if applicable, shall be handled through Retained Logic. Use of the Progress Override option is not appropriate for this project and will not be allowed.

j. Progress shall be calculated based on percent complete.

k. All changes to activities shall be recorded with a note in the activity log field. The log shall include, as a minimum, the date and reason for the change, as well as reference to a document wherein the Engineer acknowledges and accepts the change.

l. The use of resource leveling, either manual or automatic, is prohibited.

8-3.2.4 Weekly Meetings: Attend weekly meetings scheduled by the Engineer to discuss D&C Work progress, near term scheduled activities, including utility relocations, problems and their proposed solutions. Submit a Two-Week "Look Ahead" Planning Schedule at each weekly meeting, showing the items of work planned for the next two weeks. Develop the schedule in Bar Chart format, identifying current and planned activities and related Project Schedule work activities, including subcontracted work. Designate all activities that are Controlling Work Items as determined by the currently accepted Project Schedule. A report shall be submitted at each weekly meeting identifying schedule activity progress including actual start or finish dates achieved for any activities.

8-3.2.5 Float: Is also known as slack time or slide time; it is defined as the amount of time the finish of an activity can be delayed. Two kinds of float are possible: Total float is how much an activity can be delayed without affecting the finish date of the D&C Work or an intermediate deadline (constraint); it is the difference between the late finish date and the early finish date. Free float is how much an activity can be delayed without affecting its earliest successor.

Float is not for the exclusive use or benefit of either the Department or the Concessionaire.

Use of float suppression techniques, such as preferential sequencing (arranging critical path through activities more susceptible to Department caused delay), special lead/lag logic restraints, zero total or free float constraints, extended activity times, or imposing constraint dates other than as required by the contract, shall be cause for rejection of the Project Schedule or its updates. The use of Resource Leveling (or similar software features) used for the purpose of artificially adjusting activity durations to consume float and influence the critical path is expressly prohibited.

Negative float shall not be a basis for requesting time extensions. Any extension of time shall be addressed in accordance with 8-3.2.6 Time Extensions. Scheduled completion date(s) that extend beyond the applicable contractual completion date(s) (evidenced by negative float) may be used in computations for purposes of determining the Department's rights and remedies under the Contract Documents. The use of this computation is not to be construed as a means of acceleration.

8-3.2.6 Time Extensions: The Concessionaire is responsible for submitting a request for time extension in accordance with 8-7.3.2. An extension of time for performance shall be considered only to the extent that a Delay to an activity or activities exceeds the total float along the project critical paths.

As a minimum, time extension requests shall contain:

- a. A descriptive summary of the changes
- b. An analysis of project impact
- c. A fragnet that shows the impacted activities before the change
- d. A fragnet that shows the impacted activities after the change

Time extensions shall not be considered for proposals that do not include full documentation for the schedule change. Once a change has been approved by the Engineer, the specific activities and the overall Project Schedule must be updated.

8-3.2.7 Performance of Work: By submitting a schedule the Concessionaire is making a positive assertion that the Project will be constructed in the order indicated on the Project Schedule. Prosecute the D&C Work in accordance with the latest accepted Project Schedule. Any costs associated with meeting milestones and completing the Project within the time periods required under the Agreement will be borne solely by the Concessionaire.

8-3.2.8 As-Built Schedule: As a condition for Final Acceptance, submittal of an as-built schedule which describes the actual order and start and stop times for all activities of the D&C Work by the Concessionaire is required.

8-3.3 Beginning Work: The requirements for the commence of the Work are set forth in Sections 4.6, 4.7 and 6.1 of the Agreement.

8-3.4 Provisions for Convenience of Public: Schedule the Work so as to minimize any inconvenience to adjacent businesses or residences and in accordance with any constraints or work restrictions identified in the Contract Documents.

8-3.5 Preconstruction Conference: Before the Concessionaire begins actual construction; the Engineer will call a preconstruction conference at a place the Engineer designates to go over the construction aspects of the Project. Attend this meeting, along with the Department and the various utility companies that will be involved with the road construction.

