

**CONSULTANT SERVICES AGREEMENT**  
(Project 1 – Fire Station 15 – CDBG-MIT Project I0152)

**THIS AGREEMENT** is made this 7<sup>th</sup> day of January, 2025 by and between **CITY OF SEBRING**, a Florida municipal corporation, (herein called “City”) and **COOL AND COBB ENGINEERING COMPANY**, a Florida corporation, (herein called “Consultant”).

In consideration of the mutual promises made herein and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, City and Consultant hereby agree as set forth below.

1. City issued RFQ 24-002 describing the scope of work for professional services. Consultant responded and was ranked and ultimately selected as the most highly qualified to perform the work. The “Contract Documents” consist of this Agreement, Attachment 1 - General Terms and Conditions, Attachment 2 - Legal Provisions, and Attachment 3 – Description of the Project scope and fee, and all Modifications issued subsequent hereto. The Contract Documents form the “Contract.” The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the proposal documents. The Contract may be amended or modified only by a Modification. A “Modification” is a written amendment to the Contract signed by both parties or a change order.

2. City shall designate a representative who has authority to represent City in all matters encompassed by the Contract. City shall reasonably provide Consultant with information requested by Consultant in writing. City shall make all payments due Consultant under the Contract Documents within 30 days of approval thereof.

3. Scope of Work. See Attachment 3.

4. Compensation. Consultant shall be paid \$43,830.00, which includes all fees, costs, charges, and expenses, for satisfactory completion of the Scope of Work.

5. The term of this Agreement is two (2) years, beginning **January 7, 2025 and ending January 6, 2027**, unless sooner terminated as provided in the Contract Documents or extended by agreement of the parties.

6. The Contract may be terminated as provided in Attachment 1, and in the event City does so, Consultant shall grant City unlimited license to use the Work Product to complete any on-going projects, conditioned on the following:

- A. Use by City of the Work Product is at City’s sole risk and without liability or legal exposure to Consultant or anyone working by or through Consultant, including design professionals.
- B. Consultant is paid by City all monies due under subparagraph 5 above.

7. All documents provided by Consultant to City shall be in both hard copy and in digital, hyperlink formats.

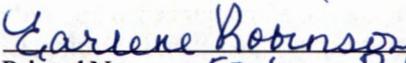
8. PURSUANT TO 558.0035 F.S., AN AGENT OR INDIVIDUAL EMPLOYEE OR AGENT OF COOL AND COBB ENGINEERING COMPANY CANNOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF THIS PROFESSIONAL SERVICES CONTRACT OR THE PERFORMANCE OF PROFESSIONAL SERVICES HEREUNDER.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

WITNESSES:

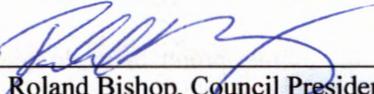
  
Printed Name: Tiffany Hill

  
Printed Name: Renee Brady

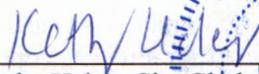
  
Printed Name: Earlene Robinson

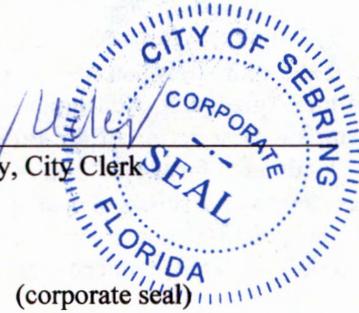
  
Printed Name: Cara L. Criss

CITY OF SEBRING, a Florida municipal corporation

By:   
Roland Bishop, Council President

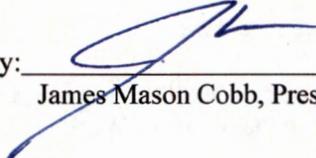
Attest:

By:   
Kathy Haley, City Clerk



(corporate seal)

COOL AND COBB ENGINEERING COMPANY, a Florida corporation

By:   
James Mason Cobb, President

(corporate seal)

**ATTACHMENT 1**  
**GENERAL TERMS AND CONDITIONS**  
**TO**  
**CONSULTANT SERVICES AGREEMENT**  
**BETWEEN**  
**CITY OF SEBRING AND**  
**COOL AND COBB ENGINEERING COMPANY**  
**DATED Jan 7th, 2025**

This Attachment contains the general terms and conditions for the Contract for Consultant Services Agreement (herein referred to as the “Contract”) dated Jan 7th, 2025, between the CITY OF SEBRING, a Florida municipal corporation (herein referred to as the “CITY”) and **COOL AND COBB ENGINEERING COMPANY**, a Florida corporation, (herein referred to as the “CONSULTANT”).

**ARTICLE 1 – PAYMENTS TO CONSULTANT**

The CONSULTANT will bill the CITY at the amounts set forth in the Schedule of Payments for services rendered toward the completion of the Scope of Work on a monthly basis. The amounts billed shall represent the approximate completion of services outlined in the Scope of Work developed for each authorization.

**ARTICLE 2 – REIMBURSABLES**

“Out-of-Pocket” expenses will be reimbursed in accordance with the list of the types of expenditures eligible for reimbursement. All requests for payment of “out-of-pocket” expenses eligible for reimbursement under the terms of the Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the CITY. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the applicable Scope of Work. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of the Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

**ARTICLE 3 – PAYMENT OF INVOICES**

Prior to payment, invoices received from the CONSULTANT pursuant to the Contract will be reviewed and approved by the initiating department, indicating that services have been rendered in conformity with the Contract or applicable Consultant Services Agreement. Invoices must reference the current purchase order number (if any). Payment shall be made in accordance with the Consultant Services Agreement for specific projects.

**ARTICLE 4 – TRUTH-IN-NEGOTIATION CERTIFICATE**

The signing of the Contract and any Consultant Services Authorization by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in the Contract and that Consultant Services Authorization are accurate, complete and current as of the date of the Contract and that Consultant Services Authorization.

The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to the inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this “Certificate” within one year following final payment.

ARTICLE 5 – TERMINATION

The Contract may be terminated by the CONSULTANT upon 30 days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Contract through no fault of the CONSULTANT. It may also be terminated by the CITY with or without cause upon 30 days written notice to the CONSULTANT. Unless the CONSULTANT is in breach of the Contract, the CONSULTANT shall be paid for services rendered to the CITY through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY, the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under the Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT’s key personnel as may be listed herein must be made known to the CITY’s representative and written approval granted by the CITY before said change or substitution can become effective.

