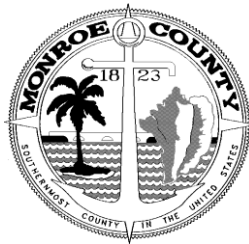


MONROE COUNTY

Project Manual

REBID SANDS SLR ROADWAY AND DRAINAGE PILOT PROJECT BIG PINE KEY (DEO CDBG GRANT #IR026 HUD FED# B-18-DP-12-0001)



BOARD OF COUNTY COMMISSIONERS

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CLERK OF THE CIRCUIT COURT

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ASSISTANT COUNTY ADMINISTRATOR

Kevin G. Wilson

January 2023

Prepared By:

Monroe County Engineering Services Department
Monroe County, FL

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Dated: 11.30.22

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**END OF SECTION 00001**

# **BIDDING DOCUMENTS**

## **NOTICE OF REQUEST FOR COMPETITIVE SOLICITATIONS**

**NOTICE IS HEREBY GIVEN** that on **Tuesday, April 4, 2023 at 3:00 P.M.**, the Monroe County Purchasing Office will receive and open sealed responses for the following:

### **REBID SANDS SLR ROADWAY AND DRAINAGE PILOT PROJECT BIG PINE KEY, MONROE COUNTY, FLORIDA**

Pursuant to F.S. 50.0211(3)(a), all published competitive solicitation notices can be viewed at: [www.floridapublicnotices.com](http://www.floridapublicnotices.com), a searchable Statewide repository for all published legal notices. Requirements for submission and the selection criteria may be requested from DemandStar at [www.demandstar.com](http://www.demandstar.com) OR [www.monroecounty-fl.gov/bids](http://www.monroecounty-fl.gov/bids) . The Public Record is available upon request.

Bidders must be FDOT pre-qualified in the types of work specified for the project. The prime bidder must be prequalified in at least one major type of work regardless of the number of major types that are solicited. For any type of work that isn't met by the prime, the subcontractor must meet the prequalification requirement. The team must be pre-qualified in all types of work needed for the project.

The project is federally funded by a Community Development Block (CDBG) Subrecipient Agreement with the Florida Department of Economic Opportunity (DEO), IR026. The awarded contractor (CONTRACTOR) is bound by the terms and conditions of the County's Subrecipient Agreement with DEO.

The CONTRACTOR is required to be familiar with and shall be responsible for complying with all federal, state, and local laws, ordinances, rules, and regulations that in any manner affect the work. The CONTRACTOR agrees to provide reports or information to the County as needed to comply with the County's obligation to submit reports to DEO on the progress of the work.

The Scope of Work consists of construction of a "pump and treat" storm water drainage system, reconstruction and elevation of roadway segments intersecting and including Father Tony Way in the Sands Subdivision of Big Pine Key. The project includes drainage structures, wet wells, pollution treatment device, and a related elevated pump station with a back-up emergency generator, pre-treatment, wet wells, pumps, piping, electrical controls, instrumentation, and injection well(s) for final disposal of treated storm water. The roadway improvements will include utility relocation and adjustment of access drives to homes. The CONTRACTOR will work with the residents on all modifications involving resident access and property.

Contractors are required to "Target Section 3 Workers". Section 3 is defined as: Section 3 business concern means: (1) A business concern that meets one of the following criteria: (i) It is at least 51 percent owned by low or very low-income persons; (ii) Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or (iii) It is a business at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing. (2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. (3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

**The Prime CONTRACTOR must be prequalified in at least one major type of work regardless of the number of major types that are solicited. For any type of work that isn't met by the prime, the**

subcontractor must meet the prequalification requirement. The team must be pre-qualified in all types of work needed for the project.

Monroe County Purchasing Department has implemented a new electronic process for reviewing and opening sealed bids. Please do not mail or attempt to deliver in person any sealed bids. Mailed/physically delivered bids/proposal/responses WILL NOT be accepted.

The Monroe County Purchasing Department hereby directs that bid be submitted via email to: [OMB-BIDS@monroecounty-fl.gov](mailto:OMB-BIDS@monroecounty-fl.gov), no later than 3:00 P.M. on April 4, 2023. Please submit your confidential financial information in a SEPARATE EMAIL from your bid and required documents. Your subject line on both emails must read as follows:

**REBID SANDS SLR ROADWAY AND DRAINAGE PILOT PROJECT**  
**4/4/2023**

Files that do not contain this subject line WILL BE REJECTED. Please note that the maximum file size that will be accepted by email is 25MB. Please plan accordingly to ensure that your bid is not rejected due to the file size. Should your bid documents exceed 25MB, in advance of the bid opening, please email: [omb-purchasing@monroecounty-fl.gov](mailto:omb-purchasing@monroecounty-fl.gov) so accommodations for delivery of your bid can be made prior to the bid opening. Please be advised that it is the bidder's sole responsibility to ensure delivery of their bid and waiting until the bid opening to address or confirm your bid submission delivery will result in your bid being rejected.

The bid opening for this solicitation will be held virtually, via the internet, at 3:00 P.M., on April 4, 2023. You may call in by phone or internet using the following:

Join Zoom Meeting

<https://mcboecc.zoom.us/j/4509326156>

Meeting ID: 4509326156

One tap mobile:

+16465189805,,4509326156# US (New York)

+16699006833,,4509326156# US (San Jose)

Dial by your location:

+1 646 518 9805 US (New York)

+1 669 900 6833 US (San Jose)

**Publication Dates:**

**Key West Citizen: Saturday, 1/28/2023**

**Keys Weekly: Thursday, 1/26/2023**

**News Barometer: Friday, 1/27/2023**

## SECTION 00100

### INSTRUCTIONS TO BIDDERS

#### ARTICLE I DEFINITIONS

**To be considered, Bids must be made in accordance with these Instructions to Bidders. To be considered, all prime CONTRACTORS submitting bids must be pre-qualified by Florida Department of Transportation (FDOT) in accordance with Chapter 337.14 F.S. and State of Florida Department of Transportation Rules Ch. 14-22- Highway prequalification required at minimum.**

- 1.1 Terms used in these Instructions to Bidders, which are defined in the General Conditions, shall have the same meanings or definitions as assigned to them in the General Conditions.
- 1.2 Bidding Documents include the Instructions to Bidders, Bid Proposal, Pre-Bid Substitutions, Scope of Work and Milestone Schedule, other sample bidding and contract forms and the proposed Contract Documents including any addenda issued prior to receipt of Bids. The Contract Documents proposed for the Work consist of the Standard Form of Agreement, General Conditions, Supplementary Conditions, Public Construction Bond, Supplementary Insurance Documents, Special Conditions, General Requirements, Technical Specifications, Drawings, and 00100-1 all Bid Documents.
- 1.3 Addenda are written or graphic instruments issued by the Owner through the Director of Engineering Services prior to the receipt of Bids which modify or interpret the Bidding Documents by additions, deletions, clarifications, or corrections.
- 1.4 A Bid is a complete and properly signed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.
- 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which may be added or from which Work may be deleted for sums stated in Alternate Bids.
- 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.
- 1.7 An Owner Option Bid (or Option) is an amount stated in the Bid, which can be exercised by the Owner through the Director of Engineering Services, for the corresponding change in the work as described in the Bidding Documents. This Owner Option can be exercised at any time during the contract duration.
- 1.8 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials or services as described in the Bidding Documents or in the proposed Contract Documents. Unit prices shall apply to add and deduct change orders and shall include all overhead and profit.
- 1.9 A Bidder is a person or entity who submits a Bid.
- 1.10 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials or labor for a portion of the Work.

- 1.11 The term 'provide' means 'furnish and install'. Wherever 'provide' or 'furnish and install' are used, this shall mean the complete purchase and installation, per the specified or implied requirements.
- 1.12 The term 'perform' refers only to installation and requires full compliance with the specified or implied requirements.

## **ARTICLE II COPIES OF BIDDING DOCUMENTS**

- 2.1 Bidders shall obtain complete sets of the Bidding Documents as designated in the Notice of Request for Competitive Solicitation. No bids will be accepted from bidders who have not obtained complete sets of the Bidding Documents as designated in the Request for Competitive Solicitation.
- 2.2.1 Bidders shall use complete sets of Bidding Documents in preparing Bids. Neither the Owner, his agents, nor the Director of Engineering Services assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3 Scope of work is described in Section 00300; and specifications are to be found in the Technical section. The Work is shown on the construction drawings.

## **ARTICLE III EXAMINATION OF BIDDING DOCUMENTS AND SITE**

- 3.1 Before Submitting a Bid:
  - A. Each Bidder shall thoroughly examine all the Bidding Documents.
  - B. Each Bidder shall visit the site to familiarize himself with local conditions that may in any manner affect the cost, progress, or performance of the Work.
- 3.2 The lands, upon which the Work is to be performed, rights-of-ways for access thereto and other lands designated for use by the CONTRACTORS in performing the Work are identified in the General Requirements or shown on the Drawings.
- 3.3 Each Bidder shall study and carefully correlate his observations with the Bidding Documents.
- 3.4 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of Article 3 and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

## **ARTICLE IV INTERPRETATION AND CORRECTION OF BIDDING DOCUMENTS**

- 4.1 Bidders and Sub-bidders shall promptly notify the Director of Engineering Services of any ambiguity, inconsistency or error, which they may discover upon examination of the Bidding Documents, or of the site and local conditions.
- 4.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall submit their questions in writing to the Director of Engineering Services no later than ten (10) calendar days prior to the date for receipt of Bids. **Written questions should be emailed to Olympia Newton, Monroe County Engineering Services, newton-olympia@monroecounty-fl.gov;** Any interpretation, correction or change of the Bidding Documents will be accomplished by Addenda and if issued will be

posted on DemandStar and a notification will be furnished by DemandStar to all known prospective bidders listed as planholders prior to the established opening date. Copies of Addenda will also be made available for inspection wherever Bidding Documents are on file for that purpose. Interpretations, corrections, or changes of the Bidding Documents made in any other manner will not be binding and Bidders shall not rely upon such interpretations and changes. Oral and other interpretations or clarifications will be without legal effect.

## **ARTICLE V BIDDING PROCEDURE**

### **5.1 FORM AND STYLE OF BIDS**

- A. The Bid Proposal shall be submitted on the forms included in Section 00110 of these Bidding Documents with the exception of the Bid Bond, which may be submitted in alternate forms as described in Section 5.3 - B of these Instructions to Bidders. Each of the forms in Section 00110 must be properly filled out, executed, and submitted as the Bid Proposal.
  - 1. Bidders shall photocopy documents included in the Bid Package as being required for submission of Bids.
  - 2. A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as 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 Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
  - 3. All forms contained in Section 00110 - Bid Proposal must be fully completed and submitted as part of the Bid Proposal.
  - 4. The Bidder is required to submit a copy of the appropriate CONTRACTOR's license and proof that he is properly licensed to conduct business within 10 days of notice of intent to award.
- B. All blanks on the Bid Form shall be filled in with ink or by typewriter.
- C. Where so indicated on the Bid Form, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount written in words shall govern.
- D. In order to determine if persons or entities submitting responses to competitive solicitations are responsible, all responses to competitive solicitations for contracts to be awarded under this section must contain, at a minimum, the following information:
  - 1. A list of the person's or entity's shareholders with five percent or more of the stock or, if a general partnership, a list of the general partners; or, if a limited liability company, a list of its members; or, if a solely owned proprietorship, names(s) of owner(s);

2. A list of the officers and directors of the entity;
3. The number of years the person or entity has been operating and, if different, the number of years it has been providing the services, goods, or construction services called for in the bid specifications (include a list of similar projects);
4. The number of years the person or entity has operated under its present name and any prior names;
5. Answers to the following questions regarding claims and suits:
  - a. Has the person, principals, entity, or any entity previously owned, operated or directed by any of its officers, major shareholders or directors, ever failed to complete work or provide the goods for which it has contracted? Please indicate yes or no. If yes, provide details;
  - b. Are there any judgments, claims, arbitration proceeding or suits pending or outstanding against the person, principal of the entity, or entity, or any entity previously owned, operated or directed by any of its officers, directors, or general partners? Please indicate yes or no. If yes, provide details;
  - c. Has the person, principal of the entity, entity, or any entity previously owned, operated or directed by any of its officers, major shareholders or directors, within the last five years, been a party to any lawsuit, arbitration, or mediation with regard to a contract for services, goods or construction services similar to those requested in the specifications with private or public entities? Please indicate yes or no. If yes, provide details;
  - d. Has the person, principal of the entity, or any entity previously owned, operated or directed by any of its officers, owners, partners, major shareholders or directors, ever initiated litigation against the county or been sued by the county in connection with a contract to provide services, goods or construction services? Please indicate yes or no. If yes, provide details;
  - e. Whether, within the last five years, the owner, an officer, general partner, principal, controlling shareholder or major creditor of the person or entity was an officer, director, general partner, principal, controlling shareholder or major creditor of any other entity that failed to perform services or furnish goods similar to those sought in the request for competitive solicitation;
6. Customer references (minimum of three), including name, current address and current telephone number;
7. Credit references (minimum of three), including name, current address and current telephone number;

8. Financial statements for the prior three years for the responding entity or for any entity that is a subsidiary to the responding entity. (Please mark as "Confidential" to exercise exemption under F.S. 119.071(1)(c)). The County shall incur no liability for inadvertent disclosure of financial records that are not properly marked; and
9. List Subcontractors, and
10. A printout from the "Detail by Entity Name" screen from the bidder's listing in [www.sunbiz.org](http://www.sunbiz.org) and a most recent copy of the bidder's annual report.
11. A copy of the CONTRACTOR's Annual Report that is submitted to the Florida Secretary of State.

The County reserves the right to request any additional information related to the financial qualifications, technical competence, the ability to satisfactorily perform within the contract time constraints, or other information the department deems necessary to enable the department and board of county commissioners to determine if the person responding is responsible.

- E. Any interlineations, alteration, or erasure must be initialed by the signer of the Bid.
- F. All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change". Failure to comply shall constitute a non-responsive bid.
- G. All requested Allowances shall be bid. Failure to comply shall constitute a non-responsive bid.
- H. All requested Owner Options shall be bid. Failure to comply shall constitute a non-responsive bid.

## 5.2 ADDENDA

- A. Each Bidder shall ascertain prior to submitting his Bid that he has received all Addenda issued, and he shall acknowledge their receipt in his Bid.
- B. Mailed or faxed questions for clarification will be accepted up to ten (10) calendar days before the opening date. Responses will be issued by addendum up to five (5) calendar days prior to the date for receipt of Bids except for an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.
- C. Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

## 5.3 BID SECURITY

- A. Any Bid in excess of Two Hundred Thousand dollars (\$200,000) shall be accompanied by a Bid Security made payable to Monroe County, in the amount of five percent of the Bidder's maximum Bid price. **No Bid Security is required on Bids of Two Hundred Thousand dollars (\$200,000) or less.**
- B. Each Bid shall be accompanied by a Bid Security made payable to Monroe County, in the amount of five (5) percent of the Bidder's maximum Bid price. The Bid Security shall be in the form of a certified check, cashier's check or a Bid Bond issued by a surety meeting the

requirements of the form in Section 00110. If a Bid Bond is submitted as Bid Security, the attorney-in-fact who executes the bond on behalf of the surety shall affix to the Bond a certified and current copy of his power of attorney.

- C. The bid surety constitutes a pledge by the Bidder that he will enter into a Contract with the Owner on the terms stated in his Bid and will furnish the required Public Construction Bond, as described in the General and Supplementary Conditions of this contract. The Bid Security of the successful Bidder will be retained until such Bidder has entered into a Contract with the Owner and furnished the required Public Construction Bond, whereupon it will be returned. If the successful Bidder fails to execute and deliver the Contract and furnish the required Bond, the Owner may annul the Notice of Award and the amount of the bid security of that Bidder shall be forfeited to the Owner not as a penalty, but as liquidated damages. **A Public Construction Bond is not required on construction contracts of Two Hundred Thousand Dollars (\$200,000) or less.**
- D. The bid security of any Bidder whom the Owner believes to have a reasonable chance of receiving the award may be retained by the Owner until either (a) the Contract has been executed and the required Bond has been furnished, or (b) the ninety-first (91st) day after the Bid opening, or (c) all Bids have been rejected. The bid security of the other Bidders will be returned within fourteen (14) days of the Bid opening.

#### 5.4 SCHEDULING/MANPOWER REQUIREMENTS

- A. The overall schedule for construction is shown in the Bidding Documents "Milestone Schedule."
- B. The CONTRACTOR will be required to provide adequate manpower and equipment in order to meet the requirements of the Schedule.

#### 5.1 SUBMISSION OF BIDS

- A. Bids shall be submitted to Monroe County via email to [OMB-BIDS@monroecounty-fl.gov](mailto:OMB-BIDS@monroecounty-fl.gov) not later than the time and date for receipt of Bids indicated in the Notice of Request for Competitive Solicitation, or any extension thereof made by Addendum. Bids received after the time and date for receipt of Bids will not be considered.
- B. The bids shall be submitted as indicated in the Notice of Request for Competitive Solicitation. Please ensure that bids are submitted via email to [OMB-BIDS@monroecounty-fl.gov](mailto:OMB-BIDS@monroecounty-fl.gov). If your bid submission is larger than 25MB, please follow the instructions as set forth in the Notice of Competitive Solicitation. Bids that exceed 25MB will not be delivered due to the file size. It is the bidder's sole responsibility to ensure that their bid is timely delivered. Please allow sufficient time to ensure that your bid does not exceed 25MB prior to the bid opening. The County is not responsible for delivery errors due to the file size. Please submit your confidential financial information in a separate email. Please do not mail or attempt to deliver bids in person as they will not be accepted or considered.
- C. The Bidder shall assume full responsibility for timely delivery via email to [OMB-BIDS@monroecounty-fl.gov](mailto:OMB-BIDS@monroecounty-fl.gov) for receipt of Bids.
- D. Oral, telephonic, telegraphic, and faxed Bids are invalid and will not receive consideration.

#### 5.6 MODIFICATION AND WITHDRAWAL OF BIDS

- A. A Bid may not be modified, withdrawn, or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, except as provided in Paragraph 5.7 Right to Claim Error in Bid, and each Bidder so agrees in submitting his Bid.
- B. Prior to the time and date designated for receipt of Bids, any Bid submitted may be modified by notice in writing to Monroe County Purchasing Department at the place designated for receipt of Bids. The modified bid shall contain all information required in the original bid and shall be labeled “**Modified Bid – “REBID SANDS SLR ROADWAY AND DRAINAGE PILOT PROJECT”**” and sent as allowed in the original Bid.
- C. Bids maybe withdrawn in writing only and must be received prior to the time of opening. Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.
- D. Bid Security shall be in an amount sufficient for the Bid as modified or resubmitted.
- E. No conditional, modified, or qualified bids will be accepted. Bidders are to comply with the instructions on the bid forms, and not make any changes to them.

#### 5.7 RIGHT TO CLAIM ERROR IN BID

- A. Each Bidder's original work papers, documents, and materials used in preparation of the bid shall be enclosed in an envelope and marked clearly as to contents, must be received by Monroe County Purchasing Department no later than 24 hours after the time and date for receipt of Bids, or any extension thereof made by Addendum. Bidders who fail to submit their original work papers, documents, and materials used in the preparation of the Bid, as provided herein, waive all rights to claim error in the Bid.

### **ARTICLE VI CONSIDERATION OF BIDS**

#### 6.1 OPENING OF BIDS

- A. The properly identified Bids received on time will be opened at the Monroe County Purchasing Department.
- B. Any Bid not received by the Purchasing Department on or before the deadline for receipt of bids designated in the Request for Competitive Solicitations will be returned unopened.

#### 6.2 BIDS TO REMAIN OPEN

- A. All Bids shall remain open for award evaluation up to ninety days after the date designated for receipt of Bids.
- B. The Owner may, at his sole discretion, release any Bid Proposal and return the Bid Security before the ninety days has elapsed.

#### 6.3 AWARD OF CONTRACT

- A. The Owner reserves the right to reject any and all Bids or any part of a Bid, to waive the right to disregard all nonconforming, non-responsive or conditional Bids.
- B. The County also reserves the right to reject the Bid of a Bidder who has previously failed to

perform properly or to complete contracts of a similar nature on time.

- C. The recommendation of staff shall be presented to the Board of County Commissioners of Monroe County, Florida, for final selection and award of contract.
- D. The Owner may consider the qualifications and experience of subcontractors and/or other entities (including those who are to furnish materials, or equipment fabricated to a special design) proposed for each of the principal portions of the Work as identified in the Bid. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered.
- E. The Owner may conduct such investigations as he deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of the Bidders, proposed subcontractors, and other persons or organizations to do the Work in accordance with the Contract Documents to the Owner's satisfaction within the prescribed time.
- F. The Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to its satisfaction.
- G. If the Contract is awarded, it will be awarded to the Bidder whose evaluation by the Owner shows him to be the lowest responsive responsible conforming Bidder and has indicated to the Owner that the award will be in the best interests of the County.
- H. If the Contract is to be awarded, the Director of Engineering Services will issue the Notice of Intent to Award to the successful Bidder within ninety days after the date of receipt of bids. The Owner reserves the right to return all Bids, not make any awards, or cancel the Project.
- I. The Owner is tax exempt and reserves the right to purchase directly various construction materials and equipment that may be a part of the Contract. If the Owner elects to make a particular purchase, the Director of Engineering Services will act as a purchasing agent for the Owner. The Owner will, via a Purchase Contract, purchase the materials and equipment, and the CONTRACTOR shall assist the Director of Engineering Services in the preparation of these Purchase Contracts, including providing to the Owner appropriate tax credits.
- J. Any Bidder/Respondent/Proposer who claims to be adversely affected by the decision or intended decision to award a contract shall submit in writing a notice of protest which must be received by the County Attorney's Office within seventy-two (72) hours or three (3) business days, whichever is less, after the posting of the notice of decision or intended decision on DemandStar or posting of the Notice of Decision or Intended Decision on the Monroe County Board of County Commissioners' (BOCC) agenda, whichever occurs first. Additionally, a formal written protest must be submitted in writing and must be received by the County Attorney's Office seventy-two (72) hours or three (3) business days prior to the Board of County Commissioner's meeting date in which the award of contract by the Board of County Commissioners will be heard. The only opportunity to address protest claims is before the BOCC at the designated public meeting in which the agenda item awarding the contract is heard. In accordance with the Rules of Debate as set forth in the Monroe County Board of County Commissioners Administrative Procedures, the Bidder/Respondent/Proposer that filed the protest is responsible for providing the Clerk with his/her name and residence prior to the agenda item to award the contract being called in order to preserve their opportunity to be heard on this matter. An individual has three (3) minutes to address the Commission and a person representing an organization has five (5) minutes to address the Commission. The BOCC decision to award the contract is final and at their sole discretion. Failure to timely

protest within the times and in the manner prescribed herein shall constitute a waiver of the ability to protest the award of contract, unless the BOCC determines that it is in the best interest of the County to do so. The filing of a protest shall not stop the solicitation, negotiations, or contract award process, unless it is determined that it is in the best interest of the County to do so.

**K. Tie Bid Responses**

As an exception to the COUNTY Purchasing Policy due to federal funding, if two exactly the same dollar and cent amount low responsive/responsible bids are received, all bids must be rejected, and the project rebid.

**6.4 EXECUTION OF CONTRACT**

- A. Upon Notice of Intent to Award by the County, the CONTRACTOR shall fully execute, scan and return via email an electronic copy and then sign and deliver all two (2) originals of the Contract Agreement to the Director of Engineering Services or designee, with all other Contract Documents attached, including an original Insurance Certificate. A copy of the recorded Public Construction Bond must be provided prior to the issuance of the Notice to Proceed. After approval by the BOCC and upon full execution by the County Clerk, The Director of Engineering Services will return one fully executed copy of the Contract Agreement to the CONTRACTOR with all other Contract Documents attached as soon as practicable. In no event shall the Bidder's failure to provide insurance extend the contract time.
- B. In the event that the CONTRACTOR does not comply with Article 6.4-A as stated above, the Owner may cancel the Award of Contract and select the next responsive bidder or reject all bids.

**ARTICLE VII  
SPECIAL LEGAL REQUIREMENTS**

- 7.1 Each Bidder, before submitting his Bid, shall familiarize himself with all Federal, State, and local laws, ordinances, rules and regulations that may apply to the Work or that may in any manner affect the cost, progress, or performance of the Work.
- 7.2 A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or service to a public entity, may not submit on a contract with a public entity for the construction or repair of a public building work, may not submit bids on leases of real property to public building 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 Section 287.017 of the Florida Statutes, for Category Two for a period of 36 months from date of being place on the conviction list. By submitting a bid for this project, bidder states that he is in conformance and is not in violation of section 287.017 of the Florida Statues.

**End of Section 00100**

## **SECTION 00110**

### **BID PROPOSAL**

The Bid Proposal shall be submitted on the forms included in this section of the Bidding Documents as previously instructed herein.

| <b><u>Item</u></b> | <b><u>Description</u></b>                                                                                                                                                     |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.                 | Bid Form                                                                                                                                                                      |
| 2.                 | Non-Collusion Affidavit                                                                                                                                                       |
| 3.                 | Lobbying and Conflict of Interest Clause                                                                                                                                      |
| 4.                 | Drug-Free Workplace Form                                                                                                                                                      |
| 5.                 | Public Entity Crime Statement                                                                                                                                                 |
| 6.                 | Vendor Certification Regarding Scrutinized Companies Form                                                                                                                     |
| 7.                 | Bid Bond                                                                                                                                                                      |
| 8.                 | Insurance Agents Statement and Bidder's Statement                                                                                                                             |
| 9.                 | CONTRACTOR's License<br>Current Copy to Be Submitted or within 10 days of Intent to Award Bid<br>(Subcontractor Licenses to Be Submitted Prior to Award of Notice to Proceed) |
| 10.                | FDOT pre-qualification                                                                                                                                                        |
| 11.                | Subcontractor's List                                                                                                                                                          |
| 12.                | Additional Information as requested in 5.1 of Specification Section 00100                                                                                                     |

**Bidder must also provide all information requested in Section 00100 Instruction to Bidders in addition to forms included in this Section.**

#### **1. PREPARATION OF BIDS**

Signature of the Bidder: The Bidder must sign the bid forms in the space provided for the signature. If the Respondent is an individual, the words "doing business as \_\_\_\_\_", or "Sole Owner" must appear beneath such signature. In the case of a partnership, the signature of at least one of the partners must follow the firm name and the words "Member of the Firm" should be written beneath such signature. If the Bidder is a corporation, the title of the officer signing the Bid on behalf of the corporation must be stated along with the Corporation Seal Stamp and evidence of his authority to sign the Bid must be submitted. The Bidder shall state in the bid the name and address of each person having an interest in the submitting entity.

**BID FORM**

**BID TO: MONROE COUNTY BOARD OF COUNTY COMMISSIONERS  
C/O PURCHASING DEPARTMENT  
1100 SIMONTON STREET, ROOM 2-213  
KEY WEST, FLORIDA 33040**

**BID FROM:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned, having carefully examined the Work and reference Drawings, Specifications, Proposal, and Addenda thereto and other Bid Documents for the construction of:

**REBID SANDS SLR ROADWAY AND DRAINAGE PILOT PROJECT**  
**BIG PINE KEY**  
**Monroe County, Florida**

and having carefully examined the site where the Work is to be performed, having become familiar with all local conditions including labor affecting the cost thereof, and having familiarized himself with material availability, Federal, State, and Local laws, ordinances, rules and regulations affecting performance of the Work, does hereby propose to furnish all labor, mechanics, superintendents, tools, material, equipment, transportation services, and all incidentals necessary to perform and complete said Work and work incidental hereto, in a workman-like manner, in conformance with said Drawings, Specifications, and other Contract Documents including Addenda issued thereto.

The undersigned further certifies that he has personally inspected the actual location of where the Work is to be performed, together with the local sources of supply and that he understands the conditions under which the Work is to be performed. The successful bidder shall assume the risk of any and all costs and delays arising from the existence of any subsurface or other latent physical condition which could be reasonably anticipated by reference to documentary information provided and made available, and from inspection and examination of the site.

The undersigned shall perform the work at the Unit Price Indicated on the following Bid Form. Further, it is understood that the Bid Form Quantities are estimated for evaluation purposes only and that the final contract price will be determined from the actual quantities measured for payment in accordance with the Contract Documents.

\_\_\_\_\_  
(Total Base Bid - words) Dollars.

\$  
(Total Base Bid- numbers)

Dollars.