8-3.6 Not Used.

8-3.7 Disputes Review Board: The dispute resolution procedures are set forth in Article 25 of the Agreement.

8-4 Limitations of Operations.

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

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

Submit a lighting plan prior to NTP 2 for review and approval by the Engineer. Submit the plan on standard size plan sheets (not larger than 24 by 36 inch), and on a scale of either 100 or 50 feet to 1 inch. Do not start night work prior to the Engineer's approval of the lighting plan.

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

8-4.2 Sequence of Operations: [Not Used]

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

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

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

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

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

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

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

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

8-4.9 Potential Contaminated Materials: When the Work encounters or exposes any abnormal condition that may indicate the presence of Contaminated Materials, discontinue such Work in the vicinity of the abnormal condition and notify the Engineer immediately. Be alert for the presence of tanks or barrels; discolored earth, metal, wood, ground water, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of Contaminated Materials and treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any Contaminated Materials into uncontaminated areas.

Dispose of the Contaminated Materials in accordance with the Contract Documents and the requirements and regulations of any Local, State, or Federal agency having jurisdiction.

8-5 Qualifications of Concessionaire's Personnel.

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

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

8-6 Temporary Suspension of Concessionaire's Operations.

8-6.1 Authority to Suspend Contractor's Operations: The Engineer's authority to suspend the Work are set forth in Section 19.2.7 of the Agreement.

Immediately comply with any suspension order. Do not resume the suspended Work until authorized to do so by the Engineer in writing. Concessionaire assumes the full risk and liability for any Work performed by the Concessionaire after the issuance of the suspension order and prior to the Engineer's authorization to resume such Work. Further, failure to immediately comply with any suspension order will also constitute a default by the Concessionaire under the Contract Documents.

8-6.1.1 State of Emergency: Concessionaire's remedies pursuant to a Governor's Declaration of a State of Emergency are as set forth in the Agreement.

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

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

8-6.4 Suspension of Concessionaire's Operations-Holidays: Unless the Concessionaire submits a written request to work on a holiday at least ten days in advance of the requested date and receives written approval from the Engineer, the Concessionaire shall not perform construction work on the following days: Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and

December 24 through January 2, inclusive. The Concessionaire is not entitled to any additional compensation for suspension of construction work during such holiday periods.

During such suspensions, remove all equipment and materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104. The Concessionaire is not entitled to any additional compensation for removal of equipment from clear zones or for compliance with Section 102 and Section 104 during such holiday periods.

8-7 Computation and Adjustment of Deadlines.

8-7.1 General: Perform the D&C Work fully, entirely, and in accordance with the Contract Documents within the time periods required under the Agreement, or as may be extended in accordance with the provisions herein below.

8-7.2 Date of Beginning of Contract Time: The date on which Contract Time begins is the date identified in NTP 1.

8-7.3 Adjusting Deadlines:

8-7.3.1 Increased Work: The Department may grant an extension of the Completion Deadlines and any other deadlines that are subject to extension pursuant to the Agreement due to adding Extra Work attributable to causes expressly assumed under the Agreement to be the Department's responsibility. The Department will base the consideration for granting a time extension on the extent that the time normally required to complete the additional designated work delays the applicable Completion Deadline and any other deadline that is subject to extension pursuant to the Agreement.

8-7.3.2 Time Extensions: Except for causes that are expressly assumed to be the Department's responsibility under the Agreement, no time extensions shall be granted for any Delays in the performance of the Work. For Delays that are expressly assumed to be the Department's responsibility under the Agreement and subject to any limitations contained therein, the Department may grant an extension of a Completion Deadline and any other deadline that is subject to extension pursuant to the Agreement when a Controlling Work Item is delayed by such causes. Further, the Department may allow such extension of time only for Delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the Department to fulfill an obligation under the Contract Documents results in delays to the Controlling Work Items, the Department will consider such Delays as a basis for granting a time extension to a Completion Deadline and any other deadline that is subject to extension pursuant to the Agreement. Notwithstanding the provisions in this 8-7.3, no time extensions shall be granted for any Delay to the extent the Agreement or any other provision of the Contract Documents expressly precludes or limits Concessionaire's right to claim a time extension for such Delay.