ARTICLE 7 – KEY PERSONNEL ASSIGNMENT

The CONSULTANT and the CITY agree to assign the following key personnel required to perform the services necessary under the Contract:

Contact Person for the Consultant	Thomas LaPerreire, AIA Cool and Cobb Engineering Company 203 West Main Street Avon Park, FL 33825
Contact Person for CITY	City Administrator City of Sebring 368 South Commerce Avenue Sebring, FL 33870

ARTICLE 8 - SUBCONTRACTING

For any specific project, the CONSULTANT reserves the right to select necessary subcontractors. The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability

of the subcontractor to perform properly under the Contract. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by the Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

#### ARTICLE 9 – FEDERAL AND STATE TAX

The CITY is exempt from Federal Tax and State Tax for Tangible Personal Property. The CITY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY's Tax Exemption Number in obtaining such materials.

The CONSULTANT shall be responsible for payment of its own taxes.

#### ARTICLE 10 – AVAILABILITY OF FUNDS

The obligations of the CITY under the Contract are subject to the availability of funds lawfully appropriated for its purpose by the City Council of the CITY OF SEBRING.

#### ARTICLE 11 – INSURANCE

- A. The CONSULTANT shall not commence work under this Contract until it has obtained all insurance required under this paragraph and that insurance has been approved by the CITY.
- B. All insurance policies shall be issued by companies authorized or approved to do business under the laws of the State of Florida. The CONSULTANT shall furnish Certificates of Insurance to the CITY prior to the commencement of work under the Contract. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classifications required for strict compliance with this Article. Compliance with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligations under the Contract.
- C. The CONSULTANT shall purchase and maintain professional liability or malpractice or errors or omissions insurance with minimum limits of \$2,000,000 per occurrence and annual aggregate. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.
- D. The CONSULTANT shall maintain, during the life of the Contract, comprehensive general liability insurance in the amount of \$1,000,000 per occurrence to protect the CONSULTANT from claims of property damages which may arise from any operations under the Contract whether such operations be by the CONSULTANT or by anyone directly employed by or contracting with the CONSULTANT.
- E. The CONSULTANT shall maintain, during the life of the Contract, comprehensive automobile liability insurance in the amounts of \$500,000 combined single limit for bodily injury and property damage to protect the CONSULTANT from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned

and non-owned automobiles, including rented automobiles whether such operations be by the CONSULTANT or by anyone directly or indirectly employed by the CONSULTANT.

- F. The CONSULTANT shall maintain, during the life of the Contract, adequate Workman's Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees performing work for the CITY pursuant to the Contract.
- G. All insurance, other than Professional Liability and Workman's Compensation, to be maintained by the CONSULTANT shall specifically include the CITY as an "Additional Insured".

#### ARTICLE 12 - STANDARD OF CARE

The CONSULTANT covenants that all services shall be performed by skilled and competent personnel to generally accepted professional standards under similar conditions.

#### ARTICLE 13 – INDEMNIFICATION

Subject to limitations of Florida law, the CONSULTANT shall indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Contract. CONSULTANT's liability for indemnification shall be limited to \$2,000,000.00.

#### ARTICLE 14 – SUCCESSORS AND ASSIGNS

The CITY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of the Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of the Contract. Neither the CITY nor the CONSULTANT shall assign, convey or transfer its interest in the Contract without the written consent of the other, which shall not be unreasonably withheld. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the CONSULTANT.

#### ARTICLE 15 – REMEDIES

The Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Highlands County, Florida, and the Contract will be interpreted according to the laws of the State of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### ARTICLE 16 – CONFLICT OF INTEREST

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, consistent with the intent and declaration of policy stated in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any interest shall be employed for said performance.

The CONSULTANT shall promptly notify the CITY in writing of potential conflicts of interest for any prospective business associations, interest or other circumstances which may influence or appear to influence the

CONSULTANT's judgment or quality of services being provided under a specific Consultant Services Agreement. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONSULTANT. The CITY agrees to notify the CONSULTANT of its opinion by certified mail within 30 days of receipt of notification by the CONSULTANT. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the CITY shall so state in the notification, and it shall be deemed not to be a conflict of interest with respect to services provided to the CITY by the CONSULTANT under the terms of the Contract.

#### ARTICLE 17 – EXCUSABLE DELAYS

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the CONSULTANT's control and without its fault or negligence. Such causes may include, but are not limited to: acts of God, the CITY's omissive and commissive failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions. The CONSULTANT shall be responsible for the timely completion of subcontractor's work.

Upon the CONSULTANT's request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT's failure to perform was due to causes reasonably beyond the CONSULTANT's control and without its fault or negligence, the Contract Schedule and/or other affected provision of the Contract shall be revised accordingly, subject to the CITY's rights to change, terminate, or stop any or all of the work at any time.

#### ARTICLE 18 – ARREARS

The CONSULTANT shall not pledge the CITY's credit or make the CITY a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of the Contract.

#### ARTICLE 19 – DISCLOSURE AND OWNERSHIP OF DOCUMENTS

So long as CONSULTANT is paid for its Work, the CONSULTANT shall deliver to the CITY, if requested, reproduces and computer files of all final documents and materials prepared by and for the CITY under the Contract, including, but not limited to, Consultant Services Agreement, Project Specifications, and Record Drawings.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the CITY's prior written consent unless required by a lawful order, notwithstanding that the CONSULTANT will be permitted to disclose such information to the affected building trades. So long as CONSULTANT is paid for its Work, all drawings, maps, sketches, and other data developed, or purchased, under the Contract or at the CITY's expense shall be and remain its property and may be reproduced and reused at the direction of the CITY.

Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project or tasks assigned the CONSULTANT is not to be construed as publication in derogation of any right therein reserved by the CONSULTANT.

If, however, the CITY uses for any other purpose the CONSULTANT's documents, drawings, and specifications, or reuses them without written verification or adaptation by the CONSULTANT for the specific purpose intended, it will be at the CITY's sole risk and without liability or legal exposure to the CONSULTANT or to the CONSULTANT's independent professional associates or consultants. Any such verification or adaptation will entitle the CONSULTANT to further compensation at rates to be agreed upon by the CITY and the CONSULTANT.

The CONSULTANT shall have the right to include representations of the design of the project(s) including photographs of the exterior and interior, among the CONSULTANT's promotional and professional material. The CONSULTANT's materials shall not include the CITY's confidential or proprietary information if the CITY advises the CONSULTANT of the specific information considered to be confidential or proprietary.

ARTICLE 20 – INDEPENDENT CONSULTANT RELATIONSHIP

The CONSULTANT is, and shall be, in the performance of all work, services, and activities under the Contract an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to the Contract shall at all times, and in all places, be subject to the CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT's relationship and the relationship of its employees to the CITY shall be that of an independent contractor and not as employees or agents of the CITY.