(Total Alternate Bid - words)

\$

(Total Alternate Bid- numbers)

Signature

Date

I acknowledge receipt of Addenda No. (s)\_\_\_\_\_. I have included the Bid Proposal which entails the Bid Form\_\_\_\_, the Non-Collusion Affidavit\_\_\_\_, the Lobbying and Conflict of Interest Clause\_\_\_\_, the Drug-Free Workplace Form\_\_\_\_, the Public Entity Crimes Statement\_\_\_\_, Vendor Certification Regarding Scrutinized Companies\_\_\_\_, the Bid Bond\_\_\_\_, the Insurance Agent's and Bidder's Insurance Statement\_\_\_\_, a copy of valid licenses\_\_\_\_ CONTRACTOR's License - current copy to be submitted or within 10 days of Intent to Award Bid, (Subcontractor Licenses to Be Submitted Prior to Award of Notice to Proceed) , FDOT pre-qualification\_\_\_\_(Roadway Paving) ;\_\_\_\_Subcontractor's list\_\_\_\_; Additional Information:\_\_\_\_\_

**(The above is intended as a courtesy review checklist of the required bid items. However, it does not imply that these are the only items needed. There may be additional requirements not listed here that are listed in other sections of the Project Manual. It is the Contactors responsibility to provide all required bid items.)**

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Date:\_\_\_\_\_Signed: \_\_\_\_\_

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Witness: \_\_\_\_\_

(Seal)

Monroe County Rebid Form: Sands Sea Level Rise Pilot Project

BID PROPOSAL

| Item No. | Description                                            | Unit | Quantity | Unit Price | Written Price | Line Total Price |
|----------|--------------------------------------------------------|------|----------|------------|---------------|------------------|
| 101-1    | MOBILIZATION                                           | LS   | 1.00     |            |               |                  |
| 102-1    | MAINTENANCE OF TRAFFIC                                 | LS   | 1.00     |            |               |                  |
| 104-10-3 | SEDIMENT BARRIER (STRAW WATTLE 9")                     | LF   | 3000     |            |               |                  |
| 104-18   | INLET PROTECTION                                       | EA   | 30.00    |            |               |                  |
| 110-1-1  | CLEARING & DEGRUBBING                                  | AC   | 1.18     |            |               |                  |
| 120-1A   | REGULAR EXCAVATION – Roadway                           | CY   | 1630.00  |            |               |                  |
| 120-6    | EMBANKMENT                                             | CY   | 5.00     |            |               |                  |
| 160-4    | STABILIZATION TYPE B                                   | SY   | 3526.92  |            |               |                  |
| 285-704  | OPTIONAL BASE GROUP 04 - ASPHALT<br>BASE (TYPE B-12.5) | SY   | 4232.30  |            |               |                  |
| 286-1    | TURNOUT CONSTRUCTION (ASPHALT)                         | SY   | 43.78    |            |               |                  |
| 327-70-1 | MILLING+OVERLAY EXIST ASPH PAVT, 1"<br>AVG DEPTH       | SY   | 4519.80  |            |               |                  |
| 334-1-11 | SUPERPAVE ASPHALTIC CONC, TRAFFIC<br>A                 | TN   | 714.14   |            |               |                  |
| 530-74   | BEDDING STONE (NO. 57 STONE)                           | TN   | 266.37   |            |               |                  |
| 570-1-2  | PERFORMANCE TURF, SOD                                  | SY   | 2777.11  |            |               |                  |
| 700-1-60 | SINGLE POST SIGN, RELOCATE                             | AS   | 14.00    |            |               |                  |
| 706-3    | RETRO-REFLECTIVE PAVEMENT<br>MARKERS                   | EA   | 72.00    |            |               |                  |

Monroe County Rebid Form: Sands Sea Level Rise Pilot Project

BID PROPOSAL

| Item No.       | Description                                                              | Unit | Quantity | Unit Price | Written Price | Line Total Price |
|----------------|--------------------------------------------------------------------------|------|----------|------------|---------------|------------------|
| 711-11-125     | THERMOPLASTIC, STANDARD, WHITE, SOLID 24"                                | LF   | 194.06   |            |               |                  |
| 711-16-201     | THERMOPLASTIC, STANDARD-OTHER SURFACES, YELLOW, SOLID, 6"                | GM   | 0.06     |            |               |                  |
| 711-16-231     | THERMOPLASTIC, STANDARD-OTHER SURFACES, YELLOW, SKIP, 6"                 | GM   | 0.25     |            |               |                  |
| 1050-16-003    | UTILITY PIPE- REMOVE & DISPOSE, 5-7.9"                                   | LF   | 420.00   |            |               |                  |
| 1050-51-206    | 6" WM DI PIPE FURNISH & INSTALL                                          | LF   | 420.00   |            |               |                  |
| 425-5          | ADJUST MANHOLE (UTILITIES) (TOP ADJUSTMENT)                              | SY   | 2.00     |            |               |                  |
| 448-73-2       | FURNISH AND INSTALL PUMPS: FLYGT MODEL LL3602/845                        | EA   | 4.00     |            |               |                  |
| 448-73-3       | FURNISH AND INSTALL CONTECH TREATMENT UNIT: MODEL CDS5678                | EA   | 1.00     |            |               |                  |
| 448-73-4       | ELECTRICAL (INCL VFD, ELECT SERVICE, ETC.)                               | LS   | 1.00     |            |               |                  |
| 125-3          | SELECT BEDDING MATERIAL                                                  | CY   | 395.00   |            |               |                  |
| 1050-51-224    | UTILITY PIPE-DUCTILE IRON/CAST IRON, FURNISH & INSTALL, WATER/SEWER, 24" | LF   | 578.00   |            |               |                  |
| 1050-51-230-36 | UTILITY PIPE-DUCTILE IRON/CAST IRON, FURNISH & INSTALL, WATER/SEWER, 36" | LF   | 456.00   |            |               |                  |

Monroe County Rebid Form: Sands Sea Level Rise Pilot Project

BID PROPOSAL

| Item No.       | Description                                                                         | Unit | Quantity | Unit Price | Written Price | Line Total Price |
|----------------|-------------------------------------------------------------------------------------|------|----------|------------|---------------|------------------|
| 1050-51-230-48 | UTILITY PIPE-DUCTILE IRON/CAST IRON, FURNISH & INSTALL, WATER/SEWER, 48"            | LF   | 477.00   |            |               |                  |
| 1080-29-124    | UTILITY FIXTURE, MECHANICAL JOINT RESTRAINT, FURNISH & INSTALL, 24"                 | EA   | 30.00    |            |               |                  |
| 1080-11-509    | UTILITY FIXTURES, F&I, 20-49.9", MECHANICAL JOINT RESTRAINT                         | EA   | 18.00    |            |               |                  |
| 1055 51-124    | UTILITY FITTINGS, DUCTILE IRON/CAST IRON, FURNISH AND INSTALL ELBOW, 24"            | EA   | 14.00    |            |               |                  |
| 1055 51-136    | UTILITY FITTINGS, DUCTILE IRON/CAST IRON, FURNISH AND INSTALL ELBOW, 36"            | EA   | 4.00     |            |               |                  |
| 1055 51-148    | UTILITY FITTINGS, DUCTILE IRON/CAST IRON, FURNISH AND INSTALL ELBOW, 48"            | EA   | 5.00     |            |               |                  |
| 1055-11-425    | UTILITY FITTING, F&I, DI/CI, TEE, 20-49.9"                                          | EA   | 12.00    |            |               |                  |
| 1055-51-524    | UTILITY FITTINGS, DUCTILE IRON/CAST IRON, FURNISH & INSTALL, CAP/PLUG, 24"          | EA   | 1.00     |            |               |                  |
| 1055-11-435    | UTILITY FITTINGS, F&I, DI/CI, REDUCER, 20 - 49.9"                                   | EA   | 3.00     |            |               |                  |
| 1080-24-124    | UTILITY FIXTURE, VALVE ASSEMBLY, FURNISH AND INSTALL, 24" FOR GATE AND SWING VALVES | EA   | 20.00    |            |               |                  |
| 1080-24-102    | UTILITY FIXTURE, VALVE ASSEMBLY, FURNISH AND INSTALL, 2"                            | EA   | 2.00     |            |               |                  |

Monroe County Rebid Form: Sands Sea Level Rise Pilot Project

BID PROPOSAL

| Item No.             | Description                                                                      | Unit | Quantity | Unit Price | Written Price | Line Total Price |
|----------------------|----------------------------------------------------------------------------------|------|----------|------------|---------------|------------------|
| 1050-16-002          | UTILITY PIPE- REMOVE & DISPOSE, 2-4.9"                                           | LF   | 300.00   |            |               |                  |
| 425-15-41            | INLETS, DT BOT, TYPE D <10'                                                      | EA   | 34.00    |            |               |                  |
| 425-2-71             | MANHOLES, J-7 <10'                                                               | EA   | 16.00    |            |               |                  |
| 425-2-72             | MANHOLES, J-7 >10'                                                               | EA   | 4.00     |            |               |                  |
| 430-173-115          | PIPE CULVERT, OPTIONAL MATERIAL ROUND, 15" SD                                    | LF   | 30.00    |            |               |                  |
| 430-173-118          | PIPE CULVERT, OPTIONAL MATERIAL ROUND, 18" SD                                    | LF   | 1365.00  |            |               |                  |
| 430-173-124          | PIPE CULVERT, OPTIONAL MATERIAL ROUND, 24" SD                                    | LF   | 1426.00  |            |               |                  |
| 430-173-136          | PIPE CULVERT, OPTIONAL MATERIAL ROUND, 36" SD                                    | LF   | 151.00   |            |               |                  |
| 288- INJECTION WELLS | FURNISH AND INSTALL INJECTION WELLS AND ANCILLARY EQUIPMENT (EXCEPT GATE VALVES) | LS   | 12       |            |               |                  |
| 400-4-25             | SUPPORT OF EXCAVATION-COFFERDAM                                                  | LS   | 1.00     |            |               |                  |
| 400-4-25             | CONCRETE-PUMP STATION                                                            | CY   | 269.40   |            |               |                  |
| 415-1-6              | MISCELLANEOUS STEEL-PUMP STATION                                                 | LB   | 71130.81 |            |               |                  |

## Monroe County Rebid Form: Sands Sea Level Rise Pilot Project

| Item No.  | Description                                                                                                      | Unit | Quantity | Unit Price  | Written Price                                                               | Line Total Price |
|-----------|------------------------------------------------------------------------------------------------------------------|------|----------|-------------|-----------------------------------------------------------------------------|------------------|
| 120-1B    | REGULAR EXCAVATION,<br>DRAINAGE STRUCTURES, PIPING<br>AND PUMP STATION                                           | CY   | 6870.68  |             |                                                                             |                  |
| 580-1-1   | LANDSCAPE COMPLETE – SMALL<br>PLANTS                                                                             | EA   | 88.00    |             |                                                                             |                  |
| 580-1-2   | LANDSCAPE COMPLETE – LARGE<br>PLANTS                                                                             | EA   | 20.00    |             |                                                                             |                  |
| 286-1     | TURNOUT CONSTRUCTION<br>GRAVEL                                                                                   | SY   | 439.20   |             |                                                                             |                  |
| 581-1-3   | RELOCATE TREES-MULTI-TRUNK                                                                                       | EA   | 1        |             |                                                                             |                  |
| 425-15-42 | INLETS-DT BOT, TYPE D > 10"                                                                                      | EA   | 4        |             |                                                                             |                  |
| MC permit | Monroe County permit# 20101595<br>pass thru amount \$45,966.44<br>(awarded contractor to pick up and<br>pay for) | LS   | 1        | \$45,966.44 | Forty-five thousand nine hundred sixty six<br>dollars and forty four cents. | \$45,966.44      |

Grand Total Rebid Amount (includes permit amount above)

\$\_\_\_\_\_

Company Name - Bidder\_\_\_\_\_

**NON-COLLUSION AFFIDAVIT**

I, \_\_\_\_\_ of the city of \_\_\_\_\_ according to law on my oath, and under penalty of perjury, depose and say that;

1. I am \_\_\_\_\_ of the firm of \_\_\_\_\_, the bidder making the Proposal for the project described in the Request for Competitive Solicitations for:

**REBID SANDS SLR ROADWAY AND DRAINAGE PILOT**  
**PROJECT BIG PINE KEY**  
**Monroe County, Florida**

and that I executed the said proposal with full authority to do so;

- 2.) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such process with any other bidder or with any competitor.
- 3.) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder and will not be knowingly disclosed by the bidder prior to bid opening, directly or indirectly, to any other bidder or to any competitor; and
- 4.) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit, or not to submit, a bid for the purpose of restricting competition.
- 5.) the statements contained in this affidavit are true and correct, and made with full knowledge that Monroe County relies upon the truth of the statements contained in this affidavit in awarding contracts for said project.

\_\_\_\_\_  
(Signature of Bidder)

\_\_\_\_\_  
(Date)

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me, by means of ☐ physical presence or ☐ online

the undersigned authority, \_\_\_\_\_ (name of individual signing) who, after first being sworn by me, affixed his/her signature in the space provided above on this

\_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

**LOBBYING AND CONFLICT OF INTEREST CLAUSE  
SWORN STATEMENT UNDER ORDINANCE NO. 010-1990  
MONROE COUNTY, FLORIDA**

\_\_\_\_\_  
" \_\_\_\_\_"  
\_\_\_\_\_  
(Company)

"... warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision the County may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the contract or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former County officer or employee".

\_\_\_\_\_  
(Signature) (Date) \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me, by means of ☐ physical presence or ☐

online, the undersigned authority, \_\_\_\_\_ who, after first being sworn by  
me, affixed his/her

Signature \_\_\_\_\_ in the space provided  
(Name of individual signing)

Above on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

## DRUG-FREE WORKPLACE FORM

The undersigned CONTRACTOR in accordance with Fl. Statute 287.087 hereby certifies that:

\_\_\_\_\_  
(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform such employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employees will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 (Florida Statutes) or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, or any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As a person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

\_\_\_\_\_  
Bidder's Signature

\_\_\_\_\_  
Date

STATE OF:  
COUNTY OF:

*Subscribed and sworn to (or affirmed) before me, by means of ☐ physical presence or ☐*

*online* on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (Name

of affiant). He/She is personally known to me or has produced  
(type of identification) as identification.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

## PUBLIC ENTITY CRIME STATEMENT

“A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a CONTRACTOR, supplier, subcontractor, or CONTRACTOR under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.”

I have read the above and state that neither \_\_\_\_\_ (Proposer's name)

nor any Affiliate has been placed on the convicted vendor list within the last 36 months.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

STATE OF:

COUNTY OF:

*Subscribed and sworn to (or affirmed) before me, by means of ☐ physical presence or ☐*

*online* on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_(Name of affiant). He/She is personally known to me or

has produced \_\_\_\_\_ (type of identification) as

identification.

My Commission Expires:

\_\_\_\_\_

NOTARY PUBLIC

**VENDOR CERTIFICATION REGARDING SCRUTINIZED COMPANIES LISTS**

Project Description(s): \_\_\_\_\_

Respondent Vendor Name: \_\_\_\_\_

Vendor FEIN: \_\_\_\_\_

Vendor's Authorized Representative Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Section 287.135, Florida Statutes prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a Boycott of Israel. Section 287.135, Florida Statutes, also prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of \$1,000,000 or more, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector Lists which were created pursuant to s. 215.473, Florida Statutes, or is engaged in business operations in Cuba or Syria.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above in the Section entitled "Respondent Vendor Name" is not listed on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel and for Projects of \$1,000,000 or more is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria.

I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the County may be terminated, at the option of the County, if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel or 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.

Certified By: \_\_\_\_\_, who is authorized to sign on behalf of the above referenced company.

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Note: The List are available at the following Department of Management Services Site:

[http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)

**SECTION 00110**  
**Bid Bond**

---

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
(Here insert full name and address or legal title of CONTRACTOR)

as Principal, hereinafter called the Principal, and \_\_\_\_\_  
(Here insert full name and address or legal title of Surety)

a corporation duly organized under the laws of the State of \_\_\_\_\_

as Surety, hereinafter called the Surety, are held and firmly bound unto \_\_\_\_\_  
(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called the Obligee, in the sum of \_\_\_\_\_  
\_\_\_\_\_, Dollars (\$ \_\_\_\_\_),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for \_\_\_\_\_  
(Here insert full name, address and description of project)

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Principal) (Seal)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Surety) (Seal)

\_\_\_\_\_  
(Title)

## Bidder's Insurance Statement

The Insurance requirements are set forth in Section 00900 of the project manual as follows:

| <u>Insurance Requirement</u>                                   |     | <u>Limits</u>                                                                                                     |
|----------------------------------------------------------------|-----|-------------------------------------------------------------------------------------------------------------------|
| Worker's Compensation                                          |     | Statutory Limits                                                                                                  |
| Employer's Liability                                           | WC3 | \$1,000,000/\$1,000,000/\$1,000,000                                                                               |
| General Liability                                              | GL7 | \$5,000,000 Combined Single Limit                                                                                 |
| Builder's Risk                                                 | BR1 | Full Replacement Value                                                                                            |
| Vehicle Liability<br>(Owned, hired and<br>Non- owned Vehicles) | VL3 | \$500,000 per person; \$1,000,000 per occurrence<br>\$100,000 Property Damage<br>or<br>\$1,000,000 Combined Limit |

I understand the insurance that will be mandatory if awarded the contract and will comply in full with all these requirements.

All insurers shall have an A.M. Best rating of VI or better and shall be licensed to do business in the state of Florida.

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **SECTION 00163 PRE-BID SUBSTITUTIONS**

### **PART 1 - GENERAL**

#### **1.1 DOCUMENT INCLUDES: Pre-Bid Substitutions**

#### **1.2 BIDDER'S OPTIONS**

- A. For products specified only by reference standard, select product meeting that standard, by any manufacturer.
- B. For products specified by naming several products or manufacturers, select one of products and manufacturers named which complies with the Technical Specifications.
- C. For Products specified by naming several products or manufacturers and stating "or equivalent", "or equal", or "or Architect/Engineer approved equivalent", or similar wording, submit a request as for substitutions, for any product or manufacturer which is not specifically named for review and approval by the Director of Engineering Services.
- D. For products specified by naming only one product / manufacturer, there is no option and no substitution will be allowed.

#### **1.3 SUBSTITUTIONS**

- A. Base Bid shall be in accordance with the Contract Documents.
  - 1. Substitutions for products may be made during the bidding by submitting completed substitution request form and substantiating product data/literature a minimum of ten calendar days prior to the Bid Date to the Director of Engineering Services.
  - 2. The Director of Engineering Services will consider requests utilizing this section from the Bidder for substitution of products in place of those specified.
  - 3. Those submitted 10 calendar days prior to Bid Date shall be included in an addendum if acceptable.
  - 4. Substitution requests may be submitted utilizing a facsimile machine (FAX) if substitution request forms and substantiating data are submitted.
- B. Submit separate request for each substitution. Support each request with:
  - 1. Complete data substantiating compliance of proposed substitution with requirements stated in Contract Documents:
    - a. Product identification, including manufacturer's name and address.
    - b. Manufacturer's literature, identifying:
      - 1. Product description.

2. Reference standards.
  3. Performance and test data.
  - c. Samples, as applicable.
  - d. Name and address of similar projects on which product has been used and date of each installation.
2. Itemized comparison of the proposed substitution with product specified, listing significant variations.
  3. Data relating to changes in construction schedule.
  4. All effects of substitution on separate contracts.
  5. List of changes required in other work or products.
  6. Designation of required license fees or royalties.
  7. Designation of availability of maintenance services, sources of replacement materials.
- C. Substitutions will not be considered for acceptance when:
1. Acceptance will require substantial revision of Contract Documents.
  2. In the judgment of the Owner or Director of Engineering Services, the substitution does not include adequate information necessary for a complete evaluation.
- D. The Director of Engineering Services will determine the acceptability of any proposed substitution.

#### 1.4 BIDDER'S REPRESENTATION

- A. In making formal request for substitution the Bidder represents that:
1. He has investigated proposed product and has determined that it is equivalent to, or superior in all respects to that specified.
  2. He will provide same warranties or bonds for substitution as for product specified.
  3. He will coordinate installation of accepted substitution into the Work and will make such changes as may be required for the Work to be complete in all respects.
  4. He waives claims for additional costs caused by substitution which may subsequently become apparent.
  5. Cost data is complete and includes related costs under his Contract, but not:
    - a. Costs under separate contracts.
    - b. Director of Engineering Services' costs for redesign or revision of Contract Documents.

6. Cost data need not be submitted, if request is for inclusion in an addendum.

1.5 DIRECTOR OF ENGINEERING SERVICES'S DUTIES

- A. Review requests for substitutions with reasonable promptness.
- B. Issue an addendum to identify accepted substitutions.
- C. Substitution requests that are not approved will be returned to the party submitting the request.

1.6 SUBSTITUTION REQUEST FORM

- A. The form is attached to this Section.
- B. Substitutions will be considered only when the attached form is completed and included with the submittal with all required back-up data.

**SUBSTITUTION REQUEST FORM**

**TO: Director of Engineering Services  
Monroe County Engineering Department  
1100 Simonton Street  
Key West, Florida 33040  
Ph: (305) 295-4329 FAX: (305) 295-4321**

We hereby submit for your consideration the following product instead of the specified item for the above project:

|                      |                       |                         |
|----------------------|-----------------------|-------------------------|
| DRAWING NO.<br>_____ | DRAWING NAME<br>_____ | SPEC. SEC.<br>_____     |
| SPEC. NAME<br>_____  | PARAGRAPH<br>_____    | SPECIFIED ITEM<br>_____ |

Proposed Substitution: \_\_\_\_\_

Attach complete information on changes to Drawings and/or Specifications which proposed substitution will require for its proper installation.

Submit with request necessary samples and substantiating data to prove equal quality and performance to that which is specified. Clearly mark manufacturer's literature to indicate equality in performance.

The undersigned certifies that the function, appearance and quality are of equal performance and assumes liability for equal performance, equal design and compatibility with adjacent materials.

Submitted By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
City / State / Zip Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

Signature shall be by person having authority to legally bind his firm to the above terms. Failure to provide legally binding signature will result in retraction of approval.

For use by the Engineer: \_\_\_\_\_Approved\_\_\_\_\_Approved as noted\_\_\_\_\_Not Approved

\_\_\_\_\_Rec'd too late\_\_\_\_\_insufficient data received

By \_\_\_\_\_

Date \_\_\_\_\_

Fill in Blanks Below:

A. Does the substitution affect dimensions shown on Drawings?

Yes \_\_\_\_\_ No \_\_\_\_\_ if yes, clearly indicate changes: \_\_\_\_\_

\_\_\_\_\_

B. Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution?

Yes \_\_\_\_\_ No \_\_\_\_\_ if no, fully explain: \_\_\_\_\_

\_\_\_\_\_

C. What effect does substitution have on other Contracts or other trades?

\_\_\_\_\_

D. What effect does substitution have on construction schedule?

\_\_\_\_\_

E. Manufacturer's warranties of the proposed and specified items are:

\_\_\_\_\_ Same \_\_\_\_\_ Different. Explain: \_\_\_\_\_

F. Reason for Request: \_\_\_\_\_

G. Itemized comparison of specified item(s) with the proposed substitution; list significant variations:

\_\_\_\_\_

H. Designation of maintenance services and sources: (Attach additional sheets if required).

\_\_\_\_\_

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END OF SECTION 00163

SECTION 00300

SCOPE OF WORK

1. GENERAL SCOPE

- 1.1 Bidders must be FDOT pre-qualified in the types of work specified for the project. The prime bidder must be prequalified in at least one major type of work regardless of the number of major types that are solicited. For any type of work that isn't met by the prime, the subcontractor must meet the prequalification requirement. The team must be pre-qualified in all types of work needed for the project.
- 1.2 The project is federally funded by a Community Development Block (CDBG) Subrecipient Agreement with the Florida Department of Economic Opportunity (DEO), IR026. The awarded contractor (CONTRACTOR) is bound by the terms and conditions of the County's Subrecipient Agreement with DEO.
- 1.3 The CONTRACTOR is required to be familiar with and shall be responsible for complying with all federal, state, and local laws, ordinances, rules, and regulations that in any manner affect the work. The CONTRACTOR agrees to provide reports or information to the County as needed to comply with the County's obligation to submit reports to DEO on the progress of the work.
- 1.4 The Scope of Work consists of construction of a "pump and treat" storm water drainage system, reconstruction and elevation of roadway segments intersecting and including Father Tony Way in the Sands Subdivision of Big Pine Key. The project includes drainage structures, wet wells, pollution treatment device, and a related elevated pump station with a back-up emergency generator, pre-treatment, wet wells, pumps, piping, electrical controls, instrumentation, and injection well(s) for final disposal of treated storm water. The roadway improvements will include utility relocation and adjustment of access drives to homes. The CONTRACTOR will work with the residents on all modifications involving resident access and property.
- 1.5 Contractors are required to "Target Section 3 Workers". Section 3 is defined as:
Section 3 business concern means: (1) A business concern that meets one of the following criteria: (i) It is at least 51 percent owned by low or very low-income persons; (ii) Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or (iii) It is a business at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing. (2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. (3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract. Cost to be included in 101-1 Mobilization.
- 1.6 The CONTRACTOR is required to provide a complete job as contemplated by the drawings and specifications, which are a part of this bid package and meet FDOT and County construction standards.

END OF SECTION 00300

SECTION 00350

MILESTONE SCHEDULE

This section contains the project milestone schedule. The CONTRACTOR is required to study the applicable parts, or milestones, in order to determine his proposed scheduling for the project.

The CONTRACTOR is to note the following special items.

- a. Bid Advertise Date (Anticipated) January 25, 2023
- b. Deadline for Requests for Information March 24, 2023
- c. Bid due Date April 4, 2023
- d. Award Date (Anticipated) April 19, 2023
- e. Pre-Con Meeting (Anticipated) May 1, 2023
- f. Construction Start (Anticipated) June 5, 2023
- g. Final Completion (Anticipated) November 27, 2024 (540 calendar days)

LIQUIDATED DAMAGES

Conditions under Which Liquidated Damages are Imposed—the time or times stipulated in the contract for completion of the work of the contract or of specified phases of the contract shall be the calendar date or dates listed in the milestone schedule.

Liquidated damages will be based on the Substantial Completion Date for all work, modified by all approved extensions in time as set forth by the Construction Manager's signature of approval on the Certificate of Substantial Completion. The liquidated damages table below shall be utilized to determine the amount of liquidated damages.

<u>CONTRACT AMOUNT</u>	<u>FIRST 15 DAYS</u>	<u>SECOND 15 DAYS</u>	<u>31ST DAY & THEREAFTER</u>
Under 50,000.00	\$50.00/Day	\$100.00/Day	\$250.00/Day
\$50,000.00-99,999.00	\$100.00/Day	\$200.00/Day	\$750.00/Day
\$100,000.00-499,999.00	\$200.00/Day	\$500.00/Day	\$2,000.00/Day
\$500,000.00 and Up	\$500.00/Day	\$1,000.00/Day	\$3,500.00/Day

The Contractor's recovery of damages and sole remedy for any delay caused by the Owner shall be an extension of time on the Contract.

END OF SECTION 00350

CONTRACT DOCUMENTS

Section 00500

**Standard Form of Agreement
Between Owner and CONTRACTOR**

Where the basis of payment is a STIPULATED SUM

AGREEMENT

Made as of the ____ day of _____ in the year of Two Thousand and Twenty Two.

BETWEEN the Owner: Monroe County Board of County Commissioners (“BOCC”)
1100 Simonton Street
Key West, Florida 33040 (“Owner”)

And the CONTRACTOR:

(“CONTRACTOR”)

For the following Project: **REBID SANDS SLR ROADWAY AND DRAINAGE PILOT PROJECT
BIG PINE KEY**

Monroe County, Florida (“Project”)

Oversight for Owner:

Engineer: WSP USA, Inc
7650 Corporate Drive, Suite 300
Miami, FL 33126

The Owner and CONTRACTOR agree as set forth below.

ARTICLE 1

The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Attachments, Drawings, Specifications, Insurance Requirements and Documents, Milestone Schedule, Bid Documents and CONTRACTOR's Bid, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. These form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

ARTICLE 2

The Work of this Contract

The CONTRACTOR shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Scope of Work is as specified in the Contract Documents and shown on the Drawings and in the specifications. The contract constitutes the entire and exclusive agreement between the Owner and the CONTRACTOR with reference to the **SANDS SLR ROADWAY AND DRAINAGE PILOT PROJECT, BIG PINE KEY.**

ARTICLE 3

Date of Commencement and Substantial Completion

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner as stated in Section 00350, milestone schedule. Unless the date of commencement is established by a notice to proceed issued by the Owner, the CONTRACTOR shall notify the Owner, in writing not less than five days before commencing the Work.

The date of commencement shall be the date specified in the Notice to Proceed issued to the CONTRACTOR.

3.2 The CONTRACTOR shall achieve Substantial Completion of the entire Work not later than **540 calendar days** after the Date of Commencement, subject to adjustments of the Contract Time as provided by the Contract Document.

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LIQUIDATED DAMAGES

Liquidated damages will be based on the Substantial Completion Date for all work, modified by all approved extension in time as set forth by the Owner's signature of approval on the Certificate of Substantial Completion. The liquidated damages table below shall be utilized to determine the amount of liquidated damages.

<u>CONTRACT AMOUNT</u>	<u>FIRST 15 DAYS</u>	<u>SECOND 15 DAYS</u>	<u>31ST DAY & THEREAFTER</u>
Under 50,000.00	\$50.00/Day	\$100.00/Day	\$250.00/Day
\$50,000.00-99,999.00	\$100.00/Day	\$200.00/Day	\$750.00/Day
\$100,000.00-499,999.00	\$200.00/Day	\$500.00/Day	\$2,000.00/Day
\$500,000.00 and Up	\$500.00/Day	\$1,000.00/Day	\$3,500.00/Day

The Contractor's recovery of damages and sole remedy for any delay caused by the Owner shall be an extension of time on the Contract.

Uncontrollable Circumstance

3.3 Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable: (a) acts of God; (b) flood, fire, earthquake, explosion, tropical storm, hurricane or other declared emergency in the geographic area of the Project; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest in the geographic area of the Project; (d) government order or law in the geographic area of the Project; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority prohibiting work in the geographic area of the Project; (each, a "Uncontrollable Circumstance"). CONTRACTOR'S financial inability to perform, changes in cost or availability of materials, components, or services, market conditions, or supplier actions or contract disputes will not excuse performance by CONTRACTOR under this Section. CONTRACTOR shall give County written notice within 7 days of any event or circumstance that is reasonably likely to result in an Uncontrollable Circumstance, and the anticipated duration of such Uncontrollable Circumstance. CONTRACTOR shall use all diligent efforts to end the Uncontrollable Circumstance, ensure that the effects of any Uncontrollable Circumstance are minimized and resume full performance under this Agreement. The County will not pay additional cost as a result of an Uncontrollable Circumstance. The CONTRACTOR may only seek a no cost Change Order for such reasonable time as the Owners Representative may determine.

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ARTICLE 4

Contract Sum

- 4.1 The owner shall pay the CONTRACTOR in current funds for the CONTRACTOR's performance of the Contract, for the **REBID SANDS SLR ROADWAY AND DRAINAGE PILOT PROJECT** the Contract Sum of DOLLARS, (\$**.00**), subject to additions and deductions as provided in the Contract Documents.
- 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: None
- 4.3 Unit prices, if any, are as follows: As specified in Section 00110.

ARTICLE 5

Progress Payments

- 5.1 Based upon Applications for Payment submitted by the CONTRACTOR to the Owner, and upon Project Applications and Certificates for Payment, the Owner shall make progress payments on account of the Contract Sum to the CONTRACTOR as provided below and elsewhere in the Contract Documents.
- 5.2 The period covered by each Application for payment shall be one calendar month ending on the last day of the month.
- 5.3 County shall pay pursuant to the Local Government Prompt Payment Act 218.70 Florida Statutes.
- 5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the CONTRACTOR in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the CONTRACTOR's Applications for Payment.
- 5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- 5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- 5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of Five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included in applications for Payment. The amount of credit to be allowed by the CONTRACTOR to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (5%):

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to Ninety five percent (95%) of the Contract Sum, less such amounts as the Owner recommends and determines for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the CONTRACTOR, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 Reduction or limitation of retainage, if any, shall be as follows: None

ARTICLE 6

Final Payment

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the CONTRACTOR when (1) the Contract has been fully performed by the CONTRACTOR except for the CONTRACTOR's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Project Certificate for Payment has been issued by the Project Manager: such final payment shall be made by the Owner not more than 20 days after the issuance of the final Project Certificate for Payment.

ARTICLE 7

Miscellaneous Provisions

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest pursuant to the Local Government Prompt Payment Act 218.735

7.3 Temporary facilities and services:

None.

7.4 Monroe County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Board of County Commissioners.

7.5 **Public Entities Crimes** By signing this Agreement, CONTRACTOR represents that the execution of this Agreement will not violate the Public Entities Crime Act (Section 287.133, Florida Statutes). Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto and may result in debarment from County's competitive procurement activities.