Whenever the Engineer suspends the Concessionaire's D&C Work, as provided in Section 19.2.7.2 of the Agreement, the Engineer will grant a time extension for any delay to a Controlling Work Item due to such suspension. The Department will not grant time extensions for delays due to the fault or negligence of the Concessionaire.

The Concessionaire shall be solely responsible and bear the full risk for Delays caused by the effects of rains or other inclement weather conditions, and related adverse soil conditions, except to the extent such responsibility and risk are expressly assumed by the Department under the Agreement.

The Department will consider the Delays in delivery of materials or component equipment that affect progress on a Controlling Work Item as a basis for granting a

time extension if such Delays are beyond the control of the Concessionaire or its Contractors. Such Delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Concessionaire shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the Delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for Delays caused by delivery of materials or component equipment.

The Department will not consider requests for time extension due to Delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Concessionaire furnishes documentation that he placed the order for such equipment in a timely manner, the Delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a Controlling Work Item. No additional compensation will be paid for Delays caused by delivery of custom manufactured equipment.

In addition any other requirements in the Agreement, as a condition precedent to an extension of the Completion Deadlines and any other deadlines that are subject to extension pursuant to the Agreement, the Concessionaire must submit to the Engineer:

A preliminary request for an extension of the applicable deadline must be made in writing to the Engineer within ten calendar days after the commencement of a delay to a Controlling Work Item. If the Concessionaire fails to submit this required preliminary request for an extension of such deadline, the Concessionaire fully, completely, absolutely and irrevocably waives any entitlement to an extension of such deadline for that Delay. In the case of a continuing Delay only a single preliminary request for an extension of the applicable deadline will be required. Each such preliminary request for an extension of a deadline shall include as a minimum the commencement date of the Delay, the cause of the Delay, and the Controlling Work Item affected by the Delay; and

Further, the Concessionaire must submit to the Engineer a request for a deadline extension in writing within 30 days after the elimination of the delay to the Controlling Work Item identified in the preliminary request for such deadline extension. Each request for a deadline extension shall include as a minimum all documentation that the Concessionaire wishes the Department to consider related to the Delay, and the exact number of days requested to be added to the deadline. If the Concessionaire contends that the Delay is compensable, then the Concessionaire shall also be required to submit with the request for a deadline extension a detailed cost analysis of the requested additional compensation. If the Concessionaire fails to submit this required request for a deadline extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the Delay and the costs of the Delay, the Concessionaire waives any entitlement to an extension of such deadline or additional compensation for the Delay.

Upon timely receipt of the preliminary request of time extension from the Concessionaire, the Engineer will investigate the conditions, and if it is determined that a Controlling Work Item is being delayed for reasons beyond the control of the Concessionaire the Engineer will take appropriate action to mitigate the Delay and the costs of the Delay. Upon timely receipt of the request for a time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the Controlling Work Item beyond the control of the Concessionaire, then an

adjustment of a deadline will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Agreement will be modified in writing accordingly.

The existence of an accepted Project Schedule, including any required update(s), as stated in 8-3.2, is a condition precedent to the Concessionaire having any right to the granting of an extension of a deadline or any monetary compensation arising out of any Delay. Concessionaire failure to have an accepted Project Schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted Project Schedule and applicable updates do not accurately reflect the actual status of the D&C Work or fail to accurately show the true Controlling Work Items or non-Controlling Work Items for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to the Department's analysis and identification of the actual Controlling Working Activities or non-Controlling Work Items. Further, in such instances, the Department's determination as to entitlement as to either time or compensability will be final, unless the Concessionaire can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis.

8-8 Failure of Concessionaire to Maintain Satisfactory Progress.