The CONSULTANT does not have the power or authority to bind the CITY in any promise, agreement or representation other than specifically provided for in the Contract or amendment thereto.

ARTICLE 21 – CONTINGENT FEES

The CONSULTANT represents that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure the Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Contract.

ARTICLE 22 – ACCESS AND AUDITS

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in performing work pursuant to the Contract for at least six (6) years after completion of the Contract. The CITY and shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CITY's cost, upon reasonable notice.

ARTICLE 23 – NONDISCRIMINATION

The CONSULTANT represents, to the best of its knowledge, that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, handicap, or marital status.

ARTICLE 24 – COMPLIANCE WITH DAVIS-BACON ACT REQUIREMENTS

The CONSULTANT hereby agrees, where required on Federal Grant assisted projects, to comply with applicable portions of the Davis-Bacon and related acts which regulate employee wages and benefits. The CONSULTANT further acknowledges the possible necessity for amending the Contract in order to comply with Federal guidelines

applicable to Grant Assisted projects which may be undertaken by the CITY.

ARTICLE 25 – SURVIVAL

All covenants, agreements and representations made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership or documents, shall survive the execution and delivery of the Contract and consummation of the transactions contemplated hereby.

ARTICLE 26 – ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the CONSULTANT agree that the Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in the Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 27 – ENFORCEMENT COSTS

In any action brought by either party for the interpretation or enforcement of the obligations of the other party, including the establishment of a right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorney’s fees, paralegal fees, court and other costs, even if not taxable as court costs, whether incurred before or at trial, on appeal, in bankruptcy or in post judgment collections.

ARTICLE 28 – AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, that it will at all times conduct its business activities in a reputable manner, and that it will maintain for duration of the Contract a current certificate of registration required under Florida Statutes.

ARTICLE 29 - SEVERABILITY

If any term or provision of the Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of the Contract, or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of the Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 30 – AMENDMENTS AND MODIFICATION

No amendments and/or modifications of the Contract shall be valid unless in writing and signed by each of the parties.

The CITY reserves the right to make changes in the scope of work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the CITY’s notification of a contemplated change, the CONSULTANT shall, if requested by CITY: (1) provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the CITY of any estimated change in the completion date, and (3) advise the CITY in writing if the contemplated change shall effect the CONSULTANT’s ability to meet the completion dates or schedules of the Contract.

If the CITY so instructs in writing, the CONSULTANT shall suspend work on the portion of the work affected

by a contemplated change, pending the CITY's decision to proceed with the change.

If the CITY elects to make the change, the CITY shall issue a Contract Amendment or Change Order and the CONSULTANT shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

#### ARTICLE 31 – CITY'S RESPONSIBILITIES

Provided such information is reasonably required by the CONSULTANT to perform its services under the Contract, the CITY shall:

- A. Provide full information regarding requirements for the projects and tasks, including a program which shall set forth the CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.
- B. Designate a representative authorized to act on the CITY's behalf with respect to the projects or tasks. The CITY or that authorized representative shall render decisions in a timely manner pertaining to documents submitted by the CONSULTANT in order to avoid unreasonable delay in the orderly and sequential progress of the CONSULTANT's services.
- C. Furnish to the extent in its possession, surveys describing available information on utility locations, written legal descriptions of the sites, easements, encroachments, zoning, deed restrictions, and other available information to assist the CONSULTANT in developing proper scopes of service and fulfilling project or task objectives.
- D. Assist in gaining access to and make all provisions for access required for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform services under the Contract.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the CONSULTANT and render decisions and comments regarding them within a reasonable time so as not to delay the services of the CONSULTANT.
- F. Bear all costs incident to compliance with the requirements of this Article.

#### ARTICLE 32 – NOTICE

All notices required in the Contract shall be sent certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

City Administrator  
City of Sebring  
368 South Commerce Avenue  
Sebring, FL 33870

and if sent to the CONSULTANT shall be mailed to:

James Mason Cobb, President  
Cool and Cobb Engineering Company  
203 West Main Street  
Avon Park, FL 33825

### ARTICLE 33 – PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a CONSULTANT, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. By signing the Contract, CONSULTANT certifies that it is not subject to denial or revocation of the right to transact business with public entities pursuant to s. 287.133, Florida Statutes.

### ARTICLE 34 - DRUG-FREE WORKPLACE

CONSULTANT acknowledges that City is a drug-free work place. CONSULTANT covenants that all employees of CONSULTANT working upon City property shall be subject to implementation of all possible provisions to maintain a drug-free environment and that CONSULTANT will adhere to the provisions of Florida Statute 287.087.

### ARTICLE 35 - SCRUTINIZED COMPANIES

By signing the Contract, CONSULTANT certifies that it is not ineligible, pursuant to Florida Statute 287.135, to bid on, submit a proposal for, or enter into or renew a contract pursuant to Florida Statute 287.135. CITY may terminate the Contract at its option if CONSULTANT is found to have submitted a false certification pursuant to section 287.135, F.S., been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria. CITY may also terminate the Contract at its option if CONSULTANT is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

### ARTICLE 36 - LAWS AND REGULATIONS

CONSULTANT shall comply with all laws, ordinances, rules, orders and regulations relating to performance of the Work and the protection of persons and property.

### ARTICLE 37 - RESPONSIBILITY FOR THOSE PERFORMING THE WORK

CONSULTANT shall be responsible to City for the acts and omissions of all its employees and all subcontractors, their agents and employees and all other persons performing any of the Work by, through, or under CONSULTANT.

### ARTICLE 38 - PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this document shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

### ARTICLE 39 - SAFETY AND HEALTH REGULATIONS

CONSULTANT shall comply with the Department of Labor Safety and Health Regulations promulgated for construction under the Occupational Safety and Health Act and such other rules and regulations as may be

applicable to this Project.

39.1 CONSULTANT shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

ARTICLE 40 - DEFAULT

Subject to the limitations of Sec. 768.28, Fla. Stat., in any action brought by either party for the interpretation or enforcement of the obligations of the other party including City's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy or in post judgment collections.