In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it or any subcontractor has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

CONTRACTOR will promptly notify the County if it or any subcontractor is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list. A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as 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 Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

7.6 The following items are part of this contract:

a. **Right to Audit Availability of Records.** The records of the parties to this Agreement relating to the Project, which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, bidding instructions, bidders list, etc); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; any other supporting evidence deemed necessary by County or the Monroe County Office of the Clerk of Court and Comptroller (hereinafter referred to as "County Clerk") to substantiate charges related to this agreement, and all other agreements, sources of information and matters that may in County's or the County Clerk's reasonable judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document (all foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction by County's representative and/or agents or the County Clerk. County or County Clerk may also conduct verifications such as, but not limited to, counting employees at the job site, witnessing the distribution of payroll, verifying payroll computations, overhead computations, observing vendor and supplier payments, miscellaneous allocations, special charges, verifying information and amounts through interviews and written confirmations with employees, Subcontractors, suppliers, and contractors representatives. All records shall be kept for ten (10) years after Final Completion of the Project. The County Clerk possesses the independent authority to conduct an audit of Records, assets, and activities relating to this Project. If any auditor employed by the Monroe County or County Clerk determines that monies paid to Contractor pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Contractor shall repay the monies together with interest calculated pursuant to Section 55.03, F.S., running from the date the monies were paid to Contractor. The *right to audit* provisions survives the termination or expiration of this Agreement.

b. Maintenance of Records: CONTRACTOR shall maintain all books, records, and documents directly

pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of seven years from the termination of this agreement or for a period of three years from the submission of the final expenditure report as per 2 CFR §200.333, whichever is greater. The period of retention is 5 years from final payment for FHWA projects. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the COUNTY or Clerk determines that monies paid to CONTRACTOR pursuant to this Agreement were spent for purposes not authorized by this Agreement, or were wrongfully retained by the CONTRACTOR, the CONTRACTOR shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the COUNTY.

c. Governing Law, Venue, Interpretation, Costs, and Fees: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and CONTRACTOR agree that venue shall lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. This Agreement shall not be subject to arbitration.

- d. Severability:** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and CONTRACTOR agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- e. Attorney's Fees and Costs:** The County and CONTRACTOR agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, as an award against the non-prevailing party, and shall include attorney's fees and courts costs in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.
- f. Binding Effect:** The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and CONTRACTOR and their respective legal representatives, successors, and assigns.
- g. Authority:** Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.
- h. Claims for Federal or State Aid:** CONSULTANT and COUNTY agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement. Any conditions imposed as a result of funding that effect the Project will be provided to each party.

i. Nondiscrimination/Equal Employment Opportunity: CONTRACTOR and its subcontractors and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. CONTRACTOR or COUNTY agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 12101 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

During the performance of this Agreement, the CONTRACTOR, in accordance with *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. 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 41C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C, agrees as follows:

- a. 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.
- b. 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.
- c. 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.
- d. 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,
 - e. and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - f. 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.
 - g. 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.
 - h. 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.

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.

i) **Covenant of No Interest:** County and CONTRACTOR covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

j) **Code of Ethics:** County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

k) **No Solicitation/Payment:** The County and CONTRACTOR warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement 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 it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the CONTRACTOR agrees that the County

shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

1) **Public Records Compliance:** CONTRACTOR must comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of article I of the Constitution of Florida. The County and CONTRACTOR shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters or other "public record" materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and CONTRACTOR in conjunction with this contract and related to contract performance. The County shall have the right to unilaterally cancel this contract upon violation of this provision by the CONTRACTOR. Failure of the CONTRACTOR to abide by the terms of this provision shall be deemed a material breach of this contract and the County may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney's fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the contract.

The CONTRACTOR is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision.

Pursuant to F.S. 119.0701 and the terms and conditions of this contract, the CONTRACTOR is required to:

- (1) Keep and maintain public records that would be required by the County to perform the service.
- (2) Upon receipt from the County's custodian of records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the CONTRACTOR or keep and maintain public records that would be required by the County to perform the service. If the CONTRACTOR transfers all public records to the County upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of records, in a format that is compatible with the information technology systems of the County.
- (5) A request to inspect or copy public records relating to a County contract must be made directly to the County, but if the County does not possess the requested records, the County shall immediately notify the CONTRACTOR of the request, and the CONTRACTOR must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

If the CONTRACTOR does not comply with the County's request for records, the County shall enforce the public records contract provisions in accordance with the contract, notwithstanding the County's option and right to unilaterally cancel this contract upon violation of this provision by the CONTRACTOR. A CONTRACTOR who fails to provide the public records to the County or pursuant to a valid public records request within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

The CONTRACTOR shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, BRIAN BRADLEY AT PHONE# 305-292-3470 BRADLEY-BRIAN@MONROECOUNTY-FL.GOV, MONROE COUNTY ATTORNEY'S OFFICE 1111 12TH Street, SUITE 408, KEY WEST, FL 33040.

m) **Non-Waiver of Immunity:** Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the County and the CONTRACTOR in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

n) **Privileges and Immunities:** All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules, pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

o) **Legal Obligations and Responsibilities:** Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

p) **Non-Reliance by Non-Parties:** No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the CONTRACTOR agree that neither the County nor the CONTRACTOR or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

q) **Attestations:** CONTRACTOR agrees to execute such documents as the County may reasonably require, including a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

r) **No Personal Liability:** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

s) **Execution in Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

t) **Section Headings:** Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

u) **Special Conditions,** if any are detailed in Section 01000 of the Project Manual for this Project.

v) **Hold Harmless and Indemnification:** Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, the CONTRACTOR covenants and agrees that he shall defend, indemnify and hold the COUNTY and the COUNTY's elected and appointed officers and employees, and DEO harmless from and against (i) claims, actions or causes of action, (ii) litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) costs or expenses that may be asserted against, initiated with respect to, or sustained by the County and the COUNTY's elected and appointed officers and employees from liabilities damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the indemnifying party in the performance of the construction contract. The monetary limitation of liability under this contract shall be not less than \$1 million per occurrence pursuant to F. S. 725.06. In so far as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this Agreement, this section will survive the expiration of the term of this Agreement or any earlier termination of this Agreement.

In the event the completion of the project (including the work of others) is delayed or suspended as a result of the CONTRACTOR's failure to purchase or maintain the required insurance, the CONTRACTOR shall indemnify the County from any and all increased expenses resulting from such delay.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within General Insurance Requirements Section 900. In the event any claims are brought or actions are filed against the County with respect to the indemnity contained herein, the CONTRACTOR agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The CONTRACTOR agrees that the County may select the attorneys to appear and defend such claims or actions on behalf of the County. The CONTRACTOR further agrees to pay at the CONTRACTOR's expense the attorneys' fees and costs incurred by those attorneys selected by the County to appear and defend such actions or claims on behalf of the County at both the trial and appellate levels. The County at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the County.

DEO INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the Agency (COUNTY), the State of Florida, Department of Economic Opportunity, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Contract. This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's (COUNTY's) sovereign immunity requirement.

The CONTRACTOR will include the above indemnification in any sub-contracts.

w) **Adjudication of Disputes or Disagreements:** COUNTY and CONTRACTOR agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as

may be provided by this Agreement or by Florida law. This Agreement is not subject to arbitration. This provision does not negate or waive the provisions of paragraph 9.5 concerning termination or cancellation.

x) **Cancellation:** In the event that the CONTRACTOR shall be found to be negligent in any aspect of installation, stocking, maintenance, repair, or service, the County shall have the right to terminate this agreement after five (5) calendar days' written notification to the CONTRACTOR.

y) **Cooperation:** In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and CONTRACTOR agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and CONTRACTOR specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

z) **Insurance:** Prior to commencement of work the CONTRACTOR will provide satisfactory evidence of insurance as required in Specification Section 00900 General Insurance Requirements for Construction CONTRACTORS and Subcontractors. The CONTRACTOR shall name the Monroe County Board of County Commissioners, its employees and officials and the Florida Department of Economic Opportunity (DEO) as "Additional Insured" on all policies except for Worker's Compensation.

aa) **Inspector General:** The CONTRACTOR agrees to comply with s.20.055(5) Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes. "(5) It is the duty of every state officer, employee, agency, special district, board, commission, CONTRACTOR, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section."

7.7 Ownership of the Project Documents: The documents prepared by the CONTRACTOR for this Project belong to the County and may be reproduced and copied without acknowledgement or permission of the CONTRACTOR.

7.8 Successors and Assigns: The CONTRACTOR shall not assign or subcontract its obligations under this agreement, except in writing and with the prior written approval of the Board of County Commissioners for Monroe County, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this Agreement. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

7.9 No third Party Beneficiaries: Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

7.10 The CONTRACTOR will provide copies of subcontractor agreements prior to execution to ensure that the contract provisions are included in these subcontractor agreements. All subcontractor agreements must comply with applicable CDBG and Section 3 requirements. **Attachment A CDBG Requirements.**

7.11 Wage Rates for Federal-Aid Projects. For this Contract, payment of predetermined minimum wages applies. The U.S. Department of Labor (USDOL) Wage Rates applicable to this Contract are listed in **Attachment B**, as modified up through ten days prior to the opening of bids. Obtain the applicable General Decision(s) (Wage Tables) through the Department's Office of Construction website and ensure that

employees receive the minimum compensation applicable. Review the General Decisions for all classifications necessary to complete the project. Request additional classifications through the Engineer's office when needed. For guidance on the requirements for the payment of wages and benefits and the submittal of certified payrolls, and for general guidance and examples of multiple wage rates when assigned to a Contract, refer to the Department's Office of Construction website. Questions regarding wage rates and the applicability of wage tables should be submitted in accordance with Section 00100 Instruction to Bidders.

7.12 The CONTRACTOR and its subcontractors must follow the provisions as set forth in 2 C.F.R. §200.326 Contract provisions and Appendix II to 2 C.F.R. Part 200, as amended including but not limited to:

i. 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 comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, the Federal Water Pollution Control Act as amended, and the National Environmental Policy Act (NEPA). Violations must be reported to DEO, the Federal awarding agency, FEMA, and the Regional Office of the Environmental Protection Agency (EPA), as needed.

ii. **Davis-Bacon Act:** as amended (40 U.S.C. §§3141-3148). When required by Federal program legislation, which includes emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must comply 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 current prevailing wage determination issued by the Department of Labor is included and attached as Attachment B. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The COUNTY must report all suspected or reported violations to the Federal awarding agency. When required by Federal program legislation, which includes emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program (it does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program), the CONTRACTORS must also comply 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"). As required by the Act, each CONTRACTOR or subrecipient is 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 COUNTY must report all suspected or reported violations to the Federal awarding agency.

- (1) CONTRACTOR. The CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime

CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONTRACTOR and subcontractor as provided in 29 C.F.R. § 5.12.

For this Contract, payment of predetermined minimum wages applies.

The U.S. Department of Labor (USDOL) Wage Rates applicable to this Contract are listed in **Attachment B**, as modified up through ten days prior to the opening of bids.

Obtain the applicable General Decision(s) (Wage Tables) through the Department's Office of Construction website and ensure that employees receive the minimum compensation applicable. Review the General Decisions for all classifications necessary to complete the project. Request additional classifications through the Engineer's office when needed.

For guidance on the requirements for the payment of wages and benefits and the submittal of certified payrolls, and for general guidance and examples of multiple wage rates when assigned to a Contract, refer to the Department's Office of Construction website. Questions regarding wage rates and the applicability of wage tables should be submitted in accordance with 2-4.

iii. **Contract Work Hours and Safety Standards Act:** (40 U.S.C. 3701-3708). Where applicable, which includes all FEMA grant and cooperative agreement programs, all contracts awarded by the COUNTY in excess of \$100,000 that involve the employment of mechanics or laborers must comply 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 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.

iv. **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.

v. **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 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).

vi. **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 government wide 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.

vii. **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.

viii. **Compliance with Procurement of recovered materials:** As set forth in 2 CFR § 200.322. CONTRACTOR must comply with section 6002 of the Solid Waste Disposal Act, as amendment by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designed 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.

ix. **Americans with Disabilities Act of 1990 (ADA):** The CONTRACTOR will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and the assurance by the CONTRACTOR pursuant thereto.

x. **Disadvantaged Business Enterprise (DBE) Policy and Obligation:** It is the policy of the COUNTY that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with COUNTY funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The COUNTY and its CONTRACTOR agree to ensure that DBE’s have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and CONTRACTORS shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE’s have the opportunity to compete for and perform contracts. The COUNTY and the CONTRACTOR and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

xi. The CONTRACTOR shall utilize the **U.S. Department of Homeland Security’s E-Verify system** to verify the employment eligibility of all new employees hired by the CONTRACTOR during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

7.13 **CONTRACTOR Purchase Equipment for Local Ownership:** in accordance with the provisions of 23 CFR 140 the CONTRACTOR will not purchase equipment for County ownership.

7.14 Statement of No Conflict: Neither the COUNTY nor any of its CONTRACTORS or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the COUNTY or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the COUNTY, the COUNTY, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the COUNTY or the locality relating to such contract, subcontract or arrangement. The COUNTY shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its CONTRACTORS to insert in each of their subcontracts, the following provision:

“No member, officer or employee of the COUNTY or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.”

The provisions of this paragraph shall not be applicable to any agreement between the COUNTY and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

7.15 Compliance with Procurement of recovered materials: as set forth in 2 CFR § 200.323. CONTRACTOR 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 C.F.R 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. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

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

The CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

7.16 Prohibition on certain telecommunications and video surveillance services or equipment: as set forth in 2 CFR § 200.216. Recipients and subrecipients and their CONTRACTORS and subcontractors may not obligate or expend any federal 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.

7.17 Domestic preference for procurements as set forth in 2 CFR §200.322 The COUNTY and CONTRACTOR should, to the greatest extent practicable, 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). These requirements of this section must be included in all subawards including contracts and purchase orders for work or products under federal award. 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.

7.18 The follow items will not be allowed in this contract:

1. **CONTRACTOR Purchased Equipment for State or Local Ownership** - Per 23 CFR 140 / 2 CFR 200.313 and 23 U.S.C. 302.
2. **State of Florida or other locally produced materials.** Preference program mandating materials purchasing requirements or restrictions are not allowed. Per 23 CFR 635.409
3. **Public Agencies in Competition with the Private Sector** Per 23 CFR 635.112(e),
4. **Publicly owned Equipment** - Per 23 CFR 635.106,
5. **State/Local Owned/ Furnished Designated Materials Per 23 CFR 635.407** Note: Local Agency tax savings programs are will not be allowed.
6. **Local/State Hiring Preferences** Per 23 CFR 635.117) and 23 CFR 635.112(d). No Preference programs. Examples include in-state or local business; location of CONTRACTOR; limitations in business enterprises; local economic development hiring practices or programs; targeted hiring practices or programs (e.g., homeless, welfare-to-work, veterans); or exclusionary business preferences not based on federal sanctions.
7. **Patented/Proprietary/Sole Sources Materials** will not be allowed on this contract. 337.02 F.S.
8. **Incentive/ Disincentive Clauses.** The Agency has elected not to use incentive/disincentive clauses in this proposal. Per 23 CFR 635.127 (d & f).
9. **Indian Preference** on Federal Aid Projects (Labor & Employment) is not allowed on this contract. Per 23 CFR 635.117(e).
10. **Owner Force Account Contracting** Per 23 CFR 635 Subpart B & 255.20 F.S.
11. **Foreign CONTRACTOR and Supplier Restrictions.** Agency will not limit this proposal to domestic owned CONTRACTORS only. Per 49 CFR 30

7.19 Pursuant to the Housing and Urban Development Act of 1968, as amended by the Housing and

Community Development Act of 1992 (HUD Section 3). Contractors are required to “Target Section 3 Workers”. Section 3 business concern means: (1) A business concern that meets one of the following criteria: (i) It is at least 51 percent owned by low or very low-income persons; (ii) Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or (iii) It is a business at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing. (2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. (3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

The CONTRACTOR will also provide information as requested by the County for compliance of Section 3 of the Housing and Urban Development Act of 1968 and required completion of the Section 3 Summary Report (HUD-60002). Compliance with Section 3 of the Housing and Urban Development Act of 1968 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, but not in derogation of compliance with Section 7(b). (The CONTRACTOR should review the DEO Subrecipient Agreement for further guidance and required forms.)

A. 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 U.S.C. 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.

B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR Part 135, which implements Section 3. As evidenced by their execution of this contract the parties certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. 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 of worker’s 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; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. CONTRACTOR agrees to include this Section 3 requirement in every subcontract subject to compliance with regulations in 24 CFR 700 § 135.40 24 CFR Subtitle B, Ch. I (4–1–03 Edition) part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in the Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. 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 135.

E. CONTRACTOR will certify that any vacant employment positions, including training positions, refer to Attachment A - CDBG and Section 3 Federal Requirement.

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 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. 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 (i) preference and opportunities for training and employment shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract 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).

H. The State of Florida requires the CONTRACTOR and all applicable sub-contractors to follow the State's Section 3 requirements as defined by the [State's Section 3 Plan](#).

I. The State of Florida requires the CONTRACTOR meet or exceeds the Contractors stated proportional use of Minority Owned, Woman Owned or Section 3 Business that the CONTRACTOR stated in responding to the Request for Proposals or Request for Qualification. The CONTRACTOR understands and agrees that failure to meet this requirement may result in termination or such other sanctions as may be solely determined by the State.

J. The CONTRACTORS will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The CONTRACTORS may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

ARTICLE 8

Termination or Suspension

8.1 In the event that the CONTRACTOR shall be found to be negligent in any aspect of service, the COUNTY shall have the right to terminate this agreement after five (5) calendar days' written notification to the CONTRACTOR.

8.2 Either of the parties hereto may cancel this Agreement without cause by giving the other party sixty (60) days written notice of its intention to do so.

8.3 Termination for Cause and Remedies: In the event of breach of any contract terms, the COUNTY retains the right to terminate this Agreement. The COUNTY may also terminate this agreement for cause with CONTRACTOR should CONTRACTOR fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, prior to termination, the COUNTY shall provide CONTRACTOR with five (5) calendar days' notice and provide the CONTRACTOR with an opportunity to cure the breach that has occurred. If the breach is not cured, the Agreement will be terminated for cause. If the COUNTY terminates this agreement with the CONTRACTOR, COUNTY shall pay CONTRACTOR the sum due the CONTRACTOR under this agreement prior to termination, unless the cost of completion to the COUNTY exceeds the funds remaining in the contract; however, the COUNTY reserves the right to assert and seek an offset for damages caused by the breach. The maximum amount due to CONTRACTOR shall not in any event exceed the spending cap in this Agreement. In addition, the COUNTY reserves all rights available to recoup monies paid under this Agreement, including the right to sue for breach of contract and including the right to pursue a claim for violation of the COUNTY's False Claims Ordinance, located at Section 2-721 et al. of the Monroe County Code.

8.4 Termination for Convenience: The COUNTY may terminate this Agreement for convenience, at any time, upon sixty (60) days' notice to CONTRACTOR. The COUNTY may also terminate this agreement for cause with CONTRACTOR should CONTRACTOR fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, prior to termination, the COUNTY shall provide CONTRACTOR with five (5) calendar days' notice and provide the CONTRACTOR with an opportunity to cure the breach that has occurred. If the breach is not cured, the Agreement will be terminated for cause. If the COUNTY terminates this agreement with the CONTRACTOR, COUNTY shall pay CONTRACTOR the sum due the CONTRACTOR under this agreement prior to termination, unless the cost of completion to the COUNTY exceeds the funds remaining in the contract. The maximum amount due to CONTRACTOR shall not exceed the spending cap in this Agreement. In addition, the COUNTY reserves all rights available to recoup monies paid under this Agreement, including the right to sue for breach of contract and including the right to pursue a claim for violation of the COUNTY's False Claims Ordinance, located at Section 2-721 et al. of the Monroe County Code.

8.5 For Contracts of any amount, if the County determines that the CONTRACTOR/Consultant has submitted a false certification under Section 287.135(5), Florida Statutes or has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall have the option of (1) terminating the Agreement after it has given the CONTRACTOR/Consultant written notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

8.6 Suspension of the Work pursuant to 23 CFR 635.109, 2) Suspensions of work ordered by the engineer.

- (i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
- (ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
- (iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment

within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

Article 9

Enumeration of Contract Documents

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows: See Article 1

9.1.1 The Agreement is this executed Standard Form of Agreement between Owner and CONTRACTOR.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction.

9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated January 2023 and are as follows:

As listed in Table of Contents, Section 00001 of the Project Manual for this project, including attachments.

9.1.4 The Specifications are those contained in the Project Manual dated January 2023 as in Subparagraph 9.1.3, and are as follows:

As listed in Table of Contents, Section 00001 of the Project Manual for this project.

9.1.5 The Drawings are as follows, and are dated on each individual drawing unless a different date is shown below:

WSP Engineering Signed and Sealed Drawings – 89 sheets

Dated: 11.30.22

Sheets: G-1B, SQ-1B, SD-1B, G-2B thru G-11B, SW-1B thru SW-5B, RD-1B thru RD- 24B, TC-1B thru TC-3B, SP-1B, PS-1B thru PS-15B, LP-1B, E-1B thru E-14B, S-0B thru S-12B

9.1.6 The Addenda, if any, are as follows:

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

9.1.7 Other documents, if any, forming part of the contract Documents are as follows: Monroe County Bid Form in Section 00110, See Article 1;

9.1.8. The subrecipient and contractors are subject to 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. Subrecipient and contractors must comply with all audit requirements outlined in the contract and Attachment's J and K. Records relating to compliance and terms of the contract must be retained for a period of 6 years from the date DEO issues the final closeout for this award.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date executed and approved by DEO, deemed an original contract, electronically signed and transmitted if acceptable.

(SEAL)

Attest: KEVIN MADOK, Clerk

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

By: _____
As Deputy Clerk

By _____
Mayor

Date _____

(SEAL)

Attest:

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

END OF SECTION 00500

ATTACHMENT A

CDBG Requirements

State of Florida
Department of Economic Opportunity
Federally Funded
Community Development Block Grant
Mitigation Program (CDBG-MIT)
Subrecipient Agreement

THIS SUBRECIPIENT AGREEMENT is entered into by the State of Florida, Department of Economic Opportunity, (hereinafter referred to as “DEO”) and the Monroe County Board of County Commissioners (hereinafter referred to as the “Subrecipient”), each individually a “Party” and collectively “the Parties.”

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

WHEREAS, pursuant to Public Law (P.L.) P.L. 115-123 Bipartisan Budget Act of 2018 and Additional Supplemental Appropriations for Disaster Relief Act 2018 (approved February 9, 2018), and P.L. 116-20 Supplemental Appropriations for Disaster Relief Requirements Act, 2019 (approved June 6, 2019), Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, P.L. 115-56, the “Continuing Appropriations Act, 2018” ; and the requirements of the Federal Register (FR) notices entitled “Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees”, 84 FR 45838 (August 30, 2019) and “Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees” (CDBG Mitigation) 86 FR 561 (January 6, 2021);(hereinafter collectively referred to as the “Federal Register Guidance”), the U.S. Department of Housing and Urban Development (hereinafter referred to as “HUD”) has awarded Community Development Block Grant–Mitigation (CDBG-MIT) funds to DEO for mitigation activities authorized under Title I of the Housing and Community Development Act of 1974 (HCDA) (42 United States Code (U.S.C.) § 5301 *et seq.*) and applicable implementing regulations at 24 C.F.R. part 570 and consistent with the Appropriations Act.

WHEREAS, CDBG-MIT funds made available for use by the Subrecipient under this Agreement constitute a subaward of the DEO Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations and the terms and conditions of DEO’s Federal award.

WHEREAS, the Subrecipient has legal authority to enter into this Agreement and by signing this Agreement, the Subrecipient represents and warrants to DEO that it will comply with all the requirements of the subaward described herein.

WHEREAS, all CDBG-MIT activities carried out by the Subrecipient will: (1) meet the definition of mitigation activities. For the purpose of this funding, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters; (2) address the current and future risks as identified in DEO’s Mitigation Needs Assessment of most impacted and distressed area(s); (3) be CDBG-eligible activities under the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and a Covered Project.

NOW THEREFORE, DEO and the Subrecipient agree to the following:

(1) SCOPE OF WORK

The Scope of Work for this Agreement includes Attachment A, Project Description and Deliverables. With respect to Attachment B, Project Budget, and Attachment C, Activity Work Plan, the Subrecipient shall submit to DEO such Attachments in conformity with the current examples attached hereto as necessary and appropriate. Provided further, if there is a disagreement between the Parties, with respect to the formatting and contents of such attachments, then DEO's decisions with respect to same shall prevail, at DEO's sole and absolute discretion.

(2) INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES

Subrecipient has diligently reviewed this Agreement and is a sophisticated organization having experience managing projects with funds made available through federal grants. Subrecipient is familiar with DEO's grant agreement with HUD, has reviewed applicable CDBG-MIT regulations and guidelines, will conduct, and will ensure its activities are in compliance with DEO's grant agreement with HUD and all applicable CDBG-MIT regulations and guidelines. Subrecipient agrees to abide by all applicable State and Federal laws, rules and regulations as now in effect and as may be amended from time to time, including but not limited to, the Federal laws and regulations set forth in 24 CFR Part 570, applicable Federal Register Notices, the State's Action Plan, and all applicable CDBG-MIT regulations and guidelines.

Subrecipient shall ensure that all its activities under this Contract shall be conducted in conformance with these provisions, as applicable: 45 CFR Part 75, 29 CFR Part 95, 2 CFR Part 200, 20 CFR Part 601, 24 CFR Part 570 subpart I, *et seq.*, and all other applicable federal laws, regulations, and policies governing the funds provided under this Agreement as now in effect and as may be amended from time to time.

(3) PERIOD OF AGREEMENT

This Agreement is effective as of the date DEO executes this Agreement (the "Effective Date") and ends forty-eight (48) months after execution by DEO, unless otherwise terminated as set forth herein.

(4) RENEWAL AND EXTENSION

This Agreement shall not be renewed. DEO shall not grant any extension of this Agreement unless the Subrecipient provides justification satisfactory to DEO in its sole discretion and DEO's Director of the Division of Community Development approves such extension in writing

(5) MODIFICATION OF AGREEMENT

Modifications to this Agreement shall be valid only when executed in writing by the Parties. Any modification request by the Subrecipient constitutes a request to negotiate the terms of this Agreement. DEO may accept or reject any proposed modification based on DEO's sole determination and absolute discretion, that any such acceptance or rejection is in the State's best interest.

(6) RECORDS

(a) The Subrecipient's performance under this Agreement shall be subject to 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards as now in effect and as may be amended from time to time.

(b) Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability,

and representatives of the Federal government and their duly authorized representatives shall have access to any of the Subrecipient's books, documents, papers and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

(c) The Subrecipient shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by DEO under this Agreement.

(d) The Subrecipient will provide to DEO all necessary and appropriate financial and compliance audits in accordance with Paragraph (7), Audit Requirements and Attachments I and J herein and ensure that all related party transactions are disclosed to the auditor.

(e) The Subrecipient shall retain sufficient records to show its compliance with the terms of this Agreement and the compliance of all subrecipients, contractors, subcontractors and consultants paid from funds under this Agreement for a period of six (6) years from the date DEO issues the final closeout for this award. The Subrecipient shall also comply with the provisions of 24 CFR 570.493 and 24 CFR 570.502(a)(7)(ii). The Subrecipient shall further ensure that audit working papers are available upon request for a period of six (6) years from the date DEO issues the final closeout of this Agreement, unless extended in writing by DEO. The six-year period may be extended for the following reasons:

1. Litigation, claim or audit initiated before the six-year period expires or extends beyond the six-year period, in which case the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

2. Records for the disposition of non-expendable personal property valued at \$1,000 or more at the time of acquisition shall be retained for six (6) years after final disposition.

3. Records relating to real property acquired shall be retained for six (6) years after the closing on the transfer of title.

(f) The Subrecipient shall maintain all records and supporting documentation for the Subrecipient and for all contractors, subcontractors and consultants paid from funds provided under this Agreement, including documentation of all program costs in a form sufficient to determine compliance with the requirements and objectives of the scope of work and all other applicable laws and regulations.

(g) The Subrecipient shall either (i) maintain all funds provided under this Agreement in a separate bank account or (ii) ensure that the Subrecipient's accounting system shall have sufficient internal controls to separately track the expenditure of all funds from this Agreement. Provided further, that the only option available for advanced funds is to maintain such advanced funds in a separate bank account. There shall be no commingling of funds provided under this Agreement with any other funds, projects or programs. DEO may, in its sole discretion, disallow costs made with commingled funds and require reimbursement for such costs as described herein, Subparagraph (22)(e), Repayments.

(h) The Subrecipient, including all of its employees or agents, contractors, subcontractors and consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the Federal government or their duly authorized representatives. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

(7) AUDIT REQUIREMENTS

(a) The Subrecipient shall conduct a single or program-specific audit in accordance with the provisions of 2 CFR part 200 if it expends seven hundred fifty thousand dollars (\$750,000) or more in Federal awards from all sources during its fiscal year.

(b) Within sixty (60) calendar days of the close of Subrecipient's fiscal year, on an annual basis, the Subrecipient shall electronically submit a completed Audit Compliance Certification to audit@deo.myflorida.com, and DEO's grant manager; a blank version of which is attached hereto as

Attachment J. The Subrecipient's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and the Subrecipient.

(c) In addition to the submission requirements listed in Attachment I, Audit Requirements, the Subrecipient shall send an electronic copy of its audit report to DEO's grant manager for this Agreement by June 30 following the end of each fiscal year in which it had an open CDBG-MIT subgrant.

(d) Subrecipient shall also comply with the Federal Audit Clearinghouse rules and directives, including but not limited to the pertinent Report Submissions provisions of 2 C.F.R 200.512, when such provisions are applicable to this Agreement.

(8) REPORTS

Subrecipient shall provide DEO with all reports and information set forth in Attachment G, Reports. The monthly reports and administrative closeout reports must include the current status and progress of Subrecipient and all subcontractors in completing the work described in Attachment A, Scope of Work, and the expenditure of funds under this Agreement. Within 10 calendar days of a request by DEO, Subrecipient shall provide additional program updates or information. Without limiting any other remedy available to DEO, if all required reports and copies are not sent to DEO or are not completed in a manner acceptable to DEO, payments may be withheld until the reports are completed to DEO's satisfaction. DEO may also take other action as stated in Paragraph (13) Remedies or otherwise allowable by law.

(9) INSPECTIONS AND MONITORING

(a) Subrecipient shall cooperate and comply with DEO, HUD, and auditors with any inspections and will immediately provide access to records and financial statements as deemed necessary by DEO, HUD, and their respective auditors at least in accordance with requirements of 2 CFR part 200 and 24 CFR 570.489.

(b) Subrecipient shall cooperate and comply with monitoring of its activities as deemed necessary by DEO to ensure that the subaward is used for authorized purposes in compliance with federal statutes, regulations, and this Agreement.