8-8.1 General: Pursue the Work to completion. Section 337.16 of the Florida Statutes establishes certain requirements pertaining to the suspension or revocation of Concessionaire's Certificate of Qualification because of delinquency on a previously awarded contract.

8-8.2 Regulations Governing Suspension for Delinquency:

(a) A Concessionaire is delinquent when the allowed time for performing the Work has expired, and the Concessionaire has not completed the Work.

(b) Once the Department determines that the Concessionaire is delinquent, the Department will give the Concessionaire written notice of intent to suspend the Concessionaire's Certificate of Qualification. If the Concessionaire disagrees with the delinquency, the Concessionaire shall file a request for an administrative hearing with the Clerk of Agency Proceedings within ten days of receipt of the notice of intent to suspend. If the Concessionaire does not file a request, the Department will make the suspension conclusive and final. The request for hearing is filed when the Concessionaire delivers it to, and it is received by, the Clerk of Agency Proceedings, Mail Station 58, 562 Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0450.

(c) If the Concessionaire files a request for a hearing, the Department will schedule the hearing within 30 days of the hearing officer's receipt of the request.

(d) The Department will continue the period of suspension of the Concessionaire's Certificate of Qualification until the Concessionaire is no longer delinquent. If the Concessionaire requests an administrative hearing, the Department's final order, depending on the outcome of the hearing, will set forth the time period of suspension for the number of days the Department determines that the Concessionaire was delinquent, even if the Concessionaire cures the delinquency during the pendency of the administrative proceedings.

(e) During the period of suspension of the Concessionaire's Certificate of Qualification, the Department will not allow the Concessionaire and its affiliates to bid on any Department contract, regardless of dollar amount, and will not approve the Concessionaire as a contractor on any Department contract.

(f) The Department may grant extensions of time during the prosecution of the Work as allowed under the Specifications regardless of the Concessionaire's delinquency status.

8-9 Default and Termination of Contract. The provisions for default and termination are set forth in Articles 19 and 20 of the Agreement.

8-10 Liquidated Damages for Failure to Complete the Work. [Not Used]

8-11 Release of Concessionaire's Responsibility. [Not Used]

8-12 Recovery of Damages Suffered by Third Parties. FDOT's rights to recover for damages suffered by third parties are set forth in Section 17.4 of the Agreement.

SECTION 9 MEASUREMENT AND PAYMENT

9-1 Measurement of Quantities.

9-1.1 Measurement Standards: Measure all work completed under the Contract in accordance with the United States Standard Measures.

9-1.2 Method of Measurements: Take all measurements horizontally or vertically.

9-1.3 Determination of Pay Areas: [Not Used]

9-1.4 Construction Outside Authorized Limits: [Not Used]

9-1.5 Truck Requirements: [Not Used]

9-1.6 Ladders and Instrument Stands for Bridge Projects: [Not Used]

9-1.7 Determination of Pay Reduction: [Not Used]

9-2 Scope of Payments. Concessionaire's compensation for the Work is set forth in the Agreement. Notwithstanding any provision in the Specifications to the contrary, Concessionaire shall not be entitled to any price adjustments for fuel, bituminous materials or other consumables or materials.

9-3 Compensation for Altered Quantities. [Not Used]

9-4 Deleted Work.

The Department will have the right to cancel the portions of the Work relating to the construction of any acceptable item therein, by the payment to the Concessionaire of a fair and equitable amount covering all items of cost incurred prior to the date that the Engineer cancels or suspends the Work.

In addition to having the right of canceling the portions of the Work relating to the construction of any acceptable item therein, the Department shall have the right to cancel any portion of the engineering services. Said cancellation shall be in the same manner as contained herein.

9-5 Partial Payments.

9-5.1 General: [Not Used]

9-5.2 Unsatisfactory Payment Record: In accordance with, and the rules of the Department, the Department may disqualify the Concessionaire from bidding on future Department contracts if the Concessionaire's payment record in connection with the Work

becomes unsatisfactory. The Department may also disqualify the Surety from issuing bonds for future Department contracts if they similarly fail to perform under the terms of their bond.