ARTICLE 41 - PUBLIC RECORDS

CONSULTANT is required to keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service sought herein. CONSULTANT is required to provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Ch. 119.07 et seq., Fla. Stat. or as otherwise provided by law. CONSULTANT must ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and must meet all requirements for retaining public records. CONSULTANT shall maintain the public records for six (6) years after the completion of the project and transfer, at no cost, to the City, Federal Government (including HUD), or the State of Florida (including FloridaCommerce) all public records, including requests for proposals, invitations for bids, independent cost estimate(s); and score sheets. All records stored electronically must be provided to the City, Federal Government (including HUD), and the State of Florida (including FloridaCommerce) in a format that is compatible with the information technology systems of those governmental entities. **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT KATHY HALEY, THE CUSTODIAN OF PUBLIC RECORDS AT 863-471-5100, kathyhaley@mysebring.com or 368 SOUTH COMMERCE AVENUE, SEBRING, FL 33870.**

ARTICLE 42 - PUBLIC ENTITY CRIMES

By signing this contract, CONSULTANT certifies that it has knowledge of and understands Florida Statute 287.133, including section (2)(a) which provides: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list." CONSULTANT certifies that it has and shall comply with the provisions of Florida Statute 287.133, and further certifies that neither it, nor its officers, directors, executives, partners, shareholders, employees, members, or agents, nor its affiliates, are on the convicted vendor list.

Attachment 2  
**LEGAL PROVISIONS**

Miscellaneous

Licensing. Contractor shall procure and keep in force during the term of this contract all necessary licenses, registrations, certificates, permits and other authorizations as are required by law in order for Contractor to render its services hereunder. Contractor shall require all of its subcontractors to comply with the provisions of this paragraph.

Contractor grants Owner an irrevocable license to utilize the plans and specifications generated by Contractor for this Project.

E-Verify.

(a) Beginning January 1, 2021, every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

(b) 1. If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.

2. The contractor shall maintain a copy of such affidavit for the duration of the contract.

(c) 1. A public employer, contractor, or subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09(1) shall terminate the contract with the person or entity.

2. A public employer that has a good faith belief that a subcontractor knowingly violated this subsection, but the contractor otherwise complied with this subsection, shall promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.

3. A contract terminated under subparagraph 1. or subparagraph 2. is not a breach of contract and may not be considered as such.

(d) A public employer, contractor, or subcontractor may file an action with a circuit or county court to challenge a termination under paragraph (c) no later than 20 calendar days after the date on which the contract was terminated.

(e) If a public employer terminates a contract with a contractor under paragraph (c), the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated.

(f) A contractor is liable for any additional costs incurred by a public employer as a result of the termination of a contract.

Legal Provisions and Certifications

To the extent applicable to this Project, Engineer, Contractor, subcontractor, Architect and/or Design/Builder (collectively "Contractor"):

Conflict. Contractor represents and warrants unto Owner that no officer, employee or agent of Owner has any interest, either directly or indirectly, in the business of Contractor to be conducted hereunder. Contractor further represents and warrants to Owner that it has not employed or retained any company person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, that it has not paid or agreed

to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract, and that it has not agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out this Contract. Contractor assures that it will insert the above provision in each of its subcontractor agreements relating to the services to be performed hereunder.

Contractor and its employees shall promptly observe and comply with the applicable provisions of all Federal, State and local laws, rules and regulations which govern or apply to the goods and services rendered by Contractor hereunder, or to the wages paid by Contractor to its employees. Contractor shall require all of its subcontractors to comply with the provisions of this paragraph.

#### CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1.1 Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

1.2 Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Owner to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Owner, as appropriate, and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Owner shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or

procurement as the Owner may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Owner to enter into such litigation to protect the interests of the Owner and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) in the furnishing of services to Owner hereunder, no person on the grounds of race, color, national origin, sex, age, disability, religion, or familial status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (2) Contractor shall comply with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation – effectuation of Title VI and Title VIII of the Civil Rights Act of 1964, as said Regulations may be amended. Should Contractor authorize another person, with Owner’s prior written consent, to provide services to Owner hereunder, Contractor shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services which he or she is authorized to provide, undertake for such person the obligations contained in this section. Contractor shall furnish an original agreement to Owner.

Further, Contractor assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, color, national origin, sex, age, disability, religion, or familial status be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Such activities shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services of any program or activity covered by this subpart. Contractor assures that it shall not discriminate on the grounds of race, color, national origin, sex, age, disability, religion, or familial status in the selection or retention of subcontractors. Contractor assures that it will require that its covered subcontractors provide assurances to Contractor that they similarly require assurances from their subcontractors, as required by CFR Part 152, Subpart E, to the same effect.

Owner may, from time to time, adopt additional or amended and nondiscrimination provisions concerning the furnishing of services to the Owner, and Contractor agrees that it will adopt any such requirements as a part of this Contract.

Non-Discrimination. Contractor for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

1. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
2. That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination;
3. That Contractor shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, and as said Regulations may be amended.

That in the event of a breach of any of the above nondiscrimination covenants, Owner shall have the right to terminate this Contract. This provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule,

regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### EEO COMPLIANCE

##### (a) Requirements for prime contractors and subcontractors:

(1) Each prime contractor and subcontractor shall file annually, on or before the September 30, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with Sec. 60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided*, That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (a)(1) (i), (ii), and (iv) of this section.

(2) Each person required by Sec. 60-1.7(a)(1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with Sec. 60- 1.7(a)(1), or at such other intervals as the Deputy Assistant Secretary may require. The Deputy Assistant Secretary may extend the time for filing any report.

(3) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and this contract.

##### (b) Requirements for bidders or prospective contractors:

(1) Certification of compliance with Part 60-2: Affirmative Action Programs. Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to Part 60-2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; (iii) whether it has filed with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) Additional information. A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Deputy Assistant Secretary requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Deputy Assistant Secretary requests.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS - 41 CFR Part 60.4.3

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
  - d. "Minority" includes:
    - (1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
    - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The contractor shall implement the specific affirmative action standards provided within these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the

contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
  - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
  - f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
  - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or

other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

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

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

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

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

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

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

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

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

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

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations. The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken

on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records. The contractor shall retain such records for a period of six years following the completion and closeout of the project. Records shall be made available to the public per Chapter 119 Florida Statutes; and shall be made available to the Owner, the U.S. Department of Housing and Urban Development (HUD), the Florida Department of Commerce, the Florida Auditor General, and Comptroller General of the United States.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### CERTIFICATION OF NONSEGREGATED FACILITIES - 41 CFR PART 60-1.8

##### Notice to Prospective Federally Assisted Construction Contractors:

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally- assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective Subcontractors of Requirements for Certification of Non-Segregated Facilities:

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.
2. Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATION OF NONSEGREGATED FACILITIES

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where she or he has obtained identical certifications from proposed subcontractors for specific time periods) she or he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION - 41 CFR PART 60-2