(c) Without limiting the actions DEO, HUD, or their respective investigators may take, monitoring procedures will include at a minimum: (1) reviewing financial and performance reports required by DEO; (2) following-up and ensuring Subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to Subrecipient from DEO as detected through audits, on-site reviews and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to Subrecipient from DEO as required by 2 CFR §200.521.

(d) Corrective Actions: DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may require Subrecipient to take timely and appropriate action on all deficiencies pertaining to the federal award provided to Subrecipient from the pass-through entity as detected through audits, on-site reviews and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, DEO may in its sole discretion and without advance notice, impose additional conditions on the use of the CDBG-MIT funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance. DEO may also take other action as stated in Paragraph (13) Remedies or otherwise allowable by law.

(10) DUPLICATION OF BENEFITS

Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 *et seq.*) and described in Appropriations Acts. Subrecipient must comply with HUD's requirements for duplication of benefits, as described in the Federal Register and HUD guidance (including HUD training materials). Subrecipient shall carry out the activities under this

Agreement in compliance with DEO's procedures to prevent duplication of benefits. Subrecipient shall sign a Subrogation Agreement (See Attachment M).

(11) LIABILITY

(a) If Subrecipient is a state agency or subdivision, as defined in Section 768.28(2), F.S., pursuant to Section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party's negligence.

(b) Subrecipient assumes sole responsibility for the training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, Florida Statutes. Subrecipient shall hold DEO harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. For purposes of this Agreement, Subrecipient agrees that it is not an employee or agent of DEO but is an independent contractor.

(c) Subrecipient agrees to be fully responsible for its negligent or tortious acts or omissions, which result in claims or suits against DEO. Subrecipient agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by DEO to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

(d) Nothing herein is intended to serve as a waiver of sovereign immunity by DEO or the Subrecipient.

(12) EVENTS OF DEFAULT

If any of the following events occur ("Events of Default"), DEO may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies available through this Agreement or pursue any remedy at law or in equity, without limitation:

(a) Any warranty or representation made by Subrecipient, in this Agreement or any previous agreement with DEO, is or becomes false or misleading in any respect, or if Subrecipient fails to keep or perform any of the obligations, terms, or covenants in this Agreement or any previous agreement with DEO or HUD, and/or has not cured them in timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;

(b) Any material adverse change occurs in the financial condition of Subrecipient at any time during the term of this Agreement and the Subrecipient fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by DEO;

(c) If Subrecipient fails to submit any required report or submits any required report with incorrect, incomplete, or insufficient information or fails to submit additional information as requested by DEO;

(d) If Subrecipient fails to perform or timely complete any of its obligations under this Agreement, including participating in DEO's Implementation Workshop. The Parties agree that in the event DEO elects to make payments or partial payments after any Events of Default, it does so without waiving the right to exercise any remedies allowable herein or at law and without becoming liable to make any further payment.

(e) Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay

the Subrecipient believes is excusable under this paragraph, Subrecipient shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Subrecipient could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date Subrecipient first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE SUBRECIPIENT'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Subrecipient of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against DEO. Subrecipient shall not be entitled to an increase in the Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, Subrecipient shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from Subrecipient, provided that Subrecipient grants preferential treatment to DEO with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Subrecipient for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

(13) REMEDIES

If an Event of Default occurs, DEO may in its sole discretion and without limiting any other right or remedy available, provide thirty (30) calendar days written notice to the Subrecipient and if the Subrecipient fails to cure within those thirty (30) calendar days DEO may choose to exercise one or more of the following remedies, either concurrently or consecutively:

- (a) Terminate this Agreement upon written notice by DEO sent in conformity with Paragraph (17) Notice and Contact;
- (b) Begin any appropriate legal or equitable action to enforce performance of this Agreement;
- (c) Withhold or suspend payment of all or any part of a request for payment;
- (d) Demand Subrecipient return to DEO any funds used for ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
- (e) Exercise any corrective or remedial actions, including but not limited to:
 - 1. Request additional information from the Subrecipient to determine the reasons for or the extent of non-compliance or lack of performance;
 - 2. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
 - 3. Advise the Subrecipient to suspend, discontinue or refrain from incurring costs for any activities in question.
- (f) Exercise any other rights or remedies which may be otherwise available under law.

Pursuit of any of the above remedies does not preclude DEO from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by DEO to require strict performance does not affect, extend or waive any other right or remedy

available or affect the later exercise of the same right or remedy by DEO for any other default by the Subrecipient.

(14) DISPUTE RESOLUTION

DEO shall decide disputes concerning the performance of the Agreement, and document dispute decisions in writing and serve a copy of same to Subrecipient. All decisions are final and conclusive unless the Subrecipient files a petition for administrative hearing with DEO within twenty-one (21) days from the date of receipt of the decision. Exhaustion of administrative remedies prescribed in Chapter 120, F.S., is an absolute condition precedent to Subrecipient's ability to pursue any other form of dispute resolution; provided however, that the Parties may mutually agree to employ the alternative dispute resolution procedures outlined in Chapter 120, F.S.

(15) CITIZEN COMPLAINTS

The goal of DEO is to provide an opportunity to resolve complaints in a timely manner, usually within fifteen (15) business days of the receipt of the complaint as expected by HUD, if practicable, and to provide the right to participate in the process and appeal a decision when there is reason for an applicant to believe its application was not handled according to program policies. All applications, guidelines and websites will include details on the right to file a complaint or appeal and the process for filing a complaint or beginning an appeal.

Applicants are allowed to appeal program decisions related to one of the following activities:

- (a) A program eligibility determination,
- (b) A program assistance award calculation, or
- (c) A program decision concerning housing unit damage and the resulting program outcome.

Citizens may file a written complaint or appeal through the Office of Long-Term Resiliency email at CDBG-MIT@deo.myflorida.com or submit by postal mail to the following address:

Attention: Office of Long-Term Resiliency
Florida Department of Economic Opportunity
107 East Madison Street
The Caldwell Building, MSC 400
Tallahassee, Florida 32399

The subrecipient will handle citizen complaints by conducting:

- (a) Investigations as necessary,
- (b) Resolution, and
- (c) Follow-up actions.

If the complainant is not satisfied by Subrecipient's determination, then the complainant may file a written appeal by following the instructions issued in the letter of response. If, at the conclusion of the appeals process, the complainant has not been satisfied with the response, a formal complaint may then be addressed directly to DEO at:

Department of Economic Opportunity
Caldwell Building, MSC-400
107 E Madison Street
Tallahassee, FL 32399

The Florida Office of Long-Term Resiliency operates in Accordance with the Federal Fair Housing Law (The Fair Housing Amendments Act of 1988). Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination: 1-800-669-9777 (Toll Free), 1-800-927-9275 (TTY) or www.hud.gov/fairhousing.

(16) TERMINATION

(a) DEO may immediately suspend or terminate this Agreement for cause by providing written notice, from the date notice is sent by DEO. Cause includes, but is not limited to: an Event of Default as set forth in this Agreement; Subrecipient's improper or ineffective use of funds provided under this Agreement; fraud; lack of compliance with any applicable rules, regulations, statutes, executive orders, HUD guidelines, policies, directives or laws; failure, for any reason, to timely and/or properly perform any of the Subrecipient's obligations under this Agreement; submission of reports that are incorrect or incomplete in any material respect and refusal to permit public access to any document, paper, letter or other material subject to disclosure under law, including Chapter 119, F.S., as amended. The aforementioned reasons for termination are listed in the immediately preceding sentence for illustration purposes but are not limiting DEO's sole and absolute discretion with respect to DEO's right to terminate this Agreement. In the event of suspension or termination, Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs.

(b) DEO may unilaterally terminate this Agreement, in whole or in part, for convenience by providing Subrecipient fourteen (14) days written notice from the date notice is sent by DEO, setting forth the reasons for such termination, the effective date and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, DEO determines that the remaining portion of the award will not accomplish the purpose for which the award was made, DEO may terminate the portion of the award which will not accomplish the purpose for which the award was made. Subrecipient shall continue to perform any work not terminated. In the event of termination for convenience, Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs for the terminated portion of work.

(c) The Parties may terminate this Agreement for their mutual convenience in writing, in the manner agreed upon by the Parties, which must include the effective date of the termination.

(d) In the event that this Agreement is terminated, Subrecipient shall not incur new obligations under the terminated portion of the Agreement after the date Subrecipient has received the notification of termination. Subrecipient shall cancel as many outstanding obligations as possible. DEO shall disallow all costs incurred after Subrecipient's receipt of the termination notice. DEO may, to the extent authorized by law, withhold payments to Subrecipient for the purpose of set-off until the exact amount of damages due to DEO from Subrecipient is determined.

(e) Upon expiration or termination of this Agreement, Subrecipient shall transfer to DEO any CDBG-MIT funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-MIT funds.

(f) Any real property under Subrecipient's control that was acquired or improved in whole or in part with CDBG-MIT funds (including CDBG-MIT funds provided to the subrecipient in the form of a loan) in excess of \$25,000 must either:

1. Be used to meet a national objective until five years after expiration or termination of this Agreement, unless otherwise agreed upon by the Parties, or except as otherwise set forth herein; or
2. If not used to meet a national objective, Subrecipient shall pay to DEO an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-

CDBG-MIT funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

(g) The rights and remedies under this clause are in addition to any other rights or remedies provided by law or under this Agreement.

(17) NOTICE AND CONTACT

(a) All notices provided under or pursuant to this Agreement shall be in writing, either by hand delivery, first class or certified mail with return receipt requested, email with confirmation of receipt of email from Subrecipient, to the representative identified below at the address set forth below or said notification attached to the original of this Agreement.

(b) The name and address of DEO's Grant Manager for this Agreement is:

Taylor Doolin

107 E. Madison St.

Tallahassee, FL 32399

850-717-8541

Taylor.doolin@deo.myflorida.com

(c) The name and address of the Local Government Project Contact for this Agreement is:

Debra London

102050 Overseas Highway

Key Largo, FL 33037

305-453-8754

d) If different representatives or addresses are designated by either Party after execution of this Agreement, notice of the name, title and address of the new representative will be provided as provided for in this Agreement. Such change shall not require a formal amendment of the Agreement.

(18) CONTRACTS

If the Subrecipient contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to the DEO grant manager for prior written approval. For each contract, the Subrecipient shall report to DEO as to whether that contractor or any subcontractors hired by the contractor, is a minority vendor, as defined in Section 288.703, F.S. The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.327 and §200.330 when procuring property and services under this Agreement (refer to Attachments D & E).

The Subrecipient shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

- (a) the period of performance or date of completion;
- (b) the performance requirements;
- (c) that the contractor is bound by the terms of this Agreement;
- (d) that the contractor is bound by all applicable State and Federal laws, rules, and regulations;
- (e) that the contractor shall hold DEO and Subrecipient harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;

- (f) the obligation of the Subrecipient to document in Subrecipient's reports the contractor's progress in performing its work under this Agreement;
- (g) the requirements of 2 CFR Appendix II to Part 200 – Contract Provision for Non-Federal Entity Contract Under Federal Awards – (refer to Attachment L)

Subrecipient must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.489(l)), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

Subrecipient shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

(19) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous understandings. No waiver by DEO may be effective unless made in writing by an authorized DEO official.

(20) ATTACHMENTS

- (a) If any inconsistencies or conflict between the language of this Agreement and the attachments arise, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- (b) This Agreement contains the following attachments:
 - Attachment A – Project Description and Deliverables
 - Attachment B – Project Budget (Example)
 - Attachment C – Activity Work Plan (Example)
 - Attachment D – Program and Special Conditions
 - Attachment E – State and Federal Statutes, Regulations and Policies
 - Attachment F – Civil Rights Compliance
 - Attachment G – Reports
 - Attachment H – Warranties and Representations
 - Attachment I – Audit Requirements and Exhibit 1 to Attachment I – Funding Sources
 - Attachment J – Audit Compliance Certification
 - Attachment K – SERA Access Authorization Form (form provided after execution of this agreement)
 - Attachment L – 2 CFR Appendix II to Part 200
 - Attachment M – Subrogation Agreement

(21) FUNDING/CONSIDERATION

(a) The funding for this Agreement shall not exceed Eight Million One Hundred Eighty One Thousand Four Hundred Eighty Nine Dollars and Zero Cents (\$8,181,489.00), subject to the availability of funds. The State of Florida and DEO's performance and obligation to pay under this Agreement is contingent upon annual appropriations by the Legislature and subject to any modification in accordance with Chapter 216, F.S. or the Florida Constitution.

(b) DEO will provide funds to Subrecipient by issuing a Notice of Subgrant Award/Fund Availability ("NFA") through DEO's financial management information system. Each NFA may contain specific terms, conditions, assurances, restrictions or other instructions applicable to the funds provided by the

NFA. By accepting funds made available through an NFA, Subrecipient agrees to comply with all terms, conditions, assurances, restrictions or other instructions listed in the NFA.

(c) By execution of this Agreement, Subrecipient certifies that necessary written administrative procedures, processes and fiscal controls are in place for the operation of its CDBG-MIT program for which Subrecipient receives funding from DEO. These written administrative procedures, processes and fiscal controls must, at minimum, comply with applicable state and federal law, rules, regulations, guidance and the terms of this Agreement. Subrecipient agrees to comply with all the terms and conditions of Attachment D, Program and Special Conditions.

(d) Subrecipient shall expend funds only for allowable costs and eligible activities, in accordance with the Scope of Work.

(e) Subrecipient shall request all funds in the manner prescribed by DEO. The authorized signatory for the Subrecipient set forth on the SERA Access Authorization Form must approve the submission of each Request for Funds ("RFF") on behalf of Subrecipient. SERA Access Authorization Form will be provided after the execution of this Agreement.

(f) Except as set forth herein, or unless otherwise authorized in writing by DEO, costs incurred for eligible activities or allowable costs prior to the effective date of this Agreement are ineligible for funding with CDBG-MIT funds.

(g) If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the Federal Office of Management and Budget, the Florida Legislature, the State Chief Financial Officer or under Subparagraph (23), Mandated Conditions of this Agreement, all obligations on the part of DEO to make any further payment of funds will terminate and the Subrecipient shall submit its administrative closeout report and subgrant agreement closeout package as directed by DEO within thirty (30) calendar days from receipt of notice from DEO.

(h) Subrecipient is ultimately responsible for the administration of this Agreement, including monitoring and oversight of any person or entity retained or hired by Subrecipient.

(i) All expenditures under this Agreement shall be made in accordance with this Agreement and any applicable state or federal statutes, rules, or regulations.

(j) Funding for this Agreement is appropriated under Public Law 115-254, Division I, the "Supplemental Appropriations for Disaster Relief Act, 2018" and Public Law 116-20, the "Additional Supplemental Appropriations for Disaster Relief Act, 2019" for the purpose of assisting in long-term recovery from major disasters that occurred in 2017, 2018, and 2019 in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq., (the "Stafford Act").

(k) CDBG-MIT funds, appropriated and identified by Public Law, are governed by one or more Federal Register notices that contain requirements, applicable waivers, and alternative requirements that apply to the use of these funds.

(22) REPAYMENTS

(a) Subrecipient shall only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period. Subrecipient shall ensure that its contractors, subcontractors, and consultants only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period.

(b) In accordance with Section 215.971, F.S., Subrecipient shall refund to DEO any unobligated funds which have been advanced or paid.

(c) Subrecipient shall refund to DEO any funds paid in excess of the amount to which the Subrecipient or its contractors, subcontractors or consultants are entitled under the terms and conditions of this Agreement.

(d) Subrecipient shall refund to DEO any funds received for an activity if the activity does not meet one of the three National Objectives listed in 24 CFR § 570.483(b), (c) and (d); provided, however, the Subrecipient is not required to repay funds for subgrant administration unless DEO, in its sole discretion, determines Subrecipient is at fault for the ineligibility of the activity in question.

(e) Subrecipient shall refund to DEO any funds not spent in accordance with the conditions of this Agreement or applicable law. Such reimbursement shall be sent to DEO, by the Subrecipient, within thirty (30) calendar days from Subrecipient's receipt of notification of such non-compliance.

(f) In accordance with Section 215.34(2), F.S., if a check or other draft is returned to DEO for collection, the Subrecipient shall pay to DEO a service fee of \$15.00 or five percent of the face amount of the returned check or draft, whichever is greater. All refunds or repayments to be made to DEO under this Agreement are to be made payable to the order of "Department of Economic Opportunity" and mailed directly to DEO at the following address:

Department of Economic Opportunity
Community Development Block Grant Programs Cashier
107 East Madison Street – MSC 400
Tallahassee, Florida 32399-6508

(23) MANDATED CONDITIONS

(a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations and materials submitted or provided by the Subrecipient in this Agreement, in any later submission or response to a DEO request or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations and materials are incorporated herein by reference.

(b) This Agreement shall be construed under the laws of the State of Florida and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. The Parties explicitly waive any right to jury trial.

(c) If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

(d) Any power of approval or disapproval granted to DEO under the terms of this Agreement shall survive the term of this Agreement.

(e) This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(f) Subrecipient shall comply with all applicable local, state and federal laws, including the Americans With Disabilities Act of 1990, as amended; the Florida Civil Rights Act, as amended, Chapter 760, Florida Statutes; Title VII of the Civil Rights Act of 1964, as amended; (P.L. 101-336, 42 U.S.C. § 12101 *et seq.*) and laws which prohibit discrimination by public and private entities on in employment, public accommodations, transportation, state and local government services and telecommunications.

(g) Pursuant to Section 287.133(2)(a), F.S., a person or affiliate, as defined in Section 287.133(1), F.S., 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 thirty-five thousand dollars (\$35,000) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the convicted vendor list.

(h) Pursuant to Section 287.134(2)(a), F.S., an entity or affiliate, as defined in Section 287.134(1), who has been placed on the discriminatory vendor list 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. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the discriminatory vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the discriminatory vendor list.

(i) All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

(j) In the event travel is pre-approved by DEO, any bills for travel expenses shall be submitted and reimbursed in accordance with Section 112.061, F.S., the rules promulgated thereunder and 2 CFR § 200.474.

(k) If Subrecipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to DEO or be applied against DEO's obligation to pay the Agreement award amount.

(l) Subrecipient acknowledges being subject to Florida's Government in the Sunshine Law (Section 286.011, F.S.) with respect to the meetings of Subrecipient's governing board or the meetings of any subcommittee making recommendations to the governing board. Subrecipient agrees that all such aforementioned meetings shall be publicly noticed, open to the public and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

(m) Subrecipient shall comply with section 519 of P. L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(n) Upon expiration or termination of this Agreement, Subrecipient shall transfer to DEO any CDBG-MIT funds remaining at the time of expiration or termination, and any accounts receivable attributable to the use of CDBG-MIT funds.

(24) LOBBYING PROHIBITION

(a) No funds or other resources received from DEO under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(b) The Subrecipient certifies, by its signature to this Agreement, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, 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 awarding of any federal contract, the making of any federal grant, the making of any general loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;

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

3. Subrecipient shall require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose as described in this Agreement. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

(25) COPYRIGHT, PATENT AND TRADEMARK

Any and all patent rights accruing under or in connection with the performance of this Agreement are hereby reserved to the State of Florida. Any and all copyrights accruing under or in connection with the performance of this Agreement are hereby transferred by Subrecipient to the State of Florida.

(a) If the Subrecipient has a pre-existing patent or copyright, Subrecipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement expressly provides otherwise.

(b) If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, Subrecipient shall refer the discovery or invention to DEO for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films or other copyrightable material are produced, Subrecipient shall notify DEO. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Subrecipient to the State of Florida.

(c) Within thirty (30) calendar days of execution of this Agreement, Subrecipient shall disclose all intellectual properties relating to the performance of this Agreement which give rise to a patent or copyright. Subrecipient shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and DEO shall have the right to all patents and copyrights which accrue during performance of this Agreement.

(26) LEGAL AUTHORIZATION

(a) Subrecipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. Subrecipient certifies that the undersigned person has the authority to legally execute and bind the Subrecipient to the terms of this Agreement. DEO may, at its discretion, request documentation evidencing the undersigned has authority to bind Subrecipient to this Agreement as of the date of execution; any such documentation is incorporated herein by reference.

(b) Prior to the execution of this Agreement, Subrecipient warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation or any other legal or financial condition that would in any way prohibit, restrain or diminish Subrecipient's ability to satisfy its obligations. Subrecipient shall immediately notify DEO in writing if its ability to perform is compromised in any manner during the term of this Agreement.

(27) PUBLIC RECORD RESPONSIBILITIES

(a) In addition to Subrecipient's responsibility to directly respond to each request it receives for records, in conjunction with this Agreement and to provide the applicable public records in response to such request, Subrecipient shall notify DEO of the receipt and content of all such requests by sending an email to PRRequest@deo.myflorida.com within one (1) business day from receipt of the request.

(b) Subrecipient shall keep and maintain public records required by DEO to perform the Subrecipient's responsibilities hereunder. Subrecipient shall, upon request from DEO's custodian of

public records, provide DEO with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, F.S., or as otherwise provided by law. Subrecipient shall allow public access to all documents, papers, letters or other materials made or received by the Subrecipient in conjunction with this Agreement, unless the records are exempt from Article I, Section 24(a) of the Florida Constitution and Section 119.07(1), F.S. For records made or received by Subrecipient in conjunction with this Agreement, Subrecipient shall respond to requests to inspect or copy such records in accordance with Chapter 119, F.S. For all such requests for records that are public records, as public records are defined in Section 119.011, F.S., Subrecipient shall be responsible for providing such public records per the cost structure provided in Chapter 119, F.S., and in accordance with all other requirements of Chapter 119, F.S., or as otherwise provided by law.

(c) This Agreement may be terminated by DEO for refusal by Subrecipient to comply with Florida's public records laws or to allow public access to any public record made or received by the Subrecipient in conjunction with this Agreement.

(d) If, for purposes of this Agreement, Subrecipient is a "contractor" as defined in Section 119.0701(1)(a), F.S. ("Subrecipient-contractor"), the Subrecipient-contractor shall transfer to DEO, at no cost to DEO, all public records upon completion including termination, of this Agreement or keep and maintain public records required by DEO to perform the service. If Subrecipient-contractor transfers all public records to the public agency upon completion of this Agreement, Subrecipient-contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Subrecipient-contractor keeps and maintains public records upon completion of the Agreement, the Subrecipient-contractor shall meet all applicable requirements for retaining public records in accordance with Chapters 119 and 257, F.S. All records stored electronically must be provided to DEO, upon request from DEO's custodian of public records, in a format that is compatible with the information technology systems of DEO.

(e) If DEO does not possess a record requested through a public records request, DEO shall notify Subrecipient-contractor of the request as soon as practicable, and the Subrecipient-contractor must provide the records to DEO or allow the records to be inspected or copied within a reasonable time, but in all cases within fourteen business days. If the Subrecipient-contractor does not comply with DEO's request for records, DEO shall enforce the provisions set forth in this Agreement. Subrecipient-contractor who fails to provide public records to DEO within a reasonable time may be subject to penalties under Section 119.10, F.S.

(f) Subrecipient shall notify DEO verbally within twenty-four (24) hours and in writing within seventy-two (72) hours if any data in the Subrecipient's possession related to this Agreement is subpoenaed or improperly used, copied or removed (except in the ordinary course of business) by anyone except an authorized representative of DEO. Subrecipient shall cooperate with DEO, in taking all steps as DEO deems advisable, to prevent misuse, regain possession or otherwise protect the State's rights and the data subject's privacy.

(g) Subrecipient acknowledges DEO is subject to the provisions of Chapter 119, F.S., relating to public records and that reports, invoices and other documents Subrecipient submits to DEO under this Agreement constitute public records under Florida Statutes. Subrecipient shall cooperate with DEO regarding DEO's efforts to comply with the requirements of Chapter 119, F.S.

(h) If Subrecipient submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by Subrecipient prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of Chapter 119, F.S., prior to submittal of the record to DEO serves as the Subrecipient's waiver of a claim of exemption. Subrecipient shall ensure public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for

the duration of this Agreement term and following completion of this Agreement if the Subrecipient-contractor does not transfer the records to DEO upon completion, including termination, of this Agreement.

(i) IF SUBRECIPIENT-CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT-CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 850-245-7140, via email at PRRequest@deo.myflorida.com, or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.

(j) To the extent allowable by law, Subrecipient shall be fully liable for the actions of its agents, employees, partners, contractors and subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to public record requests or public record law violation(s), alleged to be caused in whole or in part by the Subrecipient, its agents, employees, partners, contractors or subcontractors, provided, however, Subrecipient does not indemnify for that portion of any costs or damages proximately caused by the negligent act or omission of the State or DEO. DEO, in its sole discretion, has the right, but not the obligation, to enforce this indemnification provision.

(k) DEO does not endorse any Subrecipient, commodity, or service. Subject to Chapter 119, F.S., Subrecipient shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Subrecipient's name and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any other entity that is not a Party to this Agreement, except potential or actual employees, agents, representatives or subcontractors with the professional skills necessary to perform the work services required by the Agreement.

(l) Subrecipient shall comply with the requirements set forth in Section 119.0701, F.S., when entering into any public agency contract for services after the Effective Date of this Agreement. Subrecipient shall amend each of the Subrecipient's public agency contracts for services already in effect as of the Effective Date of this Agreement and which contract will or may be funded in whole or in part with any public funds. DEO may terminate this Agreement if the Subrecipient does not comply with this provision.

(28) EMPLOYMENT ELIGIBILITY VERIFICATION

(a) Section 448.095, F.S., requires the following:

1. 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.

2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a

person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

(b) 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/>

(c) If the Recipient does not use E-Verify, the Recipient shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the effective date of this Agreement.

(29) PROGRAM INCOME

(a) The Subrecipient shall report to DEO all program income (as defined at 24 CFR § 570.500(a) or in the Federal Register Guidance governing the CDBG-MIT funds) generated by activities carried out with CDBG-MIT funds made available under this Agreement as part of the Subrecipient's Quarterly Progress Report. The Subrecipient shall use program income in accordance with the applicable requirements of 2 CFR part 200, 24 CFR part 570.489, 570.500, 570.504 and the terms of this Agreement.

(b) Program income generated after closeout shall be returned to DEO. Program income generated prior to closeout shall be returned to DEO unless the program income is used to fund additional units of CDBG-MIT activities, specified in a modification to this Agreement and duly executed prior to administrative closeout.

(30) NATIONAL OBJECTIVES

All activities funded with CDBG-MIT funds must meet the criteria for one of the CDBG program's National Objectives. The Subrecipient certifies that the activities carried out under this Agreement shall meet the following national objectives and satisfy the following criteria:

- (a) Benefit low and moderate income;
- (b) Meet a particularly urgent need;
- (c) Aid in the prevention or elimination of slums or blight.

(31) INDEPENDENT CONTRACTOR

(a) In Subrecipient's performance of its duties and responsibilities under this Agreement, it is mutually understood and agreed Subrecipient is at all times acting and performing as an independent contractor. Nothing in this Agreement is intended to or shall be deemed to constitute an employer/employee relationship, partnership or joint venture between the Parties. Subrecipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. Nothing in this Agreement shall be construed to create any agency or employment relationship between DEO Subrecipient, its employees, subcontractors or agents. Neither Party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

(b) Subrecipient, its officers, agents, employees, subcontractors or assignees, in performance of this Agreement shall act in the capacity of an independent contractor and not as an officer, employee, agent, joint venturer or partner of the State of Florida.

(c) Subrecipient shall have sole right to control the manner, method and means by which the services required by this Agreement are performed. DEO shall not be responsible to hire, supervise or pay Subrecipient's employees. Neither Subrecipient, nor its officers, agents, employees, subcontractors or assignees are entitled to State retirement or State leave benefits, or to any other compensation of State employment as a result of performing the duties and obligations of this Agreement.

(d) Subrecipient agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, employee, servant, joint venturer or partner of the State of Florida.

(e) Unless justified by the Subrecipient, and agreed to by DEO in the Scope of Work, DEO will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial or clerical support) to the Subrecipient or its subcontractor or assignee.

(f) DEO shall not be responsible for withholding taxes with respect to the Subrecipient's use of funds under this Agreement. Subrecipient shall have no claim against DEO for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits or employee benefits of any kind. Subrecipient shall ensure that its employees, subcontractors and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State of Florida.

(g) Subrecipient, at all times during the Agreement, must comply with the reporting and Reemployment Assistance contribution payment requirements of Chapter 443, F.S.

(h) DEO shall not be responsible the provision of any training to Subrecipient, its employees, assigns, agents, representatives or subcontractors in the professional skills necessary to perform the work services required by this Agreement; DEO may provide training in the form of an Implementation Workshop in keeping with implementation

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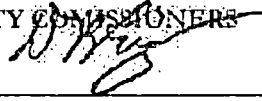
DEO Agreement No.: IR026

State of Florida
Department of Economic Opportunity
Federally Funded Subrecipient Agreement
Signature Page

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and, in the attachments and exhibits hereto, the Parties executed this Agreement by their duly authorized undersigned officials.

**MONROE COUNTY BOARD OF
COUNTY COMMISSIONERS**

By



Signature
Mayor David Rice

Title

Chair

Date

3/16/2022

Federal

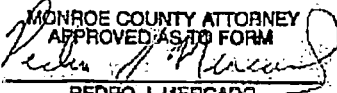
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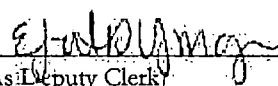
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MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

PEDRO J. MEECHAM
ASSISTANT COUNTY ATTORNEY
Date 3/23/22

Attest: KEVIN MADOK, CLERK OF
MONROE COUNTY, FLORIDA

By: 
(As: Deputy Clerk)

Date: 3/16/2022

**DEPARTMENT OF ECONOMIC
OPPORTUNITY**

By

DocuSigned by:


Signature
Dane Eagle

Title

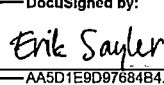
Secretary

Date

3/31/2022

Approved as to form and legal sufficiency, subject
only to full and proper execution by the Parties.

OFFICE OF GENERAL COUNSEL
DEPARTMENT OF ECONOMIC OPPORTUNITY

DocuSigned by:
By: 

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Approved Date: 3/25/2022

FILED FOR RECORD
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MONROE COUNTY, FL

Attachment A – Project Description and Deliverables

1. 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 **General Infrastructure Program**. Projects eligible for funding under this program must be from units of general local government (UGLG) include towns, cities, counties and villages. Eligible Activities include projects that demonstrably increase community resilience. The following types of infrastructure projects are encouraged:

1. Restoration of critical infrastructure
2. Renourishment of protective coastal dune systems and state beaches
3. Building or fortifying buildings that are essential to the health, safety and welfare of a community
4. Rehabilitation or construction of stormwater management systems
5. Improvements to drainage facilities
6. Reconstruction of lift stations and sewage treatment plants
7. Road repair and improvement and bridge strengthening

2. PROJECT DESCRIPTION

Monroe County was awarded \$8,181,489.00 of CDBG-MIT funds to complete drainage improvements in a low-lying subdivision on Big Pine Key that was severely impacted by Hurricane Irma and is subject to frequent and persistent flooding due to a variety of causes. Monroe County will use these funds to repair Father Tony Way between Avenues C and J by raising roadways and reconstructing the stormwater drainage systems and installing two pump stations in the surrounding areas. This will serve the Big Pine Key subdivision and help to mitigate flooding of future storms and repair the damage Hurricane Irma left in its wake.