9-5.3 Withholding Payment:

9-5.3.1 Withholding Payment for Defective Work: [Not Used]

9-5.3.2 Withholding Payment for Failure to Comply: The Department will withhold payments from the Concessionaire if he fails to comply with any or all of the following within 60 days after beginning Work:

(a) Comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity, On-The-Job-Training, and Affirmative Action;

(b) Comply with the requirement to report all necessary information, including actual payments to DBEs, all other subcontractors and major suppliers, through the Internet based Equal Opportunity Reporting System;

(c) Comply with or make a good faith effort to ensure equal employment opportunity for minorities and females hiring goals; and

(d) Comply with or make a good faith effort to meet On-The-Job-Training goals.

The Department will withhold payments until the Concessionaire has satisfied the above conditions.

9-5.4 Release of Retainage After Acceptance: [Not Used]

9-5.5 Partial Payments for Delivery of Certain Materials: [Not Used]

9-5.6 Certification of Payment to Contractors: The term “contractor,” as used herein, includes persons or firms furnishing materials or equipment incorporated into the Work or stockpiled for which the Department has made partial payment and firms working under equipment-rental agreements. The Concessionaire is required to pay all contractors for satisfactory performance of their contracts before the Department will make payment to Concessionaire. The Concessionaire shall also return all retainage withheld to the contractors within 30 days after the contractor’s work is satisfactorily complete, as determined by the Department. Prior to receipt of any payment, the Concessionaire shall certify that all contractors having an interest in the Agreement were paid for satisfactory performance of their contracts and that the retainage is returned to contractors within 30 days after satisfactory completion of the contractor’s work. Provide this certification in the form designated by the Department.

Within 30 days of the Concessionaire’s receipt of the payments, the Concessionaire shall pay all contractors and suppliers having an interest in the Agreement for all work completed and materials furnished. The Department will honor an exception to the above when the Concessionaire demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Department and the affected contractors or suppliers within said 30-day period.

9-6 Record of Construction Materials.

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

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

9-7 Disputed Amounts Due the Concessionaire.

The Department reserves the right to withhold any disputed amounts between the Concessionaire and the Department.

9-8 Acceptance and Final Payment. [Not Used]

9-9 Interest Due on Delayed Payments.

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

Section 215.422(5), Florida Statutes, requires the Department to include a statement of vendor (Contractor) rights. Contractors are hereby advised of the following:

Contractors providing goods and services to an agency should be aware of the following time frames. Upon receipt, an agency has five working days to inspect and approve the goods and services, unless the bid specifications, purchase order or Contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, by the Department.

If a payment is not made within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes would be due and payable, in addition to the invoice amount, to the Contractor. Interest penalties of less than one dollar will not be enforced unless the Contractor requests payment. Invoices that have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a State Agency. The Vendor Ombudsman may be contacted by calling the Department of Financial Services Hotline, 1-800-848-3792.

9-10 Offsetting Payments.

Section 337.145 of the Florida Statutes, providing for offsetting payments to the Concessionaire, is not applicable to the Agreement.

9-11 Submittals.

9-11.1 Notification of Quality Assurance Inspection Arrangements for Fabrication of Critical Items: In order to facilitate quality assurance inspection for fabrication of critical items, the Concessionaire must submit a fabrication schedule for all items requiring Commercial Inspection as stated in 460-23. The fabrication schedule must be submitted to the Department's Commercial Inspection State Materials Office, with a copy provided to the Engineer, before, or at, the pre-construction meeting. Fabrication of critical items include, but is not limited to: steel bridge components, overhead cantilevered sign supports with cantilevered arms exceeding forty-five feet, movable bridge components, and any other items, that FDOT personnel identify.

- 9-11.2 Submittal Instructions:** [Not Used]
- 9-11.3 Concessionaire's Invoice:** [Not Used]
- 9-11.4 Payment to the Concessionaire:** [Not Used]