The Contractor's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

1. No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for

influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

Accounting/Records. Contractor will provide all information and reports required by said Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Owner or other governmental agency to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Contractor is in the exclusive possession of another who fails or refused to furnish this information, Contractor shall so certify and shall set forth what efforts it has made to obtain the information. Contractor shall remain obligated under this paragraph until the expiration of six (6) years after the termination of the Contract. Records shall be made available to the public per Chapter 119 Florida Statutes; and shall be made available to the Owner, the U.S. Department of Housing and Urban Development (HUD), the Florida Department of Commerce, the Florida Auditor General, and Comptroller General of the United States. In the event of breach of any of the above nondiscrimination covenants, Owner shall have the right to impose such contract sanctions as it or other applicable government entity may determine to be appropriate, including withholding payments to Contractor under this Contract or canceling, terminating, or suspending this Contract in whole or in part. The rights granted to Owner by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT  
REQUIREMENTS 29 CFR PART 5

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

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

3. Withholding for Unpaid Wages and Liquidated Damages. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Subcontractors. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

## ACCESS TO RECORDS AND REPORTS

The Owner, as well as the public pursuant to Florida Statutes Chapter 119, shall have access to any books, documents, paper, and records including payroll records and associated basic data of the Contractor, which are directly pertinent to the specific Contract for the purposes of making an audit, examination, excerpts, and transcriptions.

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the U.S. Department of Housing and Urban Development (HUD), the Florida Department of Commerce, the Florida Auditor General, Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than six years after final payment is made and all pending matters are closed.

## DISADVANTAGED BUSINESS ENTERPRISES

Policy. It is the policy of the Owner and the United States or State of Florida Department of Transportation that disadvantaged business enterprises, as defined in the Owner's Disadvantaged Business Enterprises ("DBE") Participation Policy for services as defined in 49 CFR Part 26 shall have equal opportunity to participate in the performance of services contracts awarded by the Owner, including, but not limited to, contracts financed in whole or in part with federal or State funds under this Contract. Consequently, the requirements of the Owner's DBE Participation Policy apply to this Contract.

Contract Assurance (§26.13). The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fourteen (14) days from the receipt of each payment, including retainage, that the prime contractor receives from City of Sebring. Payments not made to subcontractors within fourteen (14) days of the prime contractor's receipt of payment shall bear interest at the rate of ten percent (10%) per annum, computed beginning on the 14th day after payment is due. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Sebring. The right to receive interest on a payment under this section is not an exclusive remedy, and this section does not modify any remedies available to any person under the terms of a contract or under any other statute. City of Sebring shall have the right to terminate the services of any obligor who fails to make prompt payment to any obligee. This clause applies to both DBE and non-DBE subcontractors.

DBE Obligation. The Contractor agrees to ensure that DBE/MWBE firms shall have the maximum opportunity to participate in the performance of contracts for subcontractor services, including, but not limited to, those projects financed in whole or in part with federal or state funds provided under this Contract. In this regard, the Contractor and all subcontractors shall take all necessary and reasonable steps in accordance with the Owner's DBE/MWBE Participation Policies to ensure that DBE/MWBE firms have the maximum opportunity to compete for and perform contracts. The Contractor and any subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Owner contracts.

## DBE Administration.

1. Eligibility of DBE's: Those firms currently certified as DBE's by the Florida Department of Transportation are eligible to participate as DBE's on this contract. A list of these firms can be obtained from the State, the consulting engineer, or the Owner. Firms certified as DBE's by other states, or other U.S. DOT recipients are subject to the owner's acceptance. A bidder may request a review of a potential DBE prior to the bid opening. The bidder should allow ten working days for the owner's determination regarding certification of the potential DBE. Previous acceptance of a DBE by the State or Owner does not ensure acceptance on this project.
2. Counting DBE Participation Towards DBE Goals: DBE participation toward attainment of the goal will be computed on the basis of the subcontract prices agreed to between the contractor and subcontractors for the contract items or portions of items being sublet, as shown on the DBE Participation Form and attachments. Credit will only be given for use of DBE's that are certified or accepted according to this specification. DBE participation shall be counted toward meeting the DBE goal in accordance with the following:
  - a. Commercially Useful Function: The Owner shall count toward the DBE goal only those expenditures to DBE's that perform a commercially useful function in the work of the contract. A DBE performs a commercially useful function when it is responsible for execution of a distinct element of work by actually performing, managing, and supervising that work. To determine if a DBE is performing a commercially useful function, the amount of work subcontracted, industry practices, and other relevant factors will be evaluated. If consistent with industry practices, a DBE shall enter into a subcontract or other contractual written agreement. A DBE Contractor may subcontract a portion of the work up to the amount allowed under standard subcontracting contract provisions of normal industry practices. A DBE is presumed not to be performing a commercially useful function if the DBE is performing outside these guidelines.
  - b. Materials and Supplies: The Owner shall count toward the DBE goal the expenditures for materials and supplies obtained from DBE suppliers and manufacturers as described below. The DBE's must assume the actual and contractual responsibility for the provision of the materials and supplies:
    - (1) The entire expenditure to a DBE manufacturer will be counted toward the DBE goal. A manufacturer must operate or maintain a factory or establishment that produces on the premises the materials or supplies that are obtained by the contractor.
    - (2) Sixty percent of expenditures to a DBE regular dealer will be counted toward the DBE goal. A regular dealer must perform a commercially useful function in the supply process including buying the materials or supplies, maintaining an inventory and regularly selling materials to the public. Bulk items such as steel, cement, gravel, stone and petroleum products need not be kept in stock, but the dealer must own or operate distribution equipment.
    - (3) No credit will be given toward the DBE goal, if the prime contractor makes a direct payment to a non-DBE material supplier. However, it will be permissible for a material supplier to invoice the prime contractor and the DBE jointly and be paid by the prime contractor making remittance to the DBE firm and material supplier jointly.
    - (4) No credit, toward the DBE goal, will be given for the cost of materials or equipment used in a DBE firm's work when those costs are paid by a deduction from the prime contractor's payment(s) to the DBE firm.
  - c. Owner-Operator Trucking: The Owner shall count toward the DBE goal, the entire delivery fee paid to DBE owner-operators performing trucking for the contractor, if they appear on the contractor's payroll and separate records are furnished to the Owner documenting the

expenditures. The records shall include for each owner-operator; their social security number; driver's license number; vehicle registration number; current vehicle license number; truck number; and a complete record of the contract fees paid to them.

- d. Joint Venture: When a joint venture contract is involved, the Owner shall count towards the DBE goal that portion of the contract total dollar value equal to the percentage of ownership and control of each DBE firm within the joint venture. Such crediting is subject to the owner's acceptance of the joint venture agreement. The Bidder must furnish the joint venture agreement with the DBE Participation Form. The joint venture agreement must include a detailed breakdown of the following:
  - (1) Contract responsibility of the DBE for specific contract items of work,
  - (2) Capital participation by the DBE,
  - (3) Specific equipment to be provided by the DBE,
  - (4) Specific responsibilities of the DBE regarding control of the joint venture,
  - (5) Specific workers and skills to be provided by the DBE, and
  - (6) Percentage distribution to the DBE of the projected profit or loss incurred by the joint venture.