The town consists of an LMI population of 78.9%. The county has already designed the project through WSP USA inc. The county is providing no additional funds.

3. SUBRECIPIENT RESPONSIBILITIES:

- A. Complete and submit to DEO within thirty (30) days of Agreement execution a staffing plan which must be reviewed and approved by the DEO Grant Manager prior to implementation. Should any

changes to the staffing plan be deemed necessary, an updated plan must be submitted to DEO for review and approval within forty-five (45) days. The staffing plan must include the following:

- 1) Organizational Chart; and
 - 2) Job descriptions for Subrecipient's employees, contracted staff, vendors and contractors.
- B.** Develop and submit a copy of the following policies and procedures to the DEO Grant Manager for review and approval within thirty (30) days of Agreement execution. The DEO Grant Manager will provide approval in writing prior to the policies and procedures being implemented.
- 1) Procurement policies and procedures that incorporate 2 CFR Part 200.317-327.
 - 2) Administrative financial management policies, which must comply with all applicable HUD CDBG-MIT and State of Florida rules.
 - 3) Quality assurance and quality control system policies and procedures that comply with all applicable HUD CDBG-MIT and DEO policies.
 - 4) Policies and procedures to detect and prevent fraud, waste and abuse that describe how the subrecipient will verify the accuracy of monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring policy, and which items will be monitored, and procedures for referring instances of fraud, waste and abuse to HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email hotline@hudoig.gov).
 - 5) Policies and procedures for the requirements under 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award.
- C.** Attend fraud related training offered by HUD OIG to assist in the proper management of the CDBG-MIT grant funds when available.
- D.** Upload required documents into a system of record provided by DEO.
- E.** Complete and submit an updated Project Detail Budget (Attachment B) for review and approval by DEO no later than thirty (30) days after Agreement execution. Any changes to the Project Detail Budget must be submitted in the monthly report submitted to DEO for review and approval by the DEO Grant Manager.
- F.** Maintain organized subrecipient agreement files and make them accessible to DEO or its representatives upon request.
- G.** Comply with all terms and conditions of the subrecipient agreement, Infrastructure Program Guidelines, Action Plans, Action Plan amendments, and Federal, State and local laws.
- H.** Provide copies of all proposed procurement documents to DEO ten (10) business days prior to posting as detailed in Attachment D of Subrecipient Agreement. The proposed procurement documents will be reviewed and approved by DEO Grant Manager. Should the procurement documents require revisions based on state or federal requirements, Subrecipient will be required to postpone procurement and submit revised documents for review and approval.
- I.** Provide the following documentation to DEO within ten (10) calendar days after the end of each month:
- 1) A revised detail report measuring the actual cost versus the projected cost;
 - 2) An updated Attachment C which documents any changes to the projected progress along with justification for the revision.
- J.** Develop and submit to DEO a monthly revised detailed timeline for implementation consistent with the milestones outlined in the Infrastructure Program Guidelines and report actual progress against the projected progress ten (10) calendar days after the end of each month.
- K.** Provide the following information on a quarterly basis within ten (10) calendar days of the end of each quarter:
- 1) Submit updated organization chart on a quarterly basis with quarterly report;
 - 2) If staffing changes, there must be a submittal stating the names, job descriptions, on the monthly report deadline;
 - 3) A progress report documenting the following information:
 - a) Accomplishments within the past quarter;
 - b) Issues or risks that have been faced with resolutions; and
 - c) Projected activities to be completed within the following quarter.

- L. Subrecipient shall adhere to the deadlines for the project as agreed upon in the Attachment C-Activity Work Plan. If Subrecipient is unable to meet a deadline with thirty (30) calendar days of the due date, Subrecipient shall request an extension of such deadline from DEO in writing no later than thirty (30) business days prior to the deadline. Deadlines shall not be extended outside of the term of this Agreement except by a formal amendment executed in accordance with Section (4) Modification of Agreement.
- M. Close out report is due no later than sixty (60) calendar days after this Agreement ends or is otherwise terminated.
- N. Subrecipient shall provide pictures to document progress and completion of tasks and final project.

4. ELIGIBLE TASKS AND DELIVERABLES:

A. Deliverable No. 1 – Project Implementation

Tasks that are eligible for reimbursement are as follows:

1. Professional services to the County for technical assistance and program management (Davis-Bacon review, Section 3 activities).
2. Environmental review, administrative activities (Environmental Exemption, Public Notice Publication(s), etc.).
3. Grant management to include invoicing, record keeping, prepare and award bids to vendors.
4. Project Closeout, Engineer's Certification of Completion, Grant Closeout Package Completed and Submitted to DEO

B. Deliverable No. 2 – Engineering Services

Tasks that are eligible for reimbursement are as follows:

1. Create a full design package(s), signed and sealed by a Professional Engineer (PE) licensed in the State of Florida, including engineering drawings, specifications, construction cost estimate, surveys, and any other reports, documents, or information relevant to this project and meet all local current hurricane code ratings, local codes and building codes
2. Obtain copies of all permit applications, correspondence with permitting agencies, final permits, and any other permit-related documentation for the project.
3. Conduct an Environmental Review/Assessment in accordance with DEO Policies and the National Environmental Policy Act referenced in Attachment D, 4., b. of this agreement.

C. Deliverable No. 3 – Construction

Tasks that are eligible for reimbursement are as follows:

1. Site(s) Preparation;
2. Demolition of roadway;
3. Purchase of materials for construction of Father Tony Way and intersecting roadway segments between Ave C and Ave J within the applied service area.
4. Purchase of materials and construct raised roadway;
5. Purchase of materials and installation of stormwater collection system;
6. Purchase of materials and installation of stormwater treatment; and
7. Purchase of materials and installation of stormwater disposal system.
8. Construction of two pump stations.

5. DEO'S RESPONSIBILITIES:

- A. Monitor the ongoing activities of Subrecipient to ensure all activities are being performed in accordance with the Agreement to the extent required by law or deemed necessary by DEO in its discretion
- B. Assign a Grant Manager as a point of contact for Subrecipient
- C. Review Subrecipient's invoices described herein and process them on a timely basis

D. DEO shall monitor progress, review reports, conduct site visits, as DEO determines necessary at DEO's sole and absolute discretion, and process payments to Subrecipient

6. DELIVERABLES: Subrecipient agrees to provide the following services as specified:

Deliverable No. 1 – Project Implementation		
TASKS	MINIMUM LEVEL OF SERVICE	FINANCIAL CONSEQUENCES
Subrecipient shall provide Project Implementation activities in accordance with Section 4.A of this Scope of Work, which shall be reimbursed upon satisfactory completion of an eligible task as detailed in Sections 4.B and 4.C, Deliverables 2 and 3, as identified in this Scope of Work.	Subrecipient may request reimbursement upon completion of a minimum of one (1) task on a per completed task basis associated with a completed task as identified in Sections 4.B and 4.C, Deliverables 2 and 3, as evidenced by submittal of the following documentation: 1) Summary of Project Implementation activities; and 2) Invoice package in accordance with Section 7 of this Scope of Work.	Failure to complete the Minimum Level of Service as specified shall result in non-payment for this deliverable for each payment request.
Deliverable 1 Cost- \$409,074.45		
Deliverable No. 2 – Engineering Services		
TASKS	MINIMUM LEVEL OF SERVICE	FINANCIAL CONSEQUENCES
Subrecipient shall complete tasks as detailed in Section 4.B of this Scope of Work.	Subrecipient may request reimbursement upon completion of a minimum of one (1) task in accordance with Section 4.B of this Scope of Work, evidenced by submittal of the following documentation: 1) Engineering design working drawings and associated cost estimates; 2) Copies of all required permits; and 3) Invoice package in accordance with Section 7 of this Scope of Work.	Failure to complete the Minimum Level of Service as specified shall result in non-payment for this deliverable for each payment request.
Deliverable 2 Cost- \$630,332.00		
Deliverable No. 3 – Construction		
TASKS	MINIMUM LEVEL OF SERVICE	FINANCIAL CONSEQUENCES
Subrecipient shall complete tasks as detailed in Section 4.C. of this Scope of Work.	Subrecipient may request reimbursement upon completion in accordance with Section 4.C of this Scope of Work in the following increments: 10%, 20%, 30%, 40%, 50%, 60%, 70%, 80%, 90% and 100%, evidenced by	Failure to complete the Minimum Level of Service as specified shall result in non-payment for this deliverable for each payment request.

	submittal of the following documentation: 1) AIA forms G702 and G703, or similar accepted DEO form, completed by a licensed professional certifying to the percentage of project completion; 2) Photographs of project in progress and completed; and 3) Invoice package in accordance with Section 7 of this Scope of Work.	
Deliverable 3 Cost- \$7,142,082.55		
Total Project Costs Not to Exceed: \$8,181,489		

COST SHIFTING: The deliverable amounts specified within the Deliverables Section 6 table above are established based on the Parties' estimation of sufficient delivery of services fulfilling grant purposes under the Agreement in order to designate payment points during the Agreement Period; however, this is not intended to restrict DEO's ability to approve and reimburse allowable costs Subrecipient incurred providing the deliverables herein. Prior written approval from DEO's Grant Manager is required for changes to the above Deliverable amounts that do not exceed **25%** of each deliverable total funding amount. Changes that exceed **25%** of each deliverable total funding amount will require a formal written amendment request from Subrecipient, as described in **MODIFICATION** section of the Agreement. Regardless, in no event shall DEO reimburse costs of more than the total amount of this Agreement.

7. INVOICE SUBMITTAL

DEO shall reimburse Subrecipient in accordance with Section 6, above. In accordance with the Funding Requirements of s. 215.971(1), F.S. and Section 21 of this Agreement, Subrecipient and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during this Agreement. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures (<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>).

- A. Subrecipient shall provide one invoice per month for services rendered during the applicable period of time as defined in the deliverable table. In any month no deliverable has been completed, the subrecipient will provide notice that no invoicing will be submitted.
- B. The following documents shall be submitted with the itemized invoice:
 1. A cover letter signed by Subrecipient's Grant Manager certifying that the costs being claimed in the invoice package: (1) are specifically for the project represented to the State in the budget appropriation; (2) are for one or more of the components as stated in Section 6, DELIVERABLES, of this Attachment A; (3) have been paid; and (4) were incurred during this Agreement.
 2. Subrecipient's invoices shall include the date, period in which work was performed, amount of reimbursement, and work completed to date;
 3. A certification by a licensed professional using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete.
 4. Photographs of the project in progress and completed work;
 5. A copy of all supporting documentation for vendor payments;
 6. A copy of the bank statement that includes the cancelled check or evidence of electronic funds transfer. The State may require any other information from Subrecipient that the State deems necessary to verify that the services have been rendered under this Agreement.

- C. Subrecipient's invoice and all documentation necessary to support payment requests must be submitted into DEO's Subrecipient Management Reporting Application (SERA). Further instruction on SERA invoicing and reporting, along with a copy of the invoice template, will be provided upon execution of the Agreement.

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Attachment B – Project Budget (Example)

Subrecipient: _____		Contract Number: _____			Modification Number: _____								
Activity/Project		National Objective			Beneficiaries					Budget			
Activity	Description	LMI	Slum & Blight	Urgent Need	VLI	LI	MI	Non-LMI	Total	CDBG-MIT Amount	Other Funds	Source*	Total Funds
1. Housing Program - Homeowner Service Project <i>(Example Activities)</i>													
	Home Repair												
	Reconstruction												
	Replacement of Manufactured Homes												
	Temporary Rental and Mortgage Assistance												
	Buyout / Acquisition for Redevelopment												
2. Housing Program - Supportive Housing Initiative PUD Rental Housing Project <i>(Example Activities)</i>													
3. Public Facilities Program – Unified Service Center <i>(Example Activities)</i>													
4. Infrastructure Program <i>(Example Activities)</i>													
	Armstrong Drainage Project												
	Hastings Phase I Sewer												
	Hastings Phase II Sewer												

BIO Agreement Worksheet											
	Oyster Creek Basin Improvements										
	Orange Street Drainage										
	Avenue D Drainage										
	St. Augustine - Lake Maria Sanchez HMGP Match Drainage										
	St. Augustine Blvd & Cypress Rd Drainage										
5.	Administration										
6.	Planning										
	Totals:										

Source of Other Funds	Amount
1.	
2.	
3.	
4.	

Attachment C – Activity Work Plan (Example)

Subrecipient _____ Activity: _____ Project Budget: _____

Contract Number: _____ Date Prepared: _____ Modification Number: _____

Start Date (month /year)	End Date (month /year)	Describe Proposed Action	Activity	Description	Deliverable	Associated Task	CDBG-MIT Funding	Local/Match Funding	Estimated Funds by End Date

Attachment D – Program and Special Conditions

1. The Subrecipient shall demonstrate that progress is being made in completing project activities in a timely fashion pursuant to the activity work plan. If the Subrecipient does not comply with the activity work plan schedule, a justification for the delay and a plan for timely accomplishment shall be submitted to DEO within 21 calendar days of receiving DEO's request for justification for the delay. Any project for which the Subrecipient has not completed the activities listed in the Activity Work Plan may be rescinded unless DEO agrees that the Subrecipient has provided adequate justification for the delay.
2. The Subrecipient shall maintain records of expenditure of funds from all sources that will allow accurate and ready comparison between the expenditures and the budget/activity line items as defined in the Project Detail Budget and Activity Work Plan.
3. The Subrecipient shall request DEO's approval for all professional services contracts and/or agreements that will be reimbursed with CDBG-MIT funds. Copies of the following procurement documents must be provided to DEO for review:
 - a. When publication of a Request for Proposal (RFP) is used as a means of solicitation, a copy of the advertisement, including an affidavit of publication;
 - b. DEO will either approve the procurement or notify the Subrecipient that the procurement cannot be approved because it violates State, Federal or local procurement guidelines. The Subrecipient shall notify DEO in writing no later than 90 calendar days from the effective date of this agreement if it will not be procuring any professional services or if it will be using non-CDBG-MIT funds to pay for professional services.
4. Prior to the obligation or disbursement of any funds, except for administrative expenses and not to exceed \$5000, the Subrecipient shall complete the following:
 - a. Submit for DEO's approval the documentation required in paragraph 3 above for any professional services contract. The Subrecipient proceeds at its own risk if more than the specified amount is incurred before DEO approves the procurement. If DEO does not approve the procurement of a professional services contract, the local government will not be able to use CDBG-MIT funds for that contract beyond \$5,000.
 - b. Comply with 24 CFR part 58 and the regulations implementing the National Environmental Policy Act, 40 CFR §§ 1500-1508. When the Subrecipient has completed the environmental review process, it shall submit a Request for Release of Funds and Certification. DEO will issue an Authority to Use Grant Funds (form HUD-7015.16) when this condition has been fulfilled to the satisfaction of DEO. If DEO has not issued an Authority to use Grant Funds within 15 days of Subrecipient's submission of the required documentation, DEO shall provide the Subrecipient a written update regarding the status of the review process. **SUBRECIPIENT SHALL NOT BEGIN CONSTRUCTION BEFORE DEO HAS ISSUED THE "AUTHORITY TO USE GRANT FUNDS."**
5. The Subrecipient agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601-4655; hereinafter, the "URA"), implementing regulations at 24 CFR part 42, 49 CFR part 24 and 24 CFR § 570.606(b), the requirements of 24 CFR § 42.325 – 42.350 governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5304(d)), and the requirements in 24 CFR § 570.606(d), governing optional relocation assistance policies.
6. If the Subrecipient undertakes any activity subject to the URA, the Subrecipient shall document completion of the acquisition by submitting all documentation required for a desk monitoring of the acquisition, including a notice to property owners of his or her rights under the URA, an invitation to accompany the appraiser, all appraisals, offer to the owner, acceptance, contract for sale, statement of settlement costs, copy of deed, waiver of rights (for donations), as applicable. The documentation shall be submitted prior to completing the acquisition (closing) so that DEO can

determine whether remedial action may be needed. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR § 570.606(b)(2), that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project.

7. The Subrecipient shall timely submit completed forms for all prime and subcontractors as required by this Agreement, DEO, HUD, and applicable, regulations and guidance laws, specifically including but not limited to:
 - a. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions);
 - b. Section 3 Participation Report (Construction Prime Contractor);
 - c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Subcontractor), (if applicable); and
 - d. Section 3 Participation Report (Construction Subcontractor), (if applicable).
8. In addition, each construction contract or agreement for new or replacement housing must contain language that requires the contractor to meet the Green Building Standard for Replacement and New Construction of Residential Housing, as defined in the Allocation notice published in the Federal Register Volume 81, Number 224 on Monday, November 21, 2016.
9. For each Request for Funds (RFF) that includes reimbursement of construction costs, the Subrecipient shall provide a copy of the American Institute of Architects (AIA) form G702, Application and Certification for Payment, or a comparable form approved by DEO, signed by the contractor and inspection engineer, and a copy of form G703, Continuation Sheet, or a comparable form approved by DEO. For each RFF that includes construction costs, the Subrecipient shall provide a copy of AIA form G702, or a comparable form approved by DEO, if applicable, signed by the contractor and the local building inspector or housing specialist and a copy of form G703, or a comparable form approved by DEO, if applicable.
10. For each project, when the Subrecipient issues the Notice to Proceed to the contractor(s), copies of the following documents shall be sent to DEO:
 - a. Notice to Proceed;
 - b. The contractor's performance bond (100 percent of the contract price); and
 - c. The contractor's payment bond (100 percent of the contract price).
11. The Subrecipient shall undertake an activity each quarter to affirmatively further fair housing pursuant to 24 CFR § 570.487(b).
12. The Subrecipient shall ensure that a deed restriction is recorded on any real property or facility, excluding easements, acquired with CDBG-MIT funds. This restriction shall limit the use of that real property or facility to the use stated in the subgrant application and that title shall remain in the name of the Subrecipient. Such deed restriction shall be made a part of the public records in the Clerk of Court of the county in which the real property is located. Any future disposition of that real property shall be in accordance with 24 CFR § 570.505. Any future change of use of real property shall be in accordance with 24 CFR § 570.489(j).
13. The Subrecipient shall comply with the historic preservation requirements of the National Historic Preservation Act of 1966, as amended, the procedures set forth in 36 CFR part 800, and the Secretary of the Interior's Standards for Rehabilitation, codified at 36 CFR 67, and Guidelines for Rehabilitating Historic Buildings.
14. Pursuant to section 102(b), Public Law 101-235, 42 U.S.C. § 3545, the Subrecipient shall update and submit Form HUD 2880 to DEO within thirty (30) calendar days of the Subrecipient's knowledge of changes in situations which would require that updates be prepared. The Subrecipient must disclose:
 - a. All developers, contractors, consultants and engineers involved in the application or in the planning, development or implementation of the project or CDBG- MIT-funded activity; and

- b. Any person or entity that has a financial interest in the project or activity that exceeds \$50,000 or 10 percent of the grant, whichever is less.
15. If required, the Subrecipient shall submit a final Form HUD 2880, to DEO with the Subrecipient's request for administrative closeout, and its absence or incompleteness shall be cause for rejection of the administrative closeout.
16. Conflicts of interest relating to procurement shall be addressed pursuant to 24 CFR § 570.489(g). Title 24 CFR § 570.489(h) shall apply in all conflicts of interest not governed by 24 CFR § 570.489(g), such as those relating to the acquisition or disposition of real property; CDBG-MIT financial assistance to beneficiaries, businesses or other third parties; or any other financial interest, whether real or perceived. Additionally, the Subrecipient agrees to comply with, and this Agreement is subject to, Chapter 112 F.S.
17. Any payment by the Subrecipient using CDBG-MIT funds for acquisition of any property, right-of-way, or easement that exceeds fair market value as determined through the appraisal process established in HUD Handbook 1378 shall be approved in writing by DEO prior to distribution of the funds. Should the Recipient fail to obtain DEO pre-approval, any portion of the cost of the acquisition exceeding Fair Market Value shall not be paid or reimbursed with CDBG-MIT funds.
18. The Subrecipient shall take photographs or video of all activity locations prior to initiating any construction. As the construction progresses, additional photography or videography shall document the ongoing improvements. Upon completion of construction, final documentation of the activity locations will be provided to DEO with the administrative closeout package for this Agreement.
19. If an activity is designed by an engineer, architect or other licensed professional, it shall be certified upon completion by a licensed professional as meeting the specifications of the design, as may have been amended by change orders. The date of completion of construction shall be noted as part of the certification. This certification shall be accomplished prior to submission of an administrative closeout package and a copy of the certification shall be submitted with the administrative closeout package.

Attachment E – State and Federal Statutes, Regulations, and Policies

The CDBG-MIT funds available to the Subrecipient through this agreement constitute a subaward of DEO's Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This agreement includes terms and conditions of DEO's Federal award that are imposed on the Subrecipient and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

The Subrecipient agrees to, and, by signing this Agreement, certifies that, it will comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-MIT funds available under this agreement. These Federal Register notices include, but are not limited to, Federal Register Guidance Vol. 84, No. 169/Friday, August 30, 2019/Notices, Vol. 81, No. 224/Monday, November 21, 2016/Notices, Volume 83, No. 28/Friday, February 9, 2018/Notices, Volume 82, No. 11/Wednesday, January 18, 2017/Notices, Volume 82, No. 150/Monday, August 7, 2017/Notices, and Vol. 83, No. 157/Tuesday, August 14, 2018/Notices. Notwithstanding the foregoing, (1) the Subrecipient does not assume any of DEO's responsibilities for environmental review, decision-making and action, described in 24 CFR part 58 and (2) the Subrecipient does not assume any of DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also comply with all other applicable Federal, state and local laws, regulations and policies as now in effect and as may be amended from time to time that govern the use of the CDBG-MIT funds in complying with its obligations under this agreement, regardless of whether CDBG-MIT funds are made available to the Subrecipient on an advance or reimbursement basis.

The Subrecipient also agrees to use funds available under this Agreement to supplement rather than supplant funds otherwise available. The Subrecipient further agrees to comply with all other applicable Federal, State, and local laws, regulations and policies governing the funds provided under this Agreement, including, but not limited to the following:

1. State of Florida Requirement

State of Florida Requirements are stated throughout this Agreement and Attachments thereto.

2. Audits, Inspections and Monitoring

a. Single Audit

The Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

b. Inspections and Monitoring

The Subrecipient shall permit DEO and auditors to have access to the Subrecipient's records and financial statements as necessary for DEO to meet the requirements of 2 CFR part 200.

The Subrecipient must submit to monitoring of its activities by DEO as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this agreement.

This review must include:

- (1) Reviewing financial and performance reports required by DEO;
- (2) Following up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from DEO detected through audits, on-site reviews, and other means; and
- (3) Issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from DEO as required by 2 CFR §200.521.

c. Corrective Actions

The Subrecipient shall be subject to reviews and audits by DEO, including onsite reviews of the Subrecipient as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2). DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site. DEO may impose additional conditions on the use of the CDBG-MIT funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

3. Drug-Free Workplace

Subrecipients must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the government-wide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

4. Procurement and Contractor Oversight

The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.327 when procuring property and services under this agreement. The Subrecipient shall impose the Subrecipient's obligations under this agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities, specifically including, 24 CFR 570.609 or 24 CFR 570.489, as applicable. CDBG funds may not be provided to excluded or disqualified persons.

The Subrecipient shall maintain oversight of all activities under this agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this agreement. To check for debarred or suspended entities, please visit <https://www.sam.gov/SAM/>

5. Property Standards

Real property acquired by the Subrecipient under this agreement shall be subject to 24 CFR 570.489(j) and 24 CFR 570.200(j). The Subrecipient shall also comply with the Property Standards at 2 CFR 200.310, 2 CFR 200.312, 2 CFR 200.314 through 2 CFR 200.316. The Subrecipient shall also comply with 2 CFR 200.313 Equipment, except that when the equipment is sold, the proceeds shall be program income and equipment not needed by the Subrecipient for activities under this agreement shall be transferred to DEO for its CDBG-MIT program or shall be retained after compensating DEO.

The Subrecipient shall also comply with the Property Standards in 2 CFR 200.310 through 2 CFR 200.316, except to the extent they are inconsistent with 24 CFR 570.200(j) and 24 CFR 570.489(j), in which case Subrecipient shall comply with 24 CFR 570.200(j) and 24 CFR 570.489(j), except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this agreement, pursuant to 24 CFR 570.489(e)(1)(ii).

6. Federal Funding Accountability and Transparency Act (FFATA)

The Subrecipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM, <https://www.sam.gov/SAM/> in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number <https://fedgov.dnb.com/webform/>. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

7. Relocation and Real Property Acquisition

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606.

In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the URA shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

8. Non-discrimination

a. 24 CFR Part 6

The Subrecipient will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion or sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-MIT funds. Thus, the Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.

b. Architectural Barriers Act and the Americans with Disabilities Act

The Subrecipient shall ensure that its activities are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995 and meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

c. State and Local Nondiscrimination Provisions

The Subrecipient must comply with the Florida Small and Minority Business Assistance Act (§§ 288.703-288.706, F.S.); Title VI of the Civil Rights Act of 1964 (24 CFR part 1)

(1) General Compliance

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended. No person in the United States shall, on the grounds 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 funded by this agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under 24 CFR part 1. The identity of complainants shall

be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(2) Assurances and Real Property Covenants

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1.

If the Federal financial assistance under this agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives DEO and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-MIT funds and provided to the Subrecipient under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

d. Affirmative Action

(1) Approved Plan

The Subrecipient agrees that it shall carry out pursuant to DEO's specifications an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 42 CFR 60. DEO shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this agreement.

(2) Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this agreement.

(3) Notifications

The Subrecipient 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 worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

9. Labor and Employment

Labor Standards

The Subrecipient shall comply with the in labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis- Bacon Act, as amended (40 U.S.C. 3141, *et seq.*) and 29 CFR part 1, 3, 5, 6 and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to DEO for review upon request.

10. Section 3 of the Housing and Urban Development Act of 1968

a. Low-Income Person Definition

A low-income person, as this term is defined in Section 3 (b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher and or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low—income families; or (ii) A very low-income person, as this term is defined in Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437 a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

b. Compliance

Subrecipient shall comply with the provisions of Section 3 of the Housing Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing its implementing regulations at 24 CFR part 75 (formerly 24 CFR part 135). Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with existing Federal, state and local laws and regulations. Accordingly, a subrecipient of Section 3-covered assistance is required to develop strategies for meeting both the regulatory requirements at 24 CFR part 75 and any other applicable statutes or regulations. Subrecipient and any of its contractors and subcontractors shall include the following "Section 3 clause" in every "Section 3-covered contract":

- (1) 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 U.S.C. 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.
- (2) 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.
- (3) 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; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (4) 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 action, 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.
- (5) 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.F. 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.
- (6) 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.
- (7) 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 (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).

c.. Section 3 Benchmarks and Reporting

- A. Benchmarks. Contracts over \$200,000 trigger Section 3 Benchmark requirements. When triggered, best efforts must be made to extend Section 3 opportunities to verified Section 3 residents 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.
- B. 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.
- C. Recipient will comply with any Section 3 Project Implementation Plan documents provided by HUD or DEO which may be amended from time to time for HUD reporting purposes.

11. Conduct

a. Hatch Act

The Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

b. Conflict of Interest

In the procurement of supplies, equipment, construction, and services pursuant to this agreement, the Subrecipient shall comply with the conflict of interest provisions in DEO's procurement policies and procedures.

In all cases not governed by the conflict of interest provisions in DEO's procurement policies and procedures, the Subrecipient shall comply with the conflict of interest provisions in 24 CFR 570.489(h).

c. Lobbying Certification

The Subrecipient hereby certifies that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (3) The language of paragraph (i) through (iv) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- (4) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

d. Religious Activities

The Subrecipient agrees that funds provided under this agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

Equal Treatment for Faith-Based Organizations. Prohibits any State or local government receiving funds under any Department program, or any intermediate organization with the same duties as a governmental entity, from discriminating for or against an organization on the basis of the organization's religious character or affiliation. Prohibits religious organizations from engaging in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance.

Prohibits an organization that participates in programs funded by direct financial assistance from the Department, in providing services, from discriminating against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations.

e. Environmental Conditions

(1) Prohibition on Choice Limiting Activities Prior to Environmental Review

The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision-making and action (see 24 CFR part 58) and is not delegated DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity. If DEO has not issued an Authority to Use Grant Funds within 15 days of Subrecipient's submission of the required documentation, DEO shall provide the Subrecipient a written update regarding the status of the review process.

(2) Air and Water

The Subrecipient shall comply with the following requirements insofar as they apply to the performance of this agreement:

- (a) Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93); and

- (b) Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.
- (c) The Clean Air and Water Act: If this Contract is in excess of \$100,000, Contractor shall comply with all applicable standards, orders or regulations issued under the Clean Air Act, as amended, 42 U.S.C. 7401, Section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368, *et seq.*, Executive Order 11738 and Environmental Protection Agency regulations. Contractor shall report any violation of the above to DEO.
- (d) Energy Efficiency: Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Florida's energy conservation plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163.
- (3) Flood Disaster Protection
The Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, the Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notices governing the CDBG-MIT award and listed at the beginning of this Attachment.
- (4) Lead-Based Paint
The Subrecipient shall follow DEO's procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.
- (5) Historic Preservation
The Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

- (6) Additional Regulations
 - (a) The Temporary Assistance for Needy Families Program ("TANF"), 45 CFR Parts 260-265, the Social Services Block Grant ("SSBG"), 42 U.S.C. 1397d, and other applicable federal regulations and policies promulgated thereunder.
 - (b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, *et seq.*, which prohibits discrimination on the basis of sex in educational programs.
 - (c) Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.
 - (d) The Pro-Children Act: Contractor agrees to comply with the Pro-Children Act of 1994, 20 U.S.C. 6083. Failure to comply with the provisions of the law may result in the imposition of civil monetary penalty up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. This clause is applicable to all approved sub-contracts. In compliance with Public Law (Pub. L.) 103-277, the Contract shall not permit smoking in any portion of any indoor facility used for the provision of federally funded services including health, day care, early childhood development, education or library services on a routine or regular basis, to children up to age 18.

- (e) Public Announcements and Advertising: When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, Contractor shall clearly state (1) the percentage of the total costs of the program or project which will be financed with federal money, (2) the dollar amount of federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.
- (f) Purchase of American-Made Equipment and Products: Contractor assures that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement will be American-made.
- (g) The Consolidated Appropriations Act, 2010, Division E, Section 511 (Pub. L. 111-117), which prohibits distribution of federal funds made available under the Act to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries. The Continuing Appropriations Act, 2011, Sections 101 and 103 (Pub. L. 111-242), provides that appropriations made under Pub. L. 111-117 are available under the conditions provided by Pub. L. 111-117.
- (h) Contract Work Hours and Safety Standards Act (40 U.S.C. §327–333) — If this Contract involves federal funding in excess of \$2,000 for construction contracts or in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5) is required. Under section 102 of the Act, each contractor shall 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 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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.
- (i) Resource Conservation and Recovery Act (RCRA). Under RCRA (Pub. L. 94–580 codified at 42 U.S.C. 6962), state and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.
- (j) Immigration Reform and Control Act. Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986, which requires employment verification and retention of verification forms for any individuals hired who will perform any services under the contract.

When it is determined that the Subrecipient is in non-compliance with federal or state program requirements, the State may impose any of the additional conditions and/or requirements outlined in 2 CFR § 200.207.

Attachment F – Civil Rights Compliance

Fair Housing

As a condition for the receipt of CDBG-MIT funds, each Subrecipient must certify that it will "affirmatively further fair housing" in its community. A Subrecipient shall demonstrate its commitment to affirmatively further fair housing by implementing the actions listed below.

Each Subrecipient shall do the following:

1. Have in place a fair housing resolution or ordinance that covers all Federally protected classes (race, color, familial status, handicap, national origin, religion and sex);
2. Designate an employee as the Fair Housing Coordinator who is available during regular business hours to receive fair housing calls;
3. Publish the Fair Housing Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask fair housing questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website;
4. Establish a system to record the following for each fair housing call:
 - a) The nature of the call,
 - b) The actions taken in response to the call,
 - c) The results of the actions taken and
 - d) If the caller was referred to another agency, the results obtained by the referral agency;
5. Conduct at least one fair housing activity each quarter. Identical activities (see examples below) shall not be conducted in consecutive quarters; and
6. Display a fair housing poster in the CDBG-MIT Office. (This does not count as a fair housing activity.)

The Subrecipient shall ensure that the fair housing contact person has received training so that he/she can handle fair housing phone inquiries or refer the inquiries to the appropriate people/agencies. Records maintained by the contact will help the community do the following:

1. Define where discriminatory practices are occurring,
2. Help the community measure the effectiveness of its outreach efforts, and
3. Provide the community with a means to gain information that can be used to design and implement strategies that will eliminate fair housing impediments.

Examples of fair housing activities include the following:

1. Making fair housing presentations at schools, civic clubs and neighborhood association meetings;
2. Conducting a fair housing poster contest or an essay contest;
3. Manning a booth and distributing fair housing materials at libraries, health fairs, community events, yard sales and church festivals; and
4. Conducting fair housing workshops for city/county employees, realtors, bank and mortgage company employees, insurance agents and apartment complex owners.

Printing a fair housing notice on a utility bill is no longer accepted as a fair housing activity; however, mailing a DEO-approved fair housing brochure as an insert with utility bills will be accepted as an activity. Placing posters in public buildings does not meet the requirement for a fair housing activity.

The Subrecipient shall document its fair housing activities by keeping photographs, newspaper articles, sign-in sheets and copies of handouts in their CDBG-MIT project file and include information about the activities in the comment section of each quarterly report.

Equal Employment Opportunity

As a condition for the receipt of CDBG-MIT funds, each Subrecipient must certify that it and the contractors, subcontractors, subrecipients and consultants that it hires with CDBG-MIT funds will abide by the Equal Employment Opportunity (EEO) Laws of the United States. A Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

Each Subrecipient shall do the following:

1. Have in place an equal employment opportunity resolution or ordinance that protects its applicants and employees and the applicants and employees of its contractors, subcontractors, subrecipients and consultants from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral and other aspects of employment, on the basis of race, color, religion, sex, national origin, disability, age or genetics;
2. Designate an employee as the EEO Coordinator who is available during regular business hours to receive EEO calls;
3. Publish the EEO Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask EEO questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
4. Establish a system to record the following for each EEO call:
 - a) The nature of the call,
 - b) The actions taken in response to the call and
 - c) The results of the actions taken;
5. Each Subrecipient shall maintain a list of certified minority-owned business enterprises (MBE) and women-owned business enterprises (WBE) that operate in its region. The Subrecipient shall use this list to solicit companies to bid on CDBG-MIT-funded construction activities and shall provide a copy of the list to the prime contractor(s) to use when it hires subcontractors and consultants. The Department of Management Services maintains a list of certified minority- and women-owned businesses that can be used to develop a local MBE/WBE list at the following website: <https://osd.dms.myflorida.com/directories>.
6. Incorporate the Equal Employment Opportunity clause set forth in 41 CFR Part 60-1.4(b) into any contracts or subcontracts that meet the definition of "federally assisted construction contract" in 41 CFR 60-1.3.

Section 504 and the Americans with Disabilities Act (ADA)

As a condition for the receipt of CDBG-MIT funds, the Subrecipient must certify that it provides access to all federally funded activities to all individuals, regardless of handicap. The Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

The Subrecipient shall do the following:

1. Have in place a resolution or ordinance that is designed to eliminate discrimination against any person who:
 - a) Has a physical or mental impairment which substantially limits one or more major life activities,
 - b) Has a record of such an impairment or
 - c) Is regarded as having such an impairment;
2. Designate an employee as the Section 504/ADA Coordinator who is available during regular business hours to receive Section 504/ADA calls;
3. Publish the Section 504/ADA Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask Section 504/ADA questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
4. Establish a system to record the following for each Section 504/ADA call:
 - a) The nature of the call,
 - b) The actions taken in response to the call and

c) The results of the actions taken.

Section 504 prohibitions against discrimination (see 45 CFR part 84) apply to service availability, accessibility, delivery, employment and the administrative activities and responsibilities of organizations receiving Federal financial assistance. A Subrecipient of Federal financial assistance may not, on the basis of disability:

1. Deny qualified individuals the opportunity to participate in or benefit from Federally funded programs, services or other benefits,
2. Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers, or
3. Deny employment opportunities, including hiring, promotion, training and fringe benefits, for which they are otherwise entitled or qualified.

The ADA regulations (Title II, 28 CFR part 35, and Title III, 28 CFR part 36) prohibit discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability.

Title II covers all activities of state and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting and town meetings). State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision or speech disabilities.

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation and commercial facilities. Public accommodations are private entities who own, lease, lease to or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by Title III.

Section 3 - Economic Opportunities for Low- and Very Low-Income Persons

Each Subrecipient shall encourage its contractors to hire qualified low- and moderate-income residents for any job openings that exist on CDBG-MIT-funded projects in the community. The Subrecipient and its contractors shall keep records to document the number of low- and moderate-income people who are hired to work on CDBG-MIT-funded projects. The number of low- and moderate-income residents who are hired to work of the project shall be reported in the comment section of the quarterly report.

The following Section 3 clause is required to be included in CDBG-MIT-funded contracts of \$100,000 or more:

Section 3 Clause

1. 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 U.S.C. § 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 Subrecipients of HUD assistance for housing.
2. 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.
3. 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; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. 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 action, 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.
5. 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.
6. 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.
7. 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 (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).

Civil Rights Regulations

As a condition for the receipt of CDBG-MIT funds, each Subrecipient must certify that it will abide by the following Federal laws and regulations:


1. Title VI of the Civil Rights Act of 1964 – Prohibits discrimination by government agencies that receive Federal funding;
2. Title VII of the Civil Rights Act of 1964 – prohibits employment discrimination on the basis of race, color, religion, sex or national origin;
3. Title VIII of the Civil Rights Act of 1968 – as amended (the Fair Housing Act of 1988);
4. 24 CFR § 570.487(b) – Affirmatively Furthering Fair Housing;
5. 24 CFR § 570.490(b) – Unit of general local government's record;
6. 24 CFR § 570.606(b) – Relocation assistance for displaced persons at URA levels;
7. Age Discrimination Act of 1975;
8. Executive Order 12892 – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing;
9. Section 109 of the Housing and Community Development Act of 1974 – No person shall be excluded from participation in, denied benefits of or subjected to discrimination under any program or activity receiving CDBG-MIT funds because of race, color, religion, sex or national origin;
10. Section 504 of the Rehabilitation Act of 1973 and 24 CFR part 8, which prohibits discrimination against people with disabilities;
11. Executive Order 11063 – Equal Opportunity in Housing;
12. Executive Order 11246 – Equal Employment Opportunity; and
13. Section 3 of the Housing and Urban Development Act of 1968, as amended – Employment/Training of Lower Income Residents and Local Business Contracting.

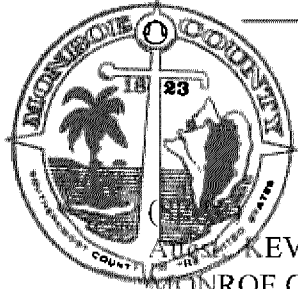
I hereby certify that Monroe County BOCC shall comply with all of the provisions and Federal regulations listed in this Attachment F.

By:  Date: 3/16/2022

Name: David Rice

Title: Mavor

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

PEDRO J. MERCADO
ASSISTANT COUNTY ATTORNEY
Date: 3/22/22



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KEVIN MADOK, CLERK OF
MONROE COUNTY, FLORIDA

By: 
As Deputy Clerk

Date: 3/16/2022

Attachment G – Reports

The following reports must be completed and submitted to DEO in the time frame indicated below. Failure to timely file these reports constitutes an Event of Default, as defined in Paragraph (10) Default, of this Agreement.

1. **Monthly Progress Report** must be submitted to DEO ten (10) calendar days after the end of each month.
2. A **Quarterly Progress** Report must be submitted to DEO on forms to be provided by DEO no later than the 10th of every April, July, October and January.
3. A **Contract and Subcontract Activity** form, Form HUD-2516, currently available at https://www.hud.gov/sites/documents/DOC_36660; which is incorporated herein by reference, must be submitted by April 15 and October 15 each year through the DEO's SERA reporting system. The form must reflect all contractual activity for the period, including Minority Business Enterprise and Woman Business Enterprise participation. If no activity has taken place during the reporting period, the form must indicate "no activity".

The Subrecipient shall closeout its use of the CDBG-MIT funds and its obligations under this Agreement by complying with the closeout procedures in 2 CFR § 200.343. Activities during this close-out period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances and accounts receivable to the Subrecipient) and determining the custodianship of records.

Notwithstanding the terms of 2 CFR 200.343, upon the expiration of this Agreement, the Subrecipient shall transfer to the recipient any CDBG-MIT funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG-MIT funds. Further, any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG-MIT funds (including CDBG-MIT funds provided to the Subrecipient in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7).

4. In accordance with 2 CFR part 200, should the Subrecipient meet the threshold for submission of a single or program specific audit, the audit must be conducted in accordance with 2 CFR part 200 and submitted to DEO no later than nine months from the end of the Subrecipient's fiscal year. If the Subrecipient did not meet the audit threshold, an **Audit Certification Memo** must be provided to DEO no later than nine months from the end of the Subrecipient's fiscal year.
5. A copy of the **Audit Compliance Certification** form, Attachment J, must be emailed to audit@deo.myflorida.com within sixty (60) calendar days of the end of each fiscal year in which this subgrant was open.
6. The **Section 3 Summary Report**, form HUD-60002, must be completed and submitted through DEO's SERA reporting system by July 31, annually. The form must be used to report annual accomplishments regarding employment and other economic opportunities provided to persons and businesses that meet Section 3 requirements.
7. Request for Funds must be submitted as required by DEO and in accordance with the ***Project Description and Deliverables, Project Detail Budget and Activity Work Plan***.
8. All forms referenced herein are available online or upon request from DEO's grant manager for this Agreement.

Attachment H – Warranties and Representations

Financial Management

The Subrecipient's financial management system must comply with the provisions of 2 CFR part 200 (and particularly 2 C.F.R 200.302 titled "Financial Management"), Section 218.33, F.S., and include the following:

1. Accurate, current and complete disclosure of the financial results of this project or program.
2. Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
3. Effective control over and accountability for all funds, property and other assets. The Subrecipient shall safeguard all assets and assure that they are used solely for authorized purposes.
4. Comparison of expenditures with budget amounts for each Request for Funds (RFF). Whenever appropriate, financial information should be related to performance and unit cost data.
5. Written procedures to determine whether costs are allowed and reasonable under the provisions of the 2 CFR part 200 (and particularly 2 CFR 200 Subpart E titled "Costs Principles") and the terms and conditions of this Agreement.
6. Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions must follow the provisions of 2 CFR §§ 200.318-200.327 and be conducted in a manner providing full and open competition. The Subrecipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals shall be excluded from competing for such procurements. Awards must be made to the responsible and responsive bidder or offeror whose proposal is most advantageous to the program, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Subrecipient. Any and all bids or offers may be rejected if there is a sound, documented reason.

Codes of Conduct

The Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent shall participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in a tangible personal benefit from a firm considered for a contract. The officers, employees and agents of the Subrecipient shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of the standards by officers, employees or agents of the Subrecipient. (*See* 2 CFR § 200.318(c)(1).)

Business Hours

The Subrecipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site at all reasonable times for business. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

Licensing and Permitting

All contractors or employees hired by the Subrecipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Subrecipient.

Attachment I – Audit Requirements

The administration of resources awarded by DEO to the Subrecipient may be subject to audits and/or monitoring by DEO as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200 Subpart F - Audit Requirements, and section 215.97, F.S., as revised (see “AUDITS” below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this Agreement, the Subrecipient agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by DEO staff to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED. This part is applicable if the Subrecipient is a state or local government or nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A Subrecipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this form lists the federal resources awarded through DEO by this agreement. In determining the federal awards expended in its fiscal year, the Subrecipient shall consider all sources of federal awards, including federal resources received from DEO. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the Subrecipient conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the Subrecipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A Subrecipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the Subrecipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from Subrecipient resources obtained from other than federal entities).

PART II: STATE FUNDED. This part is applicable if the Subrecipient is a non-state entity as defined by Section 215.97(2), F.S.

1. In the event that the Subrecipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Subrecipient (for fiscal years ending June 30, 2017, and thereafter), the Subrecipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the Subrecipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.
2. For the audit requirements addressed in Part II, paragraph 1, the Subrecipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting

package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the Subrecipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the Subrecipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Subrecipient's resources obtained from other than state entities).

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), F.S., State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, F.S. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

N/A

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this form shall be submitted, when required by 2 CFR § 200.512, by or on behalf of the Subrecipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR § 200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.

2. Copies of financial reporting packages required by Part II of this form shall be submitted by or on behalf of the Subrecipient directly to each of the following:

- a. DEO at each of the following addresses:

Electronic copies (preferred): or
Audit@deo.myflorida.com

Paper (hard copy):
 Department Economic Opportunity
 MSC # 75, Caldwell Building
 107 East Madison Street
 Tallahassee, FL 32399-4126

- b. The Auditor General's Office at the following address:

Auditor General
 Local Government Audits
 342 Claude Pepper Building, Room 401
 111 West Madison Street
 Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or the management letter required by Part III of this form shall be submitted by or on behalf of the Subrecipient directly to:

Electronic copies (preferred):
Audit@deo.myflorida.com

or

Paper (hard copy):
Department Economic Opportunity
MSC # 75, Caldwell Building
107 East Madison Street
Tallahassee, FL. 32399-4126

4. Any reports, management letters, or other information required to be submitted DEO pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
5. Subrecipients, when submitting financial reporting packages to DEO for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Subrecipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION. The Subrecipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, or six (6) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The Subrecipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of six (6) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

Exhibit 1 to Attachment I – Funding Sources

Federal Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following:

Federal Awarding Agency:	U.S. Department of Housing and Urban Development
Federal Funds Obligated to Subrecipient:	\$8,181,489.00
Catalog of Federal Domestic Assistance Title:	Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii
Catalog of Federal Domestic Assistance Number:	14.228
Project Description:	Funding is provided to complete drainage improvements in a low-lying subdivision on Big Pine Key that was severely impacted by Hurricane Irma and is subject to frequent and persistent flooding due to a variety of causes.
<i>This is not a research and development award.</i>	

Compliance Requirements Applicable to the Federal Resources Awarded Pursuant to this Agreement are as Follows:

Federal Program

1. The Subrecipient shall perform its obligations in accordance with Sections 290.0401- 290.048, F.S.
2. The Subrecipient shall perform its obligations in accordance with 24 CFR §§ 570.480 – 570.497.
3. The Subrecipient shall perform the obligations as set forth in this Agreement, including any attachments or exhibits thereto.
4. The Subrecipient shall perform the obligations in accordance with chapter 73C-23.0051(1) and (3), F.A.C.
5. The Subrecipient shall be governed by all applicable laws, rules and regulations, including, but not necessarily limited to, those identified in Award Terms & Conditions and Other Instructions of the Subrecipient's Notice of Subgrant Award/Fund Availability (NFA).

State Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following: *N/A*

Matching Resources for Federal Programs: *N/A*

Subject to Section 215.97, Florida Statutes: *N/A*

Compliance Requirements Applicable to State Resources Awarded Pursuant to this Agreement are as Follows: *N/A*

NOTE: Title 2 CFR § 200.331 and Section 215.97(5), F.S., require that the information about Federal Programs and State Projects included in Exhibit 1 and the Notice of Subgrant Award/Fund Availability be provided to the Subrecipient.

Attachment J – Audit Compliance Certification

Email a copy of this form within 60 days of the end of each fiscal year in which this subgrant was open to audit@deo.myflorida.com.

Subrecipient:

FEIN:

Subrecipient's Fiscal
Year:

Contact Name:

Contact's Phone:

Contact's Email:

1. Did the Subrecipient expend state financial assistance, during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and the Department of Economic Opportunity (DEO)? ☐ Yes ☐ No

If the above answer is yes, answer the following before proceeding to item 2.

Did the Subrecipient expend \$750,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? ☐ Yes ☐ No

If yes, the Subrecipient certifies that it will timely comply with all applicable State single or project-specific audit requirements of Section 215.97, Florida Statutes and the applicable rules of the Department of Financial Services and the Auditor General.

2. Did the Subrecipient expend federal awards during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and DEO? ☐ Yes ☐ No

If the above answer is yes, also answer the following before proceeding to execution of this certification:

Did the Subrecipient expend \$750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? ☐ Yes ☐ No

If yes, the Subrecipient certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 CFR part 200, subpart F, as revised.

By signing below, I certify, on behalf of the Subrecipient, that the above representations for items 1 and 2 are true and correct.

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Title of Authorized Representative

Attachment K – Subrecipient Enterprise Resource Application (SERA) Form

Attachment K will be provided after execution of this Agreement

Attachment L

2 CFR Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

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 affected 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.”

(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.

(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 – Procurement of Recovered Materials.

(K) See 200.216 – Prohibition on certain telecommunications and video surveillance services or equipment.

(L) See 200.322 – Domestic Preferences for procurements.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

Attachment M

**State of Florida
Department of Economic Opportunity

Federally Funded
Community Development Block Grant
Disaster Recovery (CDBG-MIT) Subrogation Agreement**

This Subrogation and Assignment Agreement (“Agreement”) is made and entered into by and between the Monroe County Board of County Commissioners (hereinafter referred to as “Subrecipient”) and the State of Florida, Department of Economic Opportunity (hereinafter referred to as “DEO”).

In consideration of Subrecipient’s receipt of funds or the commitment by DEO to evaluate Subrecipient’s application for the receipt of funds (collectively, the “Grant Proceeds”) under the DEO Community Development Block Grant-Mitigation Program (the “CDBG-MIT Program”) administered by DEO, Subrecipient hereby assigns to DEO all of Subrecipient’s future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency (“FEMA”) or the Small Business Administration (“SBA”) (singularly, a “Disaster Program” and collectively, the “Disaster Programs”) that was the basis of the calculation of Grant Proceeds paid or to be paid to Subrecipient under the CDBG-MIT Program and that are determined in the sole discretion of DEO to be a duplication of benefits (“DOB”) as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA or the SBA or any other source, and whether or not such amounts are a DOB, shall be referred to herein as “Proceeds,” and any Proceeds that are a DOB shall be referred to herein as “DOB Proceeds.” Upon receiving any Proceeds, Subrecipient agrees to immediately notify DEO who will determine in its sole discretion if such additional amounts constitute a DOB. If some or all of the Proceeds are determined to be a DOB, the portion that is a DOB shall be paid to DEO, to be retained and/or disbursed as provided in this Agreement. The amount of DOB determined to be paid to DEO shall not exceed the amount received from the CDBG-MIT Program.

Subrecipient agrees to assist and cooperate with DEO to pursue any of the claims Subrecipient has against the insurers for reimbursement of DOB Proceeds under any such policies. Subrecipient’s assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Subrecipient’s name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing record and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by DEO. Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by DEO, Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to DEO, to the extent of the Grant Proceeds paid to Subrecipient under the CDBG-MIT Program, the Policies, any amounts received under the Mitigation Programs that are DOB Proceeds and/or any rights thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by DEO to consummate and make effective the purposes of this Agreement.

Subrecipient explicitly allows DEO to request of any company with which Subrecipient held insurance policies, or FEMA or the SBA or any other entity from which Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by DEO to monitor/enforce its interest in the rights assigned to it under this Agreement and give Subrecipient's consent to such company to release said information to DEO.

If Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, Subrecipient agrees to promptly pay such amounts to DEO, if Subrecipient received Grant Proceeds under the CDBG-MIT Program in an amount greater than the amount Subrecipient would have received if such DOB Proceeds had been considered in the calculation of Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, Subrecipient shall pay such subsequent Proceeds directly to DEO, and DEO will determine the amount, if any, of such subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of Subsequent DOB Proceeds shall be returned to the Subrecipient. Subsequent DOB Proceeds shall be disbursed as follows:

1. If the Subrecipient has received full payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be retained by DEO.
2. If the Subrecipient has received no payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be used by DEO to reduce payments of the Grant Proceeds to the Subrecipient, and all Subsequent DOB Proceeds shall be returned to the Subrecipient.
3. If the Subrecipient has received a portion of the Grant Proceeds, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (A) Subsequent DOB Proceeds shall first be used to reduce the remaining payments of the Grant Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to the Subrecipient; and (B) any remaining Subsequent DOB Proceeds shall be retained by DEO.
4. If DEO makes the determination that the Subrecipient does not qualify to participate in the CDBG-MIT Program or the Subrecipient determines not to participate in the CDBG-MIT Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, and this Agreement shall terminate.

Once DEO has recovered an amount equal to the Grant Proceeds paid to Subrecipient, DEO will reassign to Subrecipient any rights assigned to DEO pursuant to this Agreement.

Subrecipient represents that all statements and representations made by Subrecipient regarding Proceeds received by Subrecipient shall be true and correct as of the date of the signing of this Agreement.

Warning: Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

~ Remainder of this page is intentionally left blank ~

The person executing this Agreement on behalf of the Subrecipient hereby represents that he/she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by Subrecipient.

In any proceeding to enforce this Agreement, DEO shall be entitled to recover all costs of enforcement, including actual attorney's fees.

**MONROE COUNTY BOARD OF
COUNTY COMMISSIONERS**

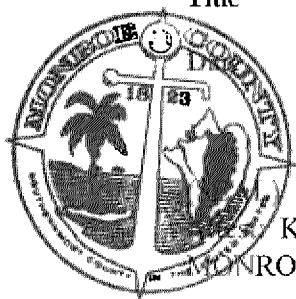
By


Signature
Mayor David Rice

Title

Chair

3/16/2022



KEVIN MADOK, CLERK OF
MONROE COUNTY, FLORIDA

**DEPARTMENT OF ECONOMIC
OPPORTUNITY**

By

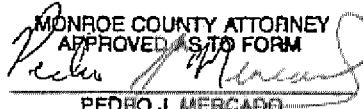

Signature
Dane Eagle

Title

Secretary

Date

3/31/2022

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

PEDRO J. MERCADO
ASSISTANT COUNTY ATTORNEY
Date 3/22/22

By:

As Deputy Clerk

Date:

3/16/2022

RESOLUTION NO. 078 -2022

A RESOLUTION BY THE MONROE COUNTY BOARD
OF COUNTY COMMISSIONERS APPROVING THE
FLORIDA DEPARTMENT OF ECONOMIC
OPPORTUNITY (DEO) SUBRECIPIENT AGREEMENT
FOR THE COMMUNITY DEVELOPMENT BLOCK
GRANT - MITIGATION PROGRAM (CDBG-MIT) AND
ACCEPTANCE OF \$8,181,489.00 IN NON MATCHING
GRANT FUNDS TO IMPLEMENT THE SANDS
SUBDIVISION, BIG PINE KEY, SEA LEVEL RISE PILOT
ROADWAY AND DRAINAGE MITIGATION PROJECT

WHEREAS, 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 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; and

WHEREAS, the Department of Housing and Urban Development ("HUD") administers the CDBG-MIT grant program and issued guidelines for application and award; and

WHEREAS, 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.

WHEREAS, pursuant to the HUD guidelines the Florida Department of Economic Opportunity ("DEO") submitted a state action plan setting forth the states proposed disaster recovery programs; and

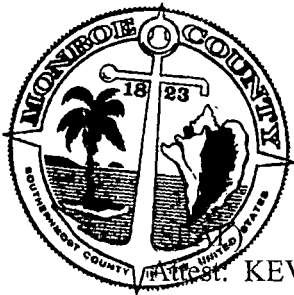
WHEREAS, On August 19, 2020, Monroe County conducted a public meeting for citizens and municipalities to provide input on an application for grant funds for the CDBG program; and

WHEREAS, on November 12, 2021 the Florida Department of Economic Opportunity (DEO) awarded Monroe County \$8,181,489.00 in CDBG-MIT Program funds and on January 28, 2022, DEO transmitted the Sub-recipient agreement to the County.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, that:

1. The Mayor or designee is directed to sign the CDBG-MIT Program Sub-recipient agreement with DEO accepting \$8,181,489.00 in non-match grant funds.
2. Monroe County staff are directed to implement the CDBG-MIT Program in compliance with all requirements imposed by Federal statutes, regulations and the terms and conditions of DEO's HUD (federal award).

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting held on the 16th Day of March, 2022.



Mayor David Rice
 Mayor Pro Tem Craig Cates
 Commissioner Michelle Coldiron
 Commissioner District 3
 Commissioner Holly Merrill Raschein

Yes
Yes
Yes
Vacant
Yes

BOARD OF COUNTY COMMISSIONERS
 OF MONROE COUNTY, FLORIDA

BY: Kevin Madok
 As Deputy Clerk

BY: [Signature]
 Mayor

FILED FOR RECORD
 2022 MAR 24 AM 8:36
 CLERK CIR. CT.
 MONROE COUNTY, FL

MONROE COUNTY ATTORNEY
 APPROVED AS TO FORM:
Christine Limbert-Barrows
 CHRISTINE LIMBERT-BARROWS
 ASSISTANT COUNTY ATTORNEY
 DATE: 2/7/22

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 574, 576, 578, 905, 964, 983, and 1000

[Docket No. FR-6085-F-03]

RIN 2501-AD87

Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. In accordance with statutory authority, HUD is charged with the responsibility to implement and enforce Section 3. HUD's regulations implementing the requirements of Section 3 have not been updated since 1994 and are not as effective as HUD believes they could be. This final rule updates HUD's Section 3 regulations to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide for program-specific oversight, and clarify the obligations of entities that are covered by Section 3. These changes will increase Section 3's impact for low- and very low-income persons, increase compliance with Section 3 requirements, and reduce regulatory burden.

DATES: *Effective Date:* November 30, 2020.

Compliance Dates: Public housing financial assistance recipients must implement their Section 3 activities pursuant to these regulations and comply with the reporting requirements starting with the recipient's first full fiscal year after July 1, 2021. These regulations are applicable to Section 3 projects for which assistance or funds are committed on or after July 1, 2021.

FOR FURTHER INFORMATION CONTACT: For questions, please contact the following people (the phone numbers are not toll-free):

For Public Housing Financial Assistance: Merrie Nichols-Dixon, Director, Office of Policy Program and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202-402-4673 (not a toll-free number).

For Community Development Block Grant (CDBG)/CDBG Disaster Recovery/Section 108 Loan Guarantee Program: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410; telephone 202-708-3587 (voice/TDD) (not a toll-free number).

For HOME or Housing Trust Fund Section 3 projects: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 10168, Washington, DC 20410; telephone 202-402-4606 (not a toll-free number).

For Office of Housing programs: Thomas R. Davis, Director, Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 6230, Washington, DC 20410; telephone 202-402-7549 (voice/TDD) (these are not toll-free numbers).

Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, at toll-free, 800-877-8339. General email inquiries regarding Section 3 may be sent to: section3@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, approved August 1, 1968) (Section 3) was enacted to bring economic opportunities generated by certain HUD financial assistance expenditures, to the greatest extent feasible, to low- and very low-income persons residing in communities where the financial assistance is expended. Section 3 recognizes that HUD funds are often one of the largest sources of Federal funds expended in low- and very low-income communities and, where such funds are spent on activities such as construction and rehabilitation of housing and other public facilities, the expenditure results

in economic opportunities. By directing HUD-funded economic opportunities to residents and businesses in the community where the funds are expended, the expenditure can have the dual benefit of creating new or rehabilitated housing and other facilities while providing opportunities for employment and training for the residents of these communities.

The Section 3 statute establishes priorities for employment and contracting for public housing programs and for other programs that provide housing and community development assistance. For example, the prioritization as it relates to public housing assistance places an emphasis on public housing residents, in contrast to the prioritization as it relates to housing and community development assistance, which places more emphasis on residents of the neighborhood or service area in which the investment is being made.

In the 25 years since HUD promulgated the current Section 3 regulations, significant legislation has been enacted that affects Section 3.¹ In addition, HUD has also heard from the public that there is a need for regulatory changes to clarify and simplify the existing requirements. HUD's experience in administering Section 3 over time has also provided insight as to how HUD could improve its Section 3 regulations. HUD, thus, concluded that regulatory changes were necessary to streamline Section 3 and more effectively benefit low- and very low-income persons through HUD financial assistance to achieve the Section 3 statute's purposes.

II. The Proposed Rule

HUD issued a proposed rule on April 4, 2019 (84 FR 13177) to update the existing regulations and streamline the Section 3 program.

Promote Sustained Employment and Career Development

The proposed rule included multiple elements designed to increase Section 3's impact in directing employment opportunities and sustaining employment for the people served by

¹ This legislation includes, but is not limited to, the following: Reforms made to HUD's Indian housing programs by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104-330, approved October 26, 1996); public housing reforms made by the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Pub. L. 105-276, approved October 21, 1998); reforms made to HUD's supportive housing programs by the Section 202 Supportive Housing for the Elderly Act of 2010 (Pub. L. 111-372, approved January 4, 2011); and the Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111-347, approved January 4, 2011).