The joint venture must be certified by the City.

3. Award Documentation and Procedure: All bidders shall certify in the bid proposal their intent to meet or exceed the established goal or to demonstrate good faith efforts to meet the goal. Failure to make such certification or failure to demonstrate good faith efforts will render a bid non responsive.
  - a. DBE Participation Form: The apparent successful bidder must submit with the bid the following information on the proposed DBE Participation Form attached to the Proposal. The information shall demonstrate the contractor's intended participation by certified DBE's. When the required information is not provided by the apparent low bidder the bid will be ruled non responsive and will not be considered. The information furnished shall consist of:
    - (1) The names, addresses, contact persons, phone numbers, and category of DBE firms to be used on the contract;
    - (2) A list of the bid items of work to be performed by the DBE and the percent to be credited toward the DBE goal;
    - (3) The dollar value of each of the DBE work items; and
    - (4) If the DBE goal is not met, a statement of why the goal could not be met and a demonstration of the good faith efforts taken to meet the DBE goal.
  - b. Owner Evaluation: In selecting the lowest responsible bidder, the Owner will evaluate the DBE information provided with the bid. The Owner may request additional DBE information and may allow the bidders, up to 7 calendar days after bid submittal to supplement or resubmit information concerning their proposed DBE participation. Prior to awarding the contract the Owner will verify verbally and/or in writing that the information submitted by the apparent successful bidder is accurate and complete.
  - c. Good Faith Efforts: If the bidder is unable to meet the DBE goal, the bidder must submit evidence of good faith efforts taken to meet the goal. Good faith efforts conducted after the bid opening will not be considered adequate to fulfill these bid requirements. Good faith efforts may include but are not limited to:
    - (1) Efforts to select portions of the work for performance by DBE's, in order to increase the

likelihood of achieving the DBE goal. This can include, but is not limited to, breaking down contracts into economically feasible units to facilitate DBE participation. Selection of portions of work shall be at least equal to the DBE goal.

- (2) Written notification to individual DBE's likely to participate in the contract sent at least 7 calendar days prior to the bid opening. The notification shall list specific items or types of work and shall be sent to a reasonable number of DBE's qualified to participate in the contract.
- (3) Efforts to negotiate with DBE's for specific items of work including:
  - (a) Names, addresses, and telephone numbers of DBE's who were contacted, the dates of initial contact and information on further contacts made to determine with certainty if the DBE's were interested. Personal or phone contacts are expected;
  - (b) Description of the information provided to the DBE's regarding the plans, specifications and estimated quantities for portions of the work to be performed;
  - (c) Individual statements as to why agreements with DBE's were not reached; and
  - (d) Information on each DBE contacted but rejected and the reasons for the rejection.
- (4) Efforts to assist the DBE's that need assistance in obtaining bonding, insurance, or lines of credit required by the contractor.
- (5) Documentation that qualified DBE's are not available or not interested.
- (6) Advertisements in general circulation media, trade association publications and disadvantaged-focus media concerning subcontracting opportunities.
- (7) Efforts to use the services of available disadvantaged community organizations; disadvantaged contractor's groups; local, state and federal disadvantaged business assistance offices; and other organizations that provide assistance in recruitment and placement of DBE's.

The demonstration of good faith efforts by the contractor must prove the contractor actively and aggressively sought out DBE's to participate in the project. The following actions would not be considered acceptable reasons for failure to meet the DBE goal and would not constitute a good faith effort:

- (1) The DBE was unable to provide adequate performance and/or payment bonds.
  - (2) A reasonable DBE bid was rejected based on price.
  - (3) The DBE would not agree to perform the subcontract work at the prime contractors unit bid price.
  - (4) Union versus non-union status of the DBE firm.
  - (5) The prime contractor would normally perform all or most of the work included in this contract.
  - (6) The prime contractor solicited DBE participation by mail only.
4. Post Award Compliance: If the contract is awarded on less than full DBE goal participation, the contractor is not relieved of the responsibility to make a determined effort to meet the full goal amount during the life of the contract. In such a case, the contractor shall continue good faith efforts throughout the life of the contract to increase the DBE participation to meet the contract goal.

If a DBE is unwilling or unable to perform the work specified, the contractor shall request from the Owner, relief from the obligation to use that DBE. Efforts will be made by the contractor to acquire from the DBE a letter which states the reason the DBE is unwilling or unable to complete its obligations under the project. If this results in a DBE contract shortfall, the contractor shall immediately take steps to obtain another certified DBE to perform an equal dollar value of allowable credit. If a new DBE cannot be found, the contractor shall submit evidence of good faith efforts within 15 calendar days of the request for relief. The contractor shall submit the new DBE's name, address, work items and the dollar amount of each item. The owner shall approve the new DBE before the DBE starts work.

If the contractor fails to conform to the approved DBE participation or if it becomes evident that the remaining work will not meet the approved participation, then the contractor shall submit evidence showing either how the contractor intends to meet the DBE participation, or what circumstances have changed affecting the DBE participation. If the owner is not satisfied with the evidence, then liquidated damages may be assessed for the difference between the approved and actual DBE participation.

5. Records and Reports: The contractor shall keep records as necessary to determine compliance with the DBE obligations. The records shall include but are not limited to:
  - a. Record of DBE Participation: The names of disadvantaged and non- disadvantaged subcontractors, regular dealers, manufacturers, consultant and service agencies; the type of work or materials or services performed on or incorporated in the project; and the actual value of such work.
  - b. Efforts to Utilize DBE Firms: Documentation of all efforts made to seek out disadvantaged contractor organizations and individual disadvantaged contractors for work on this project. All correspondence, personal contacts, telephone calls, etc., to obtain the services of DBE's should be documented.
  - c. Final DBE Certification: Upon completion of the individual DBE firm's work, the prime contractor shall submit a certification attesting to the actual work performed by the DBE firm and the amount paid the DBE firm. This certification shall be signed by both the prime contractor and the DBE firm.

Energy Conservation Requirements. The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

Rights To Inventions. All rights to inventions and materials generated under this contract are subject to regulations issued by the Owner of the Federal grant under which this contract is executed.

Contract Time. If the Contractor persistently refuses or fails to recover lost time, to the extent that it becomes apparent that the Project shall not be completed within the Contract Time, the Owner may take such actions to terminate the Contract for default on the part of the Contractor, or to assign portions of the Work to other contractors or to require Contractor to hire sufficient skilled workers for Contractor to recover lost time and complete the Project on time. Any additional costs associated with this will be borne by original Contractor.