HUD financial assistance programs. The rule proposed tracking and reporting labor hours instead of new hires. While the previous new hire framework was valuable for measuring entry into employment, the new hire framework did not capture the extent to which new hiring opportunities are created relative to the total work performed, nor whether those opportunities are sustained over time. The proposed rule's focus on labor hours sought to measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the change to labor hours emphasized continued employment. For example, the prior exclusive focus on counting new hires regarded five new hires for one-month opportunities as a more valued outcome than one 12-month opportunity, and it did not distinguish between full- and part-time employment. A full-time job sustained over a long period allows a low- or very low-income worker to gain skills and is a strong indicator of progress towards self-sufficiency. The new focus on labor hours would ensure that longer-term, full-time opportunities are appropriately recognized.

HUD's proposed rule also sought comment on maintaining the new hire framework for only Public Housing Agencies (PHAs). HUD held a number of listening sessions and heard from some PHAs that they would prefer to keep reporting new hires rather than switch to reporting labor hours. Therefore, while HUD believes tracking labor hours is the best option and would simplify reporting, HUD did seek comment on the alternative option of maintaining the new hires framework for PHAs.

Align Section 3 Reporting With Standard Business Practices

HUD also proposed tracking labor hours rather than new hires because it would be more consistent with business practices. Most construction contractors working on HUD assisted projects already track labor hours in their payroll systems because they pay their employees based on an hourly wage. In some cases, they are also subject to prevailing wage requirements.² HUD believes a consistent labor-hour tracking mechanism makes compliance with Section 3 easier not only for recipients of HUD assistance, but also for contractors and subcontractors. The proposed rule provided that for employers who do not track labor hours in detail through a time-and-attendance

system, such employers could provide a good faith assessment of the labor hours for a full- or part-time employee. However, if a time-and-attendance system is later implemented, the accurate labor hour accounting would be required.

Applicability and Thresholds

The Section 3 statute applies to both: (1) HUD's Public Housing Program, and (2) Other HUD programs that provide housing and community development assistance. For ease in administration for recipients using one or both of these HUD funding streams, the proposed rule provided definitions for these types of funding and specified Section 3 requirements for each type. The proposed rule included the following definitions for the scope of such financial assistance:

(1) Public housing financial assistance covers:

(a) Development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act),

(b) operations and management assistance provided pursuant to Section 9(e) of the 1937 Act (Operating Fund), and

(c) development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act (Capital Fund); and

(2) Section 3 projects cover HUD program assistance used for housing rehabilitation, housing construction and other public construction projects that generally exceed a \$200,000 project threshold or any Section 3 project funding from HUD's Lead Hazard Control and Healthy Homes programs.

The proposed definitions defined the scope of programs subject to Section 3 requirements but did not expand such coverage beyond the compliance requirements of HUD's prior regulations. HUD proposed the \$200,000 threshold for housing rehabilitation, housing construction and other public construction projects because work below that amount would likely not trigger long-term employment opportunities for which the recipient could show measurable labor hours. The proposed rule also clarified that contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under Section 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business

opportunities to Indians and Indian organizations.

Reporting and Targeted Section 3 Workers

The proposed rule aimed to align Section 3 reporting requirements more closely to the statutory priorities; HUD's previous regulation tracked only public housing residents or low- or very low-income persons who lived in the metropolitan area or nonmetropolitan county of the project, rather than whether the statutory priorities were met. The rule proposed a new definition of "Section 3 worker" as any worker or who meets at least one of the following criteria: Low- or very low-income, as established by HUD's income limits; living in a Qualified Census Tract (QCT); or employed by a Section 3 business concern.³

The proposed rule also included a new "Targeted Section 3 worker" definition so that HUD could track, and recipients could target, the hiring of Section 3 workers in selected categories. The Section 3 statute requires certain financial assistance recipients to prioritize their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. The "Targeted Section 3 worker" reflects both statutory and policy priorities that HUD wishes to specifically track. For public housing financial assistance, the proposed definition of a Targeted Section 3 worker was a Section 3 worker who is also:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who is currently or who was when hired by the worker's current employer, a resident in a public housing project or Section 8-assisted housing; or

(3) A resident of other projects managed by the PHA that is expending assistance; or

(4) A current YouthBuild participant.

For other HUD assistance programs, the proposed priorities were:

(1) Residents within the service area or the neighborhood of the project, and

(2) YouthBuild participants.

³ Section 3 business concern means: (1) A business concern that meets one of the following criteria: (i) It is at least 51 percent owned by low- or very low-income persons; (ii) Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or (iii) It is a business at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing. (2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. (3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

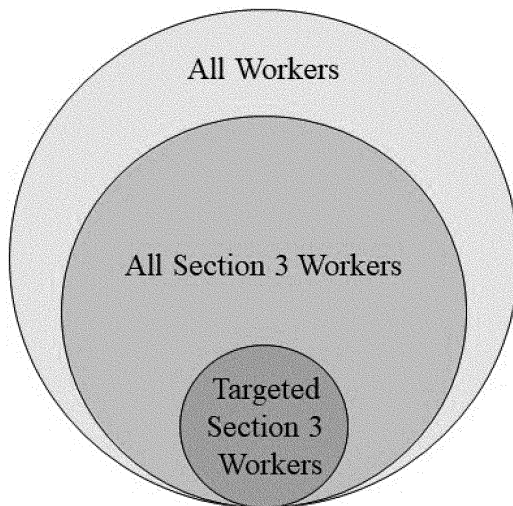
² See 42 U.S.C. 1437j(a), 24 CFR 905.308(b)(3)(ii), 24 CFR 965.101, 25 U.S.C. 4225(b)(1)(A), and 24 CFR 1006.345(b).

There is also a statutory contracting priority for businesses that provide economic opportunities for low- and very low-income workers. Therefore, HUD proposed including labor hours worked by the Section 3 business concern employees for both Section 3

workers and Targeted Section 3 workers. HUD also proposed a new Section 3 business concern definition that reflected the change to labor hours and increased the threshold of work performed by a business by low- and very low-income workers given the

proposed rule's inclusion of all Section 3 business concerns' labor hours in the definition of both Section 3 workers and Targeted Section 3 workers.

The proposed rule created the following construct for measuring workers:



Benchmarks

The proposed rule provided that a new Section 3 benchmark measurement would serve as a safe harbor for those recipients that meet the new benchmark. The primary objective of the proposed rule was to reflect and monitor grantees' abilities to direct job opportunities that are generated by HUD financial assistance to Section 3 workers and Targeted Section 3 workers. The proposal included using benchmarks based on ratios of Section 3 workers and Targeted Section 3 workers in comparison to all workers. HUD proposed that the benchmarks would be set by **Federal Register** Notice and amended periodically to provide for updating of the benchmarks to align with the reporting data HUD received. As HUD gathers more data under the new rule, HUD could increase or decrease benchmark figures over time, or tailor different benchmarks for different geographies and different funding types. If a recipient certifies compliance with the statutory priorities and meets the outcome benchmarks, HUD will presume the recipient is complying with Section 3 requirements, absent evidence to the contrary. Recipients are still required to report their outcomes, and HUD will monitor them accordingly through the data reporting methods used to oversee all other program requirements in each applicable program area. Otherwise, recipients would be required to submit

qualitative reports on their efforts, as they are required to do under HUD's previous rule when they do not meet the safe harbor, and HUD may conduct monitoring to review the recipient's compliance, again consistent with practices used to monitor program participants' compliance with other program requirements.

The proposed rule also provided a burden relieving measure for PHAs with fewer than 250 units. For these PHAs, they would only be required to report on Section 3 qualitative efforts and would not need to track labor hours for Section 3 workers and Targeted Section 3 workers.

Multiple Funding Sources

The proposed rule created a new section for housing rehabilitation, housing construction, or other public construction projects assisted with funds from more than one HUD program. Specifically, the proposed rule provided that when a Section 3 project is funded by public housing financial assistance, the public housing financial assistance must be tracked and reported consistent with the public housing financial assistance requirements in subpart B, while the community development financial assistance may follow the requirements in subpart B or subpart C. The proposed rule directed that when a Section 3 project receives housing and community development assistance from two different HUD programs, HUD would designate

guidance through a single reporting office.

Integrate Section 3 Into Program Enforcement

Since HUD program office staff are regularly in touch with HUD's funding recipients on other compliance requirements, HUD proposed that program offices incorporate Section 3 compliance and oversight into regular program oversight and make Section 3 an integral part of the program's oversight work. The proposed rule also streamlined the complaint and compliance process to make Section 3 compliance consistent with existing practices for other requirements. The proposed rule shifted the delegation of authority for Section 3 enforcement and compliance responsibilities from the Assistant Secretary for Fair Housing and Equal Opportunity to reside with each of the applicable HUD program offices.

III. Changes Made at the Final Rule Stage

After review and consideration of the public comments and upon HUD's further consideration of Section 3 and the issues raised in the proposed rule, HUD has adopted the proposed rule as final with a few changes in this final rule. HUD also made minor edits to clarify the rule's language. The following highlights the substantive changes made by HUD in this final rule from the proposed rule.

Removing Alternative 2 for New Hires

After considering the data, Section 3's statutory goals, and the public comments, HUD is not retaining the tracking of new hires for PHAs, but instead requiring tracking of labor hours for all Section 3 outcomes. HUD agrees with commenters that it is in the best interest of the communities served by HUD to implement a more impactful Section 3 standard across all HUD-funded programs. Using different metrics for different programs would unnecessarily further complicate Section 3 reporting. Tracking labor hours is meant to ensure that Section 3 workers have sustained employment and career opportunities. HUD believes that the use of new hires provides an incomplete measure of the employment and local contracting opportunities available to low- and very low-income persons envisioned by the Section 3 statute. HUD expects the labor hour data to present a more accurate assessment of Section 3's impact. The focus on labor hours will measure total actual employment and the proportion of the total employment performed by low- and very low-income workers, which will mitigate contractors' ability to manipulate their Section 3 outcomes.

Section 3 Project Threshold

HUD received many public comments on proposed changes to the Section 3 Project threshold. HUD still considers the \$200,000 threshold for Section 3 projects appropriate given the percentage of projects that will continue to be covered and are likely to result in opportunities for employment of low- and very low-income workers when expended on construction-related activities. However, in response to public comments, HUD is providing that in this final rule, the Secretary may adjust the threshold, through a **Federal Register** Notice subject to public comment, in order to ensure Section 3 compliance. HUD's proposed rule already provided for the Secretary to update the threshold not less than once every five years based on a national construction cost inflation factor; the final rule now provides that the Secretary updates the benchmarks not less frequently than once every three years. HUD believes adding this flexibility is responsive to the comments received by the public. HUD will continue to work with program participants to adjust the thresholds accordingly, if necessary, based on the updated data provided under this final rule.

Setting a Project Threshold for Lead Hazard Control Grants

HUD also received comments regarding the exclusion of projects under HUD's Lead Hazard Control and Healthy Homes program from the \$200,000 project threshold. Lead hazard control projects are generally smaller, so many commenters suggested a lower threshold for such projects. On the other hand, other commenters noted that not including a threshold for lead hazard control grants altogether may incidentally include small grants that should not be subject to Section 3. For example, some Lead and Healthy Homes Technical Studies grants study the health effects of installed housing components in projects typically smaller than \$100,000. As expected, they did not result in opportunities for employment of Section 3 workers under the previous regulations. At the final rule stage, HUD is therefore adopting a \$100,000 project threshold for all projects that receive funding from HUD's Lead Hazard Control and Healthy Homes programs. HUD adopted this number to match the contract threshold in the previous regulations (see previous 24 CFR 135.3(a)(3)).

Removing the Qualified Census Tract Definition

After considering Section 3's statutory goals and the public comments, HUD is removing the QCT definition from this final rule. The addition of this criteria was to encourage hiring in the QCT and to make targeted hiring easier, but HUD recognizes that the inclusion of workers in these areas could inadvertently include individuals who are not low- or very low-income. Rather than the broad QCT definition, HUD is limiting the Section 3 worker definition to be more consistent with the statute, which requires prioritization of low- and very low-income workers and YouthBuild participants. This should also alleviate any potential burden on participants associated with the QCT designation.

Changing the Section 3 Business Concern Definition

In adopting the proposed definition of Section 3 business concern in this final rule, HUD is maintaining the over 75 percent of the labor hours performed for the business on construction are performed by low- or very low-income persons standard, but adding in that such performance must be over the last three-month period to help businesses determine whether or not they meet the criteria. HUD is also maintaining a separate criterion for businesses owned and controlled by current public

housing residents or residents who currently live in Section 8-assisted housing, but increasing the required percentage of owned and controlled to 51%. This change is in response to public comments and to maintain consistency with HUD's public housing regulations on contracting with resident-owned businesses at 24 CFR part 963. HUD also added a change to the documentation timing in paragraph (1) of the Section 3 business concern definition to allow a six-month grace period. HUD understands that businesses need time when bidding on contracts and prior to the contract's execution to assemble materials and to assess labor hours. This change is responsive to commenters who expressed concerns about Section 3 status retention, since labor hours can be dependent on the number of contracts on which a business bids and receives.

Changing the Professional Services Definition

In this final rule, HUD is amending the professional services definition to clarify that only non-construction services that require an advanced degree or professional licensing, rather than all non-construction services, are excluded from Section 3. HUD wants to ensure this final rule's emphasis encapsulates the statutory requirement to prioritize low- and very low-income workers, and provides this category of exempted workers from reporting given the challenge to hire low- and very low-income workers in jobs that require such degrees and licensing.

Counting Labor Hours for 5 Years

HUD's proposed rule provided that labor hours for Section 3 workers and Targeted Section 3 workers could be counted as long as the worker met the definition of a Section 3 worker or Targeted Section 3 worker at the time of hire. Based on public comments and further consideration, HUD agrees that a worker whose income has risen should only be counted for Section 3 purposes for a limited time period. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. Therefore, HUD provides that for purposes of reporting the labor hours for Section 3 workers and Targeted Section 3 workers, an employer may choose whether the workers are defined as Section 3 workers for a five-year period at the time of the workers' hire, or when the

workers are first certified as meeting the Section 3 worker definition.

Delayed Effective Date

The rule provides for a delayed transition to labor hours and the associated recordkeeping requirements. HUD recognizes that employers and grantees will need time to transition their systems and reporting practices as a result of this final rule. HUD is mindful of the need to update policies and procedures for planning purposes, and the importance of implementing the rule such that employers will be able to comply. Therefore, HUD has provided for a transition period through at least July 1, 2021. During this transition period, HUD expects that employers and grantees will begin following this final rule's requirements for new grants, commitments, and contracts. The exact date on which any particular recipient of HUD funding will be able to implement the conversion to the new requirements will vary during this transition period, but the transition must be complete by July 1, 2021. The reporting requirements and labor hours tracking will not begin until the dates for each entity specified in the "Compliance Date" section above.

IV. Discussion of Public Comments and HUD's Responses

The public comment period on the proposed rule closed on June 3, 2019, and HUD received 163 public comments. The comments came from state and city government agencies and housing administrations, housing authorities, non-profits, independent consultants, private citizens, housing authority directors, small businesses, the construction industry, and housing authority associations. The following presents the significant issues and questions related to the proposed rule raised by the commenters, and HUD's responses to these issues and questions. HUD would like to thank all the commenters for their thoughtful responses.

"Best Efforts" and "Greatest Extent Feasible"

In the proposed rule, HUD included a specific question for public comment regarding these statutory terms. Some commenters suggested the terms are interchangeable. One commenter suggested that HUD use the term "reasonable best efforts" for CDBG and HOME recipients and remove the term "greatest extent feasible" from the Section 3 regulations or use only "best efforts." Other commenters argued that these words are key to the intent of the statute, which is to provide recipients

leeway when constraints outside their control impede implementation, and recommended that HUD provide guidance materials on how to show best efforts when organizations do not meet their Section 3 goals, such as data collection forms which would indicate best efforts or non-exclusive lists of examples of "best efforts" and "greatest extent feasible."

In contrast, some commenters suggested that these terms are not interchangeable. One commenter said that "best efforts" should be measured by tracking outreach and outcomes of outreach and "greatest extent feasible" is the result of "best efforts." Another commenter argued that "best efforts" can be more clearly defined than "greatest extent feasible," as specific actions can demonstrate efforts, while feasibility is a more passive analysis of what is possible. One commenter argued that the "greatest extent feasible" is a much more rigid and prescriptive standard than the "best efforts" standard and noted that courts have found that the "best efforts" requirement "specifically avoids creating a mandatory obligation on the part of the agencies the statute affects." This "best efforts" standard likewise "does not call for perfect compliance." This commenter encouraged HUD to allow PHAs to retain greater discretion over the development of their own Section 3 programs.

A commenter suggested that Subpart B participants should continue to use "best efforts" while Subpart C participants should use "greatest extent feasible," and agencies receiving funding that triggers compliance under Subparts B and C should use the "best efforts" standard. One commenter suggested using the term "best efforts" to comply with employment, contracting and training opportunities.

Commenters also urged HUD to enforce the terms "best efforts" and "greatest extent possible," suggesting that whatever the standard, if an activity by a recipient, contractor or subcontractor does not adequately serve to hire, train, and retain a Section 3 worker, then it should not meet the standard. These commenters provided an example of a PHA's best effort. Commenters noted that while the recipient or contractor appears to meet the Section 3 goal, or at least made "best efforts" to reach the goal, in practicality such effort is not workable.

One commenter wrote that the terms without any definition are too broad and should be defined to assist in compliance with Section 3. Another commenter proposed that HUD should define the terms by how they will be

measured; for instance, that "best efforts" could be determined by a specific set of metrics around recruitment efforts and the percentage of Section 3 workers in the area. One commenter suggested a way to draft the rule using dollars spent to track compliance such that these terms would not be necessary.

Other commenters requested that HUD not define these terms or should not restrictively define these terms because HUD should trust the judgment and common sense of its professional field staff to determine compliance, because documenting compliance according to specific definitions could create additional administrative burden, because there are constraints outside the grantee's control, and because guidelines may stifle innovation.

HUD Response: HUD appreciates commenters' responses to the specific question regarding "best efforts" and "greatest extent feasible" in the proposed rule. "Best efforts" and "greatest extent feasible" are statutory terms, used in the statute in different contexts. As such, HUD will continue to use both terms to track compliance. HUD agrees with commenters that there are many ways to interpret the language. Traditionally, HUD has used the terms interchangeably, as referenced in the statute, and will continue to be consistent with the statutory language. See 12 U.S.C. 1701u(b)–(d). HUD also agrees with commenters who noted these terms are integral to the statutory intent and provide flexibility, rather than administrative burden, to grantees or recipients.

HUD notes that some perceive "best efforts" to be the more rigorous standard, while others perceive "greatest extent feasible" to be the more rigorous standard. HUD has determined not to define the difference between these two terms, but rather to increase the emphasis on outcomes as a result of these efforts. A recipient's reported results will be compared to the outcome metrics defined in the benchmark Notice. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD included a list of examples in the regulation at §§ 75.15 and 75.25, including engagement in outreach efforts to generate job applicants who are Targeted Section 3 workers, providing training or apprenticeship opportunities, and providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

Move to Labor Hours

Support for Using “Labor Hours”

Many commenters supported the shift to labor hours and, notwithstanding the alternatives presented in the proposed rule for PHAs, encouraged HUD to do the same for public housing construction, modernization, and similar work. These commenters stated that the “new hire” loophole should be eliminated for both housing and community development and public housing projects. Commenters stated that, in practice, contractors have only brought on new hires for short periods of time; the shift to labor hours will promote longer term employment. Commenters also stated that the shift to labor hours would solve the problem of contractors using dishonest practices to meet benchmarks, such as hiring Section 3 residents to fill the 30% benchmark only to lay them off shortly thereafter, or employing Section 3 hires for less than 20 hours a week. Commenters stated that allowing PHAs and their contractors to use “new hires” could provide a loophole to PHAs, allowing them to hire Section 3 workers for a limited or short time frame in order to comply with the regulation. Short-term employment does not allow residents to obtain technical skills, knowledge, or adequate savings. PHAs should be required to use labor hours worked because they can evade Section 3 compliance through manipulative hiring practices.

Commenters stated that the “labor hours” standard is far more effective, less susceptible to manipulation and administratively easier to verify. Commenters stated that the new hire standard is vulnerable to manipulation, because any contractor or subcontractor that performs work on more than one project at a time can easily avoid Section 3 hiring responsibilities by placing their new hires on non-Section 3 covered projects. Commenters asserted the new hire standard may be the single greatest barrier to achieving the employment potential of Section 3.

HUD Response: HUD agrees that counting new hires can be problematic and that collecting labor hours can be a more effective measure. As stated in the proposed rule, HUD believes that counting labor hours is consistent with the statute and mitigates contractors’ ability to manipulate their Section 3 outcomes. HUD has adopted the suggestion by the commenters and in the final rule applies the labor hour requirements to both housing and community development and public housing projects.

Support for Using New Hires

Many commenters supported retaining the new hires metrics. Commenters stated that tracking by labor hours is burdensome, will increase administrative costs, and will not streamline the Section 3 reporting requirements. One commenter refuted HUD’s hypothesis articulated in the proposed rule and stated that a labor hours metric is unlikely to capture the data on sustained employment opportunities that HUD is seeking. Another commenter stated that the proposed labor hours metric would decrease the number of firms willing to bid on contracts, increase the cost of public contracting for both the PHA and contractors, and provide no appreciable increase in Section 3 workers. Commenters stated that HUD should continue to track compliance by new hires for both Subparts B and C.

One commenter stated that labor hours should only apply to projects that already require the collection of certified payrolls as part of Davis Bacon compliance. Another commenter recommended HUD look to existing programs such as the Department of Transportation’s Disadvantaged Business Enterprises for guidance to make substantive changes to Section 3.

Commenters stated that the changes will generate additional administrative burdens. Commenters especially emphasized the potential impact on the Housing Trust Fund (HTF) program and state CDBG and HOME program implementation because states, particularly small and rural community sub-grantees, have limited capacity. Commenters recommended HUD give State CDBG programs a similar alternative to the one offered to PHAs in § 75.15(d). Another commenter proposed HUD allow State CDBG programs to use a good faith assessment of hours, stating that § 75.25(a)(4) will help but will not eliminate the difficulty for State CDBG programs. Another commenter specifically referenced HOME funding and the HTF regulations, noting that stated HTF regulations do not trigger Davis-Bacon and it is rare for a HOME-funded project to trigger Davis-Bacon and prevailing wage requirements.

Commenters stated that HUD’s assumption that labor hours are already tracked by most contractors and subcontractors to comply with the prevailing wage requirement is false. Commenters specifically noted that not all CDBG programs are subject to such requirements. One commenter wrote that even a small maintenance contract could result in 6 extra work hours for

staff charged with ensuring correct payroll entries and compliance, stating that a current contract that does not track labor hours would have an increase of approximately \$606,000 of federal funding required to administer the contracts, an additional 5% of costs. Another commenter stated that the proposed shift to labor hours will create an estimated 110 hours of additional administrative effort for the commenter per construction project, and will not impact the duration of Section 3 worker employment or allow HUD to better determine if long-term employment opportunities are generated. One commenter stated that tracking labor hours would require city contractors and subcontractors to track project labor hours using LCPTracker as the city does, necessitating increased administrative staff and resulting in higher contract amounts. One commenter stated that payrolls required for Davis-Bacon compliance are often submitted in hard copy, so compliance with the shift to labor hours would require manual data entry, a significant added labor-intensive task. Commenters also stated that many contractors are small business owners who do not have payroll software and many housing authorities do not have sufficient staff to track hours worked on all projects. Commenters also noted that many medium and smaller sized PHAs do not use LCPTracker and instead rely on contractor payrolls to monitor Davis-Bacon and Section 3. Other commenters stated that tracking hours could be more burdensome than tracking new hires, because new hires are only reported once. Tracking the workers’ hours necessitates verifying each Section 3 employee each week for the duration of their employment.

HUD Response: HUD carefully considered the diverse public comments on the use of labor hours versus retaining new hires as the measurement for assessing compliance with Section 3 requirements. HUD believes that the use of new hires provides an incomplete measure of the economic opportunities available to low and very low-income persons envisioned by the Section 3 statute. HUD believes that moving to the labor hours metric provides a more robust measure of how Section 3 is intended to work and mitigates contractors’ ability to manipulate Section 3 outcomes. HUD concluded the benefits of the labor hours approach outweighs the marginal cost that would result from this shift. HUD has determined that, while public commenters have concerns about possible burdens that result from the

proposed transition to recording labor hours instead of new hires, it is in the best interest of the communities served by HUD to implement a more impactful Section 3 standard across all HUD-funded programs. The use of labor hours is intended to ensure that recipients of these program funds are fully in compliance with the intent of Section 3—maximizing the economic opportunities arising from Federally funded activities that are available to low- and very low-income persons, including those who reside in public housing.

HUD also notes that the comments revealed a diversity of understanding with respect to HUD's record-keeping expectations in measuring the labor hours metric. HUD does not anticipate the level of detail in record-keeping that is required under the Davis-Bacon prevailing wage framework for purposes of Section 3. The proposed rule does not require prevailing-wage-style payroll reports. HUD does anticipate that either employers have some form of time and attendance system, particularly where employment uses an hourly wage structure, or that employers have salaried staff. The final rule does not require any change in these systems, nor necessitate any software approach to tracking payroll. Those employers that use a time and attendance system to track hourly wages may rely on that data, while the final rule provides a good faith reporting exception which applies to all entities that do not have an existing time and attendance system. The final rule has been modified in an effort to clarify that the good faith exemption applies to all Section 3 reporting entities (not only contractors and subcontractors) and that data from any existing salary-based or time-and-attendance-based payroll records can be used in good faith reporting under Section 3. HUD is mindful of the need to update policies and procedures for planning purposes, and the importance of implementing the rule such that employers will be able to comply. Therefore, HUD has provided for a transition period and a bifurcated compliance date. Public housing financial assistance recipients must comply with the reporting requirements starting with the recipient's first full fiscal year after this final rule's effective date. Section 3 project recipients must comply with the reporting requirements starting with the recipient's first full program year for projects committed or awarded after this final rule's effective date.

Many Section 3 Positions Are Short-Term in Nature

One commenter stated that many of the jobs made available under Section 3 requirements are short term positions specific to the needs of the individual project and/or worksite. These positions provide opportunities for the target population of low-skilled workers to build work experience (leading to possible economic advancement) while helping ensure project costs remain reasonable. Another commenter stated that the Section 3 goal leading to long-term employment and career advancement is unrealistic, as most opportunities generated by Section 3 projects are construction-related and therefore seasonal or project-based; it would be burdensome and complicated to track via labor hours long-term employment that results from a Section 3 worker being hired on a subsequent Section 3 project by a different contractor. Contractors do not keep pools of long-term general laborers on hand for consecutive projects as a means of employing Section 3 workers. Other commenters stated that nothing in the statute states that long-term employment through public housing or other housing and community development funding is the goal of Section 3; the statutory intent is to provide employment and training opportunities to residents of low-income communities where Federal housing and community development dollars are being spent, and tracking new hires better meets this intent.

Similarly, commenters stated Section 3 workers are more likely to assist in temporary work for PHAs. Using new hires better fits with this economic reality. One commenter stated that contractors do not reduce the number of part-time employees so they can provide full-time, long-term employment to fewer Section 3 workers. Other commenters stated that the nature of the construction industry is episodic; workers are not employed by one company for long periods of time, but from project to project, and workers often move from one company to another. The number of hours that a specific person works is generally based on what is required for the project and the type of work they are doing. Commenters asserted it is unreasonable to think that hours for lower-skilled employees will dramatically be increased for a specific construction project by moving to a "labor hours" standard.

Commenters also stated that the move to labor hours will confuse contractors and create more complexity. Another

commenter anticipated pushback from contractors declining to bid, which can lead to an increase in the cost of developing affordable housing. Commenters stated that tracking labor hours could provide contractors with an incentive to hire fewer low-income residents by employing those hired for a greater number of hours. This would have a negative effect on the number of low-income residents hired overall.

HUD Response: HUD recognizes that many Section 3 opportunities are short-term employment opportunities. The shift from measuring new hires to measuring labor hours continues to value these short-term opportunities as creating significant economic opportunities for low- and very-low-income workers, and these short-term opportunities will likely remain a primary source of Section 3 opportunities. At the same time, the shift in metrics more accurately reflects the nature and extent of these employment opportunities and places greater relative weight on those opportunities which do provide long-term career ladders and sustained employment opportunities.

There is no obligation on a reporting employer to track an employee's work beyond the immediate short-term seasonal or project-based employment. The opportunity to track an employee over time is solely an opportunity which can be seized by those reporting employers who have invested the extra time and effort to nurture an employee over time. That extra effort to develop a career track is not recognized by the previous new hire metrics but is recognized in the labor hour metrics. It should be noted, however, that the use of the labor hour metric to reward retention applies only to the relationship with the current employer. (See § 75.11(a)(2) "A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years . . .") This provides an option for employers to look back to the worker's status at the time of original employment but does not require that an employer do so if the employer only wants to reference the employee's current status. Contrary to the concept referenced in the comments, there is no ability to claim long-term employment when hired on a subsequent Section 3 project by a different contractor.

This rule updates HUD's Section 3 regulations to create more effective incentives for employers to retain and invest in low- and very low-income workers. It is HUD's opinion that the change from new hires to labor hours, in combination with the opportunity to

provide good faith assessments, is consistent with businesses' existing payroll systems. Finally, HUD is of the opinion that this change will better advance the goal of sustained employment and career opportunities for low- and very low-income workers.

Alternatives

Several commenters suggested alternative frameworks for measuring Section 3 results, in some cases using the labor hours metric and/or the new hire metric already articulated in the current and proposed rules and in some cases proposing new alternative metrics entirely.

Some commenters recommended including definitions for both Alternative 1 and Alternative 2 so that agencies may exercise whichever option best suits their local circumstances. One commenter recommended using the \$200,000 project threshold or \$400,000 recipient threshold to determine whether labor hours or new hires should be the appropriate reporting metric, as larger projects have greater potential to create long term employment opportunities. One commenter focused on the safe harbor benchmark, stating PHAs should have the choice of labor hours at 10% or new hires at 30%. A commenter stated that if labor hours is adopted, all recipients and subrecipients should have the same flexibility allowed to PHAs.

Another commenter stated that "labor hours worked" should be used in conjunction with "30% new hires." The commenter wrote that many PHAs do not track the generated new hires metric making the current 30% of new hires mandate irrelevant—some PHAs allow contractors and subcontractors to select how many hires they will take onto a project despite it coming short of the 30% benchmark. The commenter wrote that tracking both "labor hours worked" along with the "30% new hires" provides further assurance that a recipient's contractors and subcontractors do not avoid their responsibilities to pay the prevailing wage in accordance with the Davis Bacon Act.

Other commenters argued neither labor hours worked, nor number of new hires are accurate metrics for Section 3 compliance and impact, where the goal of Section 3 is sustained economic independence and economic enhancement for Section 3 workers in and around HUD's investment areas. Commenters suggested compliance should instead be measured by: (1) Payroll dollars paid to Section 3 employees; (2) training dollars spent training Section 3 workers; and (3)

contract dollars paid to Section 3 contractors. Commenters further asserted tracking employment status would be unnecessary if all Section 3 employment payroll dollars were captured as a percentage of gross payroll dollars instead. Another commenter stated that an alternate suggestion would be to delineate Section 3 workers as full-time or part-time, and that tracking hours by using these two categories would be effective while still giving HUD information about the hours being completed by each worker. One commenter recommended Alternative 2, which continues to track new hires with the addition of Targeted Section 3 workers.

One commenter stated that transparency is needed, and the new revisions of Section 3 should include that contractors and subcontractors must make public the total amount of workers expected to complete a construction project.

Commenters proposed a third alternative to the two proposed, which is to stay with the current existing Section 3 goals, for both new hires (30% of new hires) and for contracting with Section 3 business concerns (10% of construction dollars and 3% of other dollars). Changes to what is already understood by contractors will be administratively burdensome and will require additional education and training for contractors and subcontractors.

HUD Response: HUD appreciates the alternatives suggested and has considered the various comments regarding the alternatives presented in the proposed rule and the modifications to those alternatives presented in the comments. HUD has concluded that both the use of Alternative 2 (New Hires) and the use of a hybrid drawing from both Alternative 1 and Alternative 2 provide an incomplete measure of employment opportunities generated through Section 3. Therefore, HUD decided not to retain the new hire standard. Rather than apply new hires recordkeeping to some programs and labor hours to others, HUD believes it is more efficient and effective for purposes of HUD's objectives with respect to Section 3 to apply the same standard across the board. HUD has determined to align Section 3 reporting requirements with typical payroll business practices by tracking labor hours (whether based on prevailing wage data, non-prevailing wage time-and-attendance system data, good faith assessments of hourly workers not tracked through a data system, or good faith assessments of salaried employees). While commenters varied

on whether tracking Section 3 outcomes through labor hours will be easier for recipients of HUD funding, HUD has concluded that the consistent labor hours metric more accurately reflects the impact of Section 3 and the economic development opportunities created. With respect to the alternatives regarding aggregate payroll tracking or tracking full-time and part-time positions, HUD believes that tracking of labor hours will adequately show hours worked. HUD has determined that tracking of training will be done qualitatively when appropriate.

Process for Tracking Labor Hours

Commenters stated that while they appreciated the idea of streamlining the metric, tracking new hires vs. hours may be a disincentive to developers if the tracking is more onerous or complicated than the current method. If tracking labor hours is a goal similar to Davis Bacon, then the process should be fully integrated with the Davis Bacon procedure including the duration of tracking (only until project completion), reporting requirements, and procedures. Commenters stated that ascertaining whether an employer has any new hires is not a simple task; it involves (1) reviewing pre-award payroll records to determine who was on the employee's payroll at the time of contract award and (2) reviewing ongoing payroll records for the duration of the contract to determine whether any new employees have been hired. Commenters also stated that it makes no sense to apply the "labor hours" standard to only one type of construction and rehabilitation project but not to another, based solely on the type of HUD funds involved. If a contractor employs no Section 3 workers, there should be no requirement to provide the data.

Commenters stated inexpensive software is available that enables contractors to submit electronic payroll reports and allows PHAs and other Section 3 funding recipients to easily determine the hours worked on the project, in each trade, by all workers and by Section 3 residents. Commenters noted such software is available to recipients of housing and community development assistance and also to PHAs and other public housing financial assistance recipients. Commenters stated that commonly used Contract Management and Payroll systems such as LCPTracker and B2GNow have features that align with compliance practices and make monitoring more effective. One commenter stated that HUD could provide appropriate software to all

agencies to assist them in tracking and reporting labor hours. A commenter noted that its city has a Federal labor standard software tracker which only 21% of contractors use, and this rule would require 100% of contractors to use the software, resulting in increased administrative work, contract costs, and system management.

One commenter noted that it would be easier to track labor hours with LCPTracker software if the reporting were more aligned with Davis-Bacon reporting. Commenters also saw potential in the hourly tracking if there were a way to eliminate double paperwork by adding Section 3 reporting to the existing Davis-Bacon worksheets. On the other hand, when Davis-Bacon does not apply to a Section 3 project, some commenters felt the administrative burden of tracking hours could be higher. More information would be needed about how the reporting requirements would be implemented before it could be definitively agreed that tracking hours is less burdensome than tracking new hires.

HUD Response: HUD recognizes the diversity of views on whether tracking labor hours would be less burdensome for organizations obligated to report Section 3 results. Based on the comments, HUD has concluded that it is likely to be less burdensome to track labor hours in many circumstances, and HUD has clarified the applicability of the good faith exemption to mitigate any potential burden for those who do not have payroll systems which would align to a labor-hours reporting metric. For those efforts subject to Davis Bacon requirements, which includes many HUD-funded construction endeavors, tracking labor hours consistent with existing tracking for prevailing wage requirements would almost certainly reduce burden on recipients. HUD is aware that there are existing software options that have the potential for capturing total labor hours and labor hours contributed by Section 3 workers. HUD also is exploring whether and how to operationalize and integrate HUD's Section 3 Performance Evaluation and Registry System (SPEARS) with outside software vendors. The SPEARS system already has optional data fields to capture the Aggregate Number of Staff Hours Worked and Total Staff Hours Worked by Section 3 Employees, and the system will be modified to align with the final rule. Underlying these considerations, however, is HUD's belief, as described above, that tracking labor hours will better allow HUD to determine if long-term employment opportunities are being generated, and

that the metric should be consistent without regard to the identity of the recipient of HUD funds. Unlike a labor hours measure, the new hire measure does not consider the share of actual work done by low- and very low-income workers, and new Section 3 hires may not be given the opportunity to work a substantial number of hours.

Labor Hours Based on Good Faith Assessment

One commenter stated that the proposed new rule allows for recipients to rely on a contractor's "good faith assessment" of labor hours (rather than payroll reports) if the contractor is not subject to other requirements specifying time and attendance reporting. Since a large proportion of housing rehabilitation and construction projects do not meet the unit thresholds that trigger Federal labor standards (*i.e.* eight units for CDBG, 12 units for HOME), grant administrators will regularly have to report labor hours based on a contractor's "good faith assessment." Use of this approach will introduce an unknown error margin into the calculation of labor hour benchmarks. This lack of data integrity calls into question the meaning of the proposed benchmarks and the soundness of using "labor hours" as a unit of measurement. Commenters stated that Section 3 businesses who report labor hours in "good faith" need to have specific recording requirements (*i.e.*, software) to avoid manipulation; it is more efficient to rely on tracking systems instead of contractors' good faith submissions. Commenters stated that not all HUD construction projects are subject to Davis-Bacon compliance and even a good faith assessment of labor hours will require significant PHA resources to monitor, review, and compile. One commenter stated that while the proposed rule states that HUD will permit "a good faith assessment of the labor hours" for certain employers, recipients could still be required to establish new compliance procedures, including determining how to protect the privacy of Section 3 workers and businesses when supplied with labor hours supporting documentation.

HUD Response: The final rule is explicit that employers are not required to acquire a time-and-attendance system in order to comply with the Section 3 rule. The "good faith assessment" is a limited exception to be used by employers who do not have systems in place to track labor hours. This rule was put in place to avoid increased administrative burdens. HUD is aware of the margin of error represented in the good faith assessments, but has

concluded that even with this margin of error, the labor hours metric provides a more accurate reflection of the economic opportunities created in connection with HUD-funded activities than the new hires metric. The exception does not apply if the employer is subject to other time-specific requirements.

Section 3 Applicability Threshold, HUD's Lead Hazard Control and Healthy Homes Programs and All Section 8 Programs

Total Funds Threshold or per Project Threshold Versus an Increased Threshold

The proposed rule set the Section 3 applicability threshold for Section 3 projects to projects where the amount of assistance exceeds \$200,000. HUD received comments both in favor of maintaining the current \$200,000 threshold and in favor of the new proposed threshold. Commenters also addressed the use of a project versus a total funding threshold. In addition, other commenters provided a range of alternative frameworks for setting the threshold amount—different numbers and the inclusion or exclusion of different kinds of funding in the threshold calculations.

Some commenters recommended that the \$200,000 threshold be based on the total amount of funding received within the fiscal year because it is a more simplified and streamlined process. Commenters stated the change to a per project threshold would result in many housing production projects that are mainly small and resource constrained having to comply with Section 3 requirements for the first time, noting that a per project threshold can become complicated and burdensome when a recipient handles a large volume of contracts that are funded by multiple sources. Commenters went on to state that a per project threshold would reduce the number of economic opportunities directed to low-income persons and recommended continuing to subject Project Based Voucher programs to Section 3 requirements to ensure those opportunities are directed toward low-income persons and businesses that employ them. Commenters in this line of thought noted that the \$200,000 per project threshold would potentially exempt projects where the HUD funding is less than \$200,000, even though the combined total project funding is much higher. Commenters stated this could lead to a decrease in the number of projects subject to Section 3 and an

overall reduction in Section 3 program impact.

Other commenters supported the per project threshold generally without commenting on the amount or supported the \$200,000 per project threshold and saw it as an improvement. Some of these commenters noted that while \$200,000 is an improvement over the current threshold, it does not relieve underlying concerns that contractors may break up activities into small contracts of less than \$200,000 each to avoid accountability. Several commenters agreed that a \$200,000 per project threshold would still allow contractors awarded significant funding to avoid Section 3 requirements by carrying out small discreet activities even though they cumulatively spend more than the threshold amount. A commenter suggested that the final rule include a prohibition on such activity, so that HUD has authority to pursue enforcement measures if HUD determines a recipient is “gaming the system” to avoid Section 3 obligations.

Other commenters provided alternative threshold amounts at a range of figures up to \$1 million. Some commenters stated the \$200,000 per project threshold will not necessarily result in employment opportunities for low-income people, arguing a higher project amount does not inevitably translate to the need for new employees or a benefit to Section 3 business concerns. Commenters suggested an alternative \$250,000 threshold which would coincide with the Office of Management and Budget simplified acquisition threshold and could automatically change when that amount is updated. Other commenters supported using the \$250,000 threshold for all projects to include PHAs. Some large PHAs with Section 3 experience recommended raising the threshold to \$350,000 on a per project basis and making this threshold consistent across all programs and funding sources. Commenters in agreement with this notion also noted that HUD has determined that employment opportunities in CDBG funded projects under \$350,000 are very minimal, and these commenters argued that the same is also true of public housing projects. Commenters also recommended \$400,000 or higher to increase the number of program recipients exempted from Section 3 requirements from less than 4 percent to 20 percent, greatly reducing the compliance burden for smaller grantees. Still other commenters recommended a higher threshold of \$750,000, tied to the single audit threshold, noting that smaller grants

generally will not involve sufficient hiring opportunities to warrant the increased administrative burden. Other commenters recommended that a \$1 million threshold would be a better measure of a project of a scale that would have the potential to drive the hiring of Section 3 workers and justify the additional administrative burden on recipients, subrecipients, and contractors to implement the program, particularly state CDBG programs that primarily fund public infrastructure. Another commenter recommended exempting grantees that receive \$1 million or less annually in CDBG or HOME funds because such grantees focus on a finite set of activities that involve small projects.

Commenters stated that a low threshold will create an undue compliance burden for small projects. Commenters suggested that adopting a higher per project threshold would still ensure the majority of CPD grants are covered but would likely offer significant regulatory relief for smaller grantees, builders, developers, contractors, and subcontractors who are disproportionately burdened by regulatory obligations. Some commenters who advocated for a higher threshold linked their reasoning to the effect of the threshold amount on contractors and subcontractors, noting that Section 3 obligations apply to recipients, their sub-recipients and so on. Commenters described cases in which builders forgo using covered funds to avoid the liability and compliance burdens of Section 3, and situations where developers experience costly delays on projects while searching for qualified subcontractors who are not deterred by the Section 3 paperwork and certifications.

Commenters also suggested that both a recipient threshold at \$400,000 and a project threshold of \$200,000, applicable across all programs, would be most appropriate to reduce reporting burdens with a limited impact on the dollar amounts of funding covered. Another recommendation was to apply Section 3 obligations to any entity that receives at least \$200,000 during a program year for a specific program activity. Other commenters suggested either the threshold for contracts should remain \$100,000 in HUD assistance; or a “total contract value” threshold should be defined that will trigger Section 3 on HUD-funded contracts, regardless of the dollar amount of the HUD funding. Other commenters offered an alternative threshold of 10 percent of construction costs per project. Commenters also reiterated that some CDBG grant awards are very small,

ranging from \$50,000 to \$200,000, so units of general local government have difficulty finding contractors to bid on the projects, let alone finding a contractor that is a Section 3 business concern and is willing to work on a small project. Finally, commenters suggested limiting activities that trigger the threshold to only construction and rehabilitation, as defined within the Section 3 statute for CDBG, HOME and other CPD programs.

HUD Response: HUD acknowledges the considerations raised by all the commenters in their responses. HUD found that the portion of Section 3 expenditures excluded by the \$200,000 per project threshold generate relatively few Section 3 jobs. After weighing the various considerations, this final rule maintains the \$200,000 per project threshold in general but makes changes to the Lead Hazard Control & Healthy Homes Programs threshold. HUD believes that project funding levels help accurately define thresholds because the amount of funding spent on a project is directly related to the economic opportunities generated by the project. HUD acknowledges the potential disadvantages mentioned by commenters to using a per project threshold but reiterates the per project threshold will help provide opportunities for those who are recipients of Federal financial assistance for housing or residents of the community in which the Federal financial assistance is spent. In addition, HUD remains open to adjusting thresholds in the future based on updated data analysis. The final rule clarifies that HUD may change the thresholds and benchmarks at a later date via **Federal Register** notice, subject to public comment, based on updated data input and accounting for inflation. HUD also notes that not every contractor, subcontractor or sub-recipient must use Section 3 workers. A funds recipient could meet its Section 3 benchmarks with one contract to a Section 3 business concern where the number of labor hours worked is 25% or more of all the labor hours worked by all workers on a Section 3 project while not using Section 3 workers for other work. The recipient has flexibility in determining how to meet its benchmarks.

Lead Hazard Control & Healthy Homes Programs Inclusion

Commenters who advocated for a single consistent per project threshold across all programs stated that the Lead Hazard Control and Healthy Homes programs should also be subject to the same threshold. Other commenters

agreed that Lead Hazard Control and Healthy Homes projects should be exempted from administrative and compliance burdens based on a threshold of \$200,000 or greater, stating these projects are unlikely to generate many employment opportunities because they are small and Lead Hazard Control abatement and interim controls is to be done by trained and certified workers.

Some commenters agreed that including Lead Hazard Control projects with no threshold would increase the administrative burden without a benefit, and while the exclusion is understandable, HUD should pursue a standardized threshold to avoid complicating Section 3 by creating a different scope for Lead Hazard Control and Healthy Homes programs. Commenters generally supported higher thresholds for Lead Hazard Control and Healthy Homes programs. A commenter suggested it may be appropriate to use the community development assistance threshold for simplicity. Alternatively, commenters suggested a more modest reporting threshold of not less than \$50,000 for Lead Hazard Control and Healthy Homes projects, stating that for grantees working on multifamily projects in high cost cities, projects where the contract is less than \$50,000 tend to be awarded to smaller contractors. A \$50,000 threshold would meet HUD's admirable intention of ensuring greater Section 3 participation from Lead Hazard Control and Healthy Homes grantees without imposing hardship on such small contractors.

HUD Response: HUD agrees that the \$200,000 threshold should not apply to Lead Hazard Control and Healthy Homes programs since those projects are generally smaller dollar amounts. However, in keeping with Section 3's statutory priorities and applicability, HUD is choosing to adopt a \$100,000 project threshold regarding application of Section 3 to Lead Hazard Control and Healthy Homes programs.

Section 8 Programs Exclusion

Many commenters supported the exclusion of Section 8 programs in the proposed rule, as Section 8 programs are not included in the statute. Commenters went on to note that because Section 3 programs are development subsidy sources and Section 8 programs provide operating subsidies, Section 8 assistance recipients should not be subject to Section 3 regulatory responsibilities. Commenters noted that the primary purpose of Section 8 programs is to provide a rental subsidy that covers the difference between the contract rent and 30 percent of the tenant's income,

stating these programs are "affordability tools, not construction tools," and agreed HUD should not increase regulatory burdens on housing providers by expanding the scope of Section 3 to programs not covered in the statute.

Some commenters urged that for Subpart B, HUD should retain an option for PHAs to report on Section 3 requirements for Section 8 funded programs, noting that these programs generate significant employment and training opportunities for Section 3 workers. Commenters suggested HUD format Section 3 reporting so that Section 8 funded placements can be captured as part of a PHA's overall efforts. Commenters also suggested the current reporting system be updated to allow for the reporting of other placements that might be excluded with the new proposed rule, such as placements under professional service contracts.

HUD Response: Section 8 programs are not covered under the Section 3 statute. Therefore, HUD in this final rule maintains the clarification in the proposed rule that Section 8 programs are excluded from Section 3 requirements.

Section 3 Project Definition

Commenters recommended that HUD more clearly define "project" for the purpose of Section 3, and asked how HUD would view a job order contract of more than \$200,000 that may work on various locality-owned sites (e.g., all of a locality's schools or homeless shelters). These commenters also asked, if several unrelated HUD-funded activities are taking place at the same location and have a combined value of more than \$200,000 constitutes a project. Lastly, the commenters asked whether the per-project threshold is based solely on construction-related activities, and whether the level of Federal assistance to a project must exceed the \$200,000 threshold to trigger Section 3.

Another commenter recommended that HUD define "project" as follows: Project means a site or sites together with any building or multiple buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with Section 3 covered funds as a single undertaking. A program that funds multiple buildings under separate ownership, management and financing is not a project.

HUD Response: HUD supports the Section 3 Project definition within the proposed rule and believes it is consistent with the statutory

requirements of HUD programs. HUD also intends to provide sub-regulatory guidance and technical assistance on a program-by-program basis to assist recipients with Section 3 implementation.

Section 3 Worker

Rule Rewards Creating Opportunities for Persons Who Are Not Low-Income

Commenters stated that the rule, particularly the definitions of Section 3 worker, rewards creating opportunities for persons who are not low-income, which would be counterproductive to the intent of the Section 3 program. A commenter stated that the proposed definition could inadvertently include individuals who are not low-income because categories (ii) and (iii) are not income-based.

Specifically, some commenters objected to category (ii) which allowed workers who live in a Qualified Census Tract (QCT) to be included in the definition of "Section 3 worker" because these individuals will not necessarily be low-income. One commenter noted this is especially true in large metropolitan cities with mixed income communities and gentrifying areas. Another commenter stated that researching employee residence as of the date of hire to determine census tract qualification will be difficult or impossible for long-term employees who may have moved multiple times. Commenters warned that the QCT designation would create a risk of potential abuse by recipients. Some commenters suggested removing the QCT criteria altogether since the definition already includes a low- or very low-income person.

Other commenters objected to category (iii) which included all Section 3 business concern employees as Section 3 workers. These commenters stated that someone working at a Section 3 business concern is not necessarily a resident of HUD-assisted housing, nor is it likely that a business owned by 51% low-income people would hire only public housing or HUD-assisted residents. For this reason, commenters recommended that HUD should exclude "a worker employed by a Section 3 business" from its definition and benchmarks and the definition of Section 3 worker and Targeted Section 3 worker. One commenter noted the phrase "worker is employed by a Section 3 business" is included in both the Section 3 worker and Targeted Section 3 worker definitions and recommended including this term in the Targeted Section 3 worker definition

only and not the Section 3 worker definition.

HUD Response: HUD agrees that paragraph (1)(ii) could inadvertently include individuals who are not low-income. This final rule removes paragraph (1)(ii) regarding the QCT from the definition of “Section 3 worker” from this final rule. However, HUD disagrees that the category of Section 3 business concerns should be removed from the Section 3 worker and Targeted Section 3 worker definitions. The Section 3 statute states that HUD must prioritize Section 3 business concerns. If HUD did not include Section 3 business concerns in the definitions that are used for the benchmarks, PHAs and other HUD funded entities would have no incentive to hire Section 3 businesses. Including all Section 3 business concern employees in the definition of Section 3 worker and Targeted Section 3 worker creates an incentive to contract with a Section 3 business while maintaining a single reporting metric. The final rule maintains that all hours worked on the project by the Section 3 business counts towards the benchmarks. HUD believes these changes are consistent with the statute.

Prior Conviction

One commenter wrote that convictions for certain categories of crimes may have a direct bearing on the worker’s suitability for particular jobs. Previous theft convictions, for example, may be relevant for a worker who will be involved in procurement and distribution of materials. Other commenters supported this language, stating that “there is no evidence that hiring an individual with a criminal history will have a negative impact on employee success.” The commenters also noted that the language is consistent with other HUD guidance on the use of background reports in housing decisions. However, one commenter suggested a minor revision to clarify the regulation: “A recipient, contractor, or subcontractor shall not refuse to hire a Section 3 worker on the basis of a prior arrest or conviction, unless otherwise required by Federal, state, or local law.”

HUD Response: HUD agrees with the commenters that convictions for certain crimes, such as fraud or theft, might affect a worker’s qualifications for a particular position, and that “there is no evidence that hiring an individual with a criminal history will have a negative impact on employee success.” HUD notes that the Section 3 worker definition provides that an individual’s prior arrest or conviction shall not negatively impact their Section 3 worker

status, but the definition maintains the requirement that the individual is qualified for the job. Job qualifications may include the worker’s arrest or conviction history. The rule does not require a Section 3 worker with a criminal history to be hired. HUD has considered the suggestions and has chosen to keep the regulatory language in § 75.5. *See Section 3 business concern*, § 75.5 (“The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.”); *Section 3 worker*, § 75.5 (“The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.”); *Targeted Section 3 worker*, § 75.5 (“does not exclude an individual that has a prior arrest or conviction.”)

Additional Categories

One commenter stated that the proposed rule no longer explicitly lists a public housing resident as a “Section 3 resident” and does not provide for the employer to continue counting that worker in the future. Another commenter suggested that staff hired by a PHA should be counted toward Section 3 requirements. Commenters suggested additional categories and expansion of existing categories, and requested HUD explicitly list the following: people immediately prior to hiring are public housing, Section 8, Section 811, Section 202 residents or other low-income people, and women. Commenters recommended that a “Section 3 worker” should be a worker whose income is below the limit set by HUD, or a resident of public or HUD-assisted housing.

One commenter supported the change to using an individual’s status as low-income versus household income, which will increase the pool of persons that can be counted as a Section 3 worker and make meeting the benchmarks more attainable. Commenters requested clarification on whether the HUD-defined low-income level will be based on individual or family income and one commenter recommended the use of only an individual’s income.

HUD Response: HUD wants to clarify that, while the definition of Section 3 worker does not include public housing residents, it does include all workers whose income is below the income limit established by HUD, which is the same limit that would qualify someone for public housing. Therefore, public housing residents would be considered Section 3 workers. HUD does not believe that all staff hired by a PHA should be counted as Section 3 workers.

Those staff that meet the qualification of a low or very low-income person, as defined by HUD’s income limit, would already qualify, and HUD does not think it is appropriate to include all PHA staff. As for expanding the categories further, the Section 3 statute is specific as to the priorities that HUD should be providing with employment and other economic opportunities generated by Federal financial assistance. Therefore, HUD is not expanding the scope of Section 3 workers beyond those listed in the statute. HUD changed the Section 3 worker definition to include a worker whose income is below the income limit established by HUD in place of the family income and appreciates the comments in support of the change.

Setting Time Limits

Commenters recommended that HUD should keep the existing standard of a three-year period for counting workers in order to account for staff turnover and to generate more accurate metrics. Other commenters recommended HUD limit someone counting as a Section 3 person to 5 years. Another commenter stated that because many contractors and subcontractors report no new hires for specific projects, a Section 3 worker should be defined as one who “at the time of hire” was low- or very low-income. One commenter asked HUD to be more specific in defining a Section 3 worker rather than stating low-income is a “limit established by HUD.”

HUD Response: HUD agrees with the commenters that a worker whose income has risen should only be counted for Section 3 purposes for five years. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. An employer may choose whether the workers are defined as Section 3 workers for that five-year period at the time of the workers’ hire, or the date from which the workers are certified as meeting the Section 3 worker definition.

Guidance

Commenters requested that HUD provide more specific guidance regarding how to calculate labor hours for the purpose of determining Section 3 status. For example, is there a set timeline for consideration, such as during the past year or several years? Or is it based on the business’ last 1–2 payrolls to capture the most recent picture of employment? Commenters stated that it is unclear over what time period labor hours are to be measured.

One commenter stated that it is unclear whether the “labor hours” standard relies on the labor hours on the Section 3 project, or in general.

HUD Response: HUD will provide additional guidance to assist PHAs and grantees in how to calculate labor hours. Generally, labor hours will be calculated based on the labor performed on a Section 3 project for housing and community development financial assistance or on all labor hours performed within the fiscal year for public housing assistance.

Subrecipient

One commenter stated that using the applicable definition of subrecipient in the HOME program would mean that multifamily owners contracting directly with the State may not have to comply with Section 3 requirements because they are not included in that definition for the HOME program in 24 CFR 92.2. This commenter also noted that multifamily owners are also not often contractors (under the proposed definition), because they do not enter into a contract with a recipient to perform the work. This commenter suggested inclusion of owners in the HOME program and changing the definition of subrecipient to say “has the meaning provided in the applicable program regulations, and in 2 CFR 200.93” or suggested HUD amend the definition of contractor to further define the phrase by adding “work in conjunction with a Section 3 project,” to more clearly identify that it includes an owner in the HOME program that contracts with general contractors.

HUD Response: HUD appreciates the comment. However, subrecipient has different meanings in different programs, which is why HUD defined it as either the meaning as is applied in the specific program or 2 CFR 200.93.

Targeted Section 3 Worker Definition

Some commenters supported the new “Targeted Section 3 worker” definition and eliminating tracking Section 3 business concern types separately. Some commenters stated that the Targeted Section 3 worker concept is consistent with the goal of expanding employment opportunities for individuals that receive Federal assistance for housing. Another commenter agreed with HUD’s efforts to track and target certain high priority Section 3 workers separately and efforts to fold Section 3 business concern engagement into other benchmarks.

Other commenters opposed the “Targeted Section 3 worker” definition, stating that it is duplicative with worker categories already given preference

under § 75.9. Commenters stated a separate reporting category for “Targeted Section 3 worker” merely complicates reporting requirements for recipients, contractors, and subcontractors, and recommended HUD keep the existing definition and the existing priority preference order. Other commenters noted that tracking additional information to determine Section 3 compliance would be burdensome.

A commenter recommended that hours worked by Section 3 business employees be categorized as regular Section 3 worker hours and Targeted Section 3 worker hours depending on the employee’s status to avoid inflated reporting of hours worked by targeted Section 3 workers. Other commenters suggested that a worker employed by a Section 3 business only be included in the “Targeted Section 3 worker” definition because it was created to better align the regulation with the law.

Commenters stated that counting all Section 3 business concern employees as Targeted Section 3 workers is problematic and risks questionable data. HUD should exclude “a worker employed by a Section 3 business” from the definition of Targeted Section 3 worker and Section 3 worker. Including “a worker employed by a Section 3 business” in the definition of “Targeted Section 3 worker” dilutes the purpose of creating a Targeted worker designation. It also frustrates the purpose of the statute, which is to give priority to public housing and other HUD-assisted residents in employment and training opportunities, along with low-income families near the Section 3 project location.

Commenters also suggested that HUD include public and HUD-assisted housing residents in the Targeted Section 3 worker definition for Section 3 projects, not just PHA projects. The proposed definition of Targeted Section 3 worker for PHA projects more accurately interprets the statutory priority of Section 3 to employ public housing and other Federally assisted residents than the definition for CPD recipients. One commenter recommended that HUD include the word priority in the definition of “Targeted Section 3 worker” to clarify the requirements and add objective criteria or guidance by which to monitor or measure success or satisfactory performance.

HUD Response: HUD appreciates the commenters’ recommendation to target public and HUD-assisted housing residents in both funding types. However, the statute specifies priority categories differently for recipients of

public housing financial assistance and housing and community development financial assistance. The Targeted Section 3 worker is a concept designed to serve as a proxy for the highest priority categories, allowing HUD to collect data through standardized reporting regarding the funding recipients’ efforts with respect to the priority categories. HUD believes that the definitions of Targeted Section 3 worker for both public housing financial assistance and other housing and community development financial assistance funds provide good reporting proxies for the statutory priorities and should remain as proposed. As Targeted Section 3 workers are a proxy for the priority categories solely for reporting purposes, and do not replace the prioritization that funding recipients must apply in their efforts under Section 3, the use of the word “priority” in the definition would be inappropriate.

§ 75.11 Targeted Section 3 Worker for Public Housing Financial Assistance

Commenters stated that HUD should combine 75.11(a)(2)(i) and (ii) into a single category, “residents of public and HUD-assisted housing” to more clearly include residents of all HUD-assisted housing programs and conversion projects. Commenters supported the addition of Section 8 assisted households. This change mirrors the Section 3 statute, which broadly emphasizes employment and training opportunities for “recipients of government assistance for housing.” Some commenters recommended deleting paragraph § 75.11(a)(1), because it is redundant with § 75.5. Commenters also asked HUD to clarify what “residents of other projects managed by the PHA” covers. One commenter suggested HUD add “administered by the PHA” when describing Section 8 assisted housing.

HUD Response: HUD appreciates the support for the categories in § 75.11 and recommendations to make changes to include additional HUD programs. HUD believes that consistent with the statute, the Targeted Section 3 worker definition for public housing financial assistance should focus on the categories as listed. To be inclusive of residents in other housing assisted by the PHA and residents of housing in the property management portfolio of the PHA, both categories have been included in the regulation in place of the vaguer term “managed by the PHA.” Those residents would also count as Section 3 workers for purposes of Targeted Section 3 workers for public housing financial assistance. The rule’s current “resident

of other projects managed by the PHA'' has been replaced, which should address the commenter's concerns.

§ 75.21 Targeted Section 3 Worker for Housing and Community Development Financial Assistance

One commenter wrote that limiting the definition to a geographic area eliminates large sectors of nearby Section 3 workers and business. Another commenter noted some State CDBG programs do not operate in areas where public housing residents or YouthBuild participants typically live. Commenters also stated that the proposed definition gives broader opportunity to identify low-income construction employees for Section 3 projects but requires wage calculations and census tract verification from contractors already burdened by paperwork and will remove the focus from employing eligible persons living within a neighborhood.

HUD Response: HUD retained the proposed Targeted Section 3 worker definition in the final rule. The rule creates the "Targeted Section 3 worker" concept so that HUD can track, and recipients can target, the hiring of Section 3 workers in selected categories based on the statute's