Owner has the right to refuse a subcontractor for good faith concern about the subcontractor's competence, solvency or fitness to perform timely.

Owner's Recourse. Written warranties made to the Owner are in addition to manufacturer's warranties, implied warranties, and shall not limit the duties, obligations, rights and remedies otherwise available under the law, nor shall warranty periods be interpreted as imitations on time in which the Owner can enforce such other duties, obligations, rights, or remedies.

The Owner reserves the right to refuse to accept Work for the Project where a special warranty, certification, or similar commitment is required on such Work or part of the Work, until evidence is presented that entities required to countersign such commitments have done so.”

Pursuant to §403.7065, *Fla. Stat.*, Contractor shall procure products or materials with recycled content when the Florida Department of Management Services determines that those products or materials are available.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION

The Contractor certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

CLEAN AIR AND WATER POLLUTION CONTROL

Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
4. To include or cause to be included in any construction contract or subcontract which exceeds \$ 100,000 the aforementioned criteria and requirements.

ASSURANCE OF COMPLIANCE

The Contractor hereby agrees that it will comply with:

Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.

Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that,

in accordance with Section 504 of that Act and the Regulation, no otherwise qualified individual with a disability in the United States shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.

The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.

49 CFR SUBTITLE A (10-1-03 EDITION)

Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5).

Compliance with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S. C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

46 U.S. C. 1241(b)(1) and 46 CFR part 381 impose cargo preference requirements on the shipment of foreign made goods.

Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1061, section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c), of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR part 23 impose requirements for the participation of disadvantaged business enterprises.

Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1068(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

A breach by Contractor or any subcontractor, vendor or supplier of any of the federal or state laws or regulations applicable to this Project may be grounds for termination of the contract, and possibly debarment as a contractor or subcontractor.

The provisions of these Additional Special Provisions shall control over any contrary provision in the Special Provisions or any other Contract Document.

Contractor waives any right of subrogation against Owner or Owner's agents.

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages up to \$10,000,000 (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the

Project, provided that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Construction), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission or reckless or intentional wrongdoing of Contractor or Contractor's officers, directors, partners, employees, or subcontractors. The parties agree that this limit on indemnification amount bears a reasonable commercial relationship to the contract. In any action construing the scope or nature of this indemnification, the court shall construe this provision to comply with Section 725.06, Florida Statutes, as amended.

#### State Residents Preference.

- (1) If state funds are utilized on this project, the Contractor shall give preference to the employment of state residents in the performance of the work on the project if state residents have substantially equal qualifications to those of nonresidents. A contract for construction funded by local funds may contain such a provision.
  - a. As used in this section, the term "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.
  - b. A contractor required to employ state residents must contact the Agency for Workforce Innovation to post the contractor's employment needs in the state's job bank system.
- (2) No contract shall be let to any person refusing to execute an agreement containing this provision. However, in work involving the expenditure of federal aid funds, this section may not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, or marines, or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.

#### Punch List.

If the contract is for the provision of construction services, Owner shall provide for a single list of items required to render the construction services complete, satisfactory, and acceptable ("punch list"). For construction projects having an estimated cost of less than \$10,000,000, the punch list shall be developed within thirty days after Contractor and Owner agree that the project has achieved substantial completion. For construction projects having an estimated cost of

\$10,000,000 or more, the punch list shall be created within sixty calendar days after Owner and Contractor agree that the Contractor has achieved substantial completion. Owner shall provide the punch list to Contractor not more than five days after the punch list is completed.

The final contract completion date must be at least thirty days after the delivery of the punch list. If the punch list is not provided to the Contractor by the agreed upon date for delivery, the contract time for completion must be extended by the number of days that Owner exceeded the delivery date.

#### Payment for Purchases of Construction Services.

Owner hereby identifies the City Administrator as the agent to whom the Contractor may submit its payment request or invoice or anyone that this agent designates in writing. A contractor's submission of a payment request or invoice to the identified agent of Owner shall be stamped as received as provided in F.S. 218.74(1) and shall commence the time periods for payment or rejection of a payment request or invoice as provided herein. If a payment request or invoice does not meet the contract requirements, Owner must reject the payment request or invoice within twenty business days after the date on which the payment request or invoice is stamped as received as provided in F.S. 218.74(1). The rejection must be written and must specify the deficiency and the action necessary to make the payment request or invoice proper.

Attorneys' Fees and Costs. In any judicial or alternative dispute resolution technique action to interpret or enforce

**Attachment 3**

**CITY OF SEBRING - and – COOL AND COBB ENGINEERING COMPANY**

**Project 1**

**FIRE STATION NO. 15**

---

**PROGRAM DESCRIPTION:** In April 2018, the U.S. Department of Housing and Urban Development (HUD) announced the State of Florida, Department of Economic Opportunity (DEO) would receive \$633,485,000 in funding to support long-term mitigation efforts following declared disasters in 2016 and 2017 through HUD's Community Development Block Grant Mitigation (CDBG-MIT) program. Awards were distributed on a competitive basis targeting HUD designated Most Impacted and Distressed (MID) Areas, primarily addressing the Benefits to Low-to-Moderate Income (LMI) National Objective. Additional information may be found in the Federal Register, Vol. 84, No. 169.

The Florida Department of Economic Opportunity (DEO) has apportioned the Federal Award to include the following initiatives: Critical Facility Hardening Program \$75,000,000; General Planning Support Program \$20,000,000; General Infrastructure Program \$475,000,000; and State Planning and Administration \$63,485,000.

This award has been granted under the **Critical Facility Hardening Program**. Projects eligible for funding under this program must harden critical facilities that serve a public safety purpose for local communities. Critical facilities include:

- Potable water facilities
- Wastewater facilities
- Police departments
- Fire departments
- Hospitals
- Emergency operation centers
- Emergency shelters

**PROJECT DESCRIPTION:** The City of Sebring, Florida has been awarded \$261,034.00 in CDBG-MIT (Community Development Block Grant – Mitigation) funding for mitigation efforts to harden Fire Station #15. The purpose of this project is to reduce the risk of damage to the building structure and to increase the resiliency of the backup generator power supply system. The population of Fire Station #15's service area is 37.6% low to moderate income residents and is considered under the Urgent Need National Objective. The mitigation activities consist of: replacement of two (2) existing doors and one (1) window with impact resistant windows and doors, including two (2) garage bay roll-up doors, meeting American Society of Civil Engineering (ASCE) Standards 7-22, ensuring a secure building envelope; installation of roof purlin stiffeners and additional wall girt bracing to adequately resist wind loads; and installation of 42kWh propane generator with an automatic transfer switch. The project is estimated to begin October 1, 2021, and is expected to be completed within 48 months. There are no leveraged or matching funds included in this project. The team overseeing this project consists of the City Administrator, City Building Official, Assistant City Administrator, Fire Chief, and selected contractor(s).

**ELIGIBLE TASKS AND DELIVERABLES:**

A. Deliverable No. 2 – Engineering Services

1. Complete the Design and Bid Drawings and submit to the City.
2. Assist the City with the construction contract, observe work completed, review draw requests, approve draw requests and coordinate any change orders required.
3. Assist the City with the construction contract, observe work completed, review draw requests, approve draw requests and coordinate any change orders required.

## **APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

**(A)** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**(B)** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

**(C)** Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” For this non-construction federally assisted contract the Equal Employment Opportunity Clause as outlined in 41 CFR Part 60 - 1.4(a) is included, herein.

**(D)** Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**(E)** Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Additionally, the requirements outlined in 24 CFR 570.609, pertaining to the use of debarred, suspended or ineligible contractors or Subrecipients, in accordance with the requirements set forth in 24 CFR Part 5, apply to this program and are incorporated into this Agreement.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

### **§ 200.323 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **§ 200.322 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.**

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115–232, section 889 for additional information.

(d) See also § 200.471.

**§ 200.321 Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, where economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;

and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

### Section 3

All Section 3 covered contracts and subcontracts must include the following clause:

- I. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC.1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance, or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- II. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- III. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- IV. The contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate actions, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- V. The contractor will certify that any vacant employment positions, including training positions, that are filled
  - (1) after the contractor is selected but before the contract is executed, and
  - (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
- VI. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- VII. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

- i. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible preference and opportunities for training and employment shall be given to Indians, and preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b). c..
- b. Section 3 Benchmarks and Reporting
  - i. Benchmarks. Contracts with CDBG awards over \$200,000 trigger Section 3 Benchmark requirements. When triggered, best efforts must be made to extend Section 3 opportunities to verified Section 3 workers and business concerns to meet these minimum numeric goals:
    1. Twenty-five percent (25%) of the total hours on a Section 3 project must be worked by Section 3 workers; and
    2. Five percent (5%) of the total hours on a Section 3 project must be worked by Targeted Section 3 workers.
  - ii. Reporting. If the subrecipient's reporting indicates that the subrecipient has not met the Section 3 benchmarks described in 24 CFR § 75.23, pursuant to 24 CFR § 75.25(b), the subrecipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued.
  - iii. Recipient will comply with any Section 3 Project Implementation Plan documents provided by HUD or the State of Hawaii which may be amended from time to time for HUD reporting purposes.

# CDBG-MIT/CDBG-DR Contract Checklist

## Procurement Summary

<b>Subrecipient Name</b>	
<b>Project Name</b>	
<b>Procurement Type</b>	<input type="checkbox"/> RFP <input type="checkbox"/> RFQ <input type="checkbox"/> ITB (Construction)
<b>Contract Type</b>	<input type="checkbox"/> Fixed Price <input type="checkbox"/> Reimbursement <input type="checkbox"/> Time and Material

## Requirements for ALL Contracts

	Federal Funding Source and Authority
	Statement of Work
	Schedule for Completion
	Period of Performance
	Not to Exceed Amount for contract
	Provisions for extending or amending contract
	Administrative, Contractual, or Legal Remedies for Non-Performance
	Termination for Cause and Convenience
	Compliance with Small, Minority, and Women's Affirmative Hiring Steps
	Provisions for Procurement of Recovered Materials
	Provisions for Domestic Preference
	Prohibition on Certain Telecommunications and Video Surveillance
	Terms for Debarment and Suspension
	Terms for Access to Records
	Terms for Reporting Requirements
	6-year Record Retention
	Compliance with E-Verify
	Section 3 Compliance
	Appendix II to 2 CFR 200

## Additional Terms for Construction Contracts

	HUD 4010 Form for DBRA
	Davis Bacon Wage Decision(s)
	Bid Bond
	Payment Bond
	Performance Bond
	Section 3 Clause for Contractors and Subcontractors
	Equal Opportunity Clause for Construction Contracts

## **Resources**

### **General Regulations**

[HUD Exchange](#)

[Buying Right CDBG-DR and Procurement: A Guide to Recovery](#)

[Uniform Guidance \(2 CFR Part 200\)](#)

[§§ 2 CFR 200.317-326 Procurement Standards](#)

[MBE/WBE Clause <https://www.ecfr.gov/current/title-2/section-200.321>](#)

[Domestic Preference <https://www.ecfr.gov/current/title-2/section-200.322>](#)

[Recovered Materials <https://www.ecfr.gov/current/title-2/section-200.323>](#)

[Telecommunications <https://www.ecfr.gov/current/title-2/section-200.216>](#)

[Federal Clauses \[Appendix II to Part 200\]\(#\)](#)

### **SAM.gov**

[Wage Determinations](#)

[Entity Search](#)

### **Davis Bacon and Related Acts**

[Form HUD-4010 Federal Labor Standards Provisions](#)

### **Equal opportunity clause for construction contracts**

<https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-300/subpart-A/section-60-300.5>

### **Section 3 Contract Clause**

OLTR Website: [Sub-Recipient Resources](#)

E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.

In accordance with section 448.095, F.S., the State of Florida expressly requires the following:

- (1) Every public agency and its contractors and subcontractors shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
- (2) An employer shall verify each new employee's employment eligibility within three (3) business days after the first day that the new employee begins working for pay as required under 8 C.F.R. 274a. Beginning July 1, 2023, a private employer with 25 or more employees shall use the E-Verify system to verify a new employee's employment eligibility.

**Certification Regarding Debarment, Suspension, Ineligibility  
and Voluntary Exclusion-Primary Covered Transactions**

The Bidder certifies that, the firm or any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds:

1. Bidder must be registered with [www.SAM.gov](http://www.SAM.gov) with a status of "Active" and have no Active Exclusions cited.
2. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR s29.110(a), by any federal department or agency;
3. have not within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
4. are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph (b) of this certification; and
5. have not within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause or default.

The Respondent certifies that it shall perform a debarment verification on any subcontractor, sub-consultant, material supplier or vendor, that it proposes to contract with to perform any work under this Bid, and shall not enter into any transaction with any sub-Contractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this project by any federal agency unless authorized by St. Johns County.

Handwritten Signature of Authorized Principal(s):

NAME (print): James Mason Cobb

SIGNATURE: 

TITLE: President

NAME OF FIRM: Cool and Cobb Engineering Company

DATE: 1-3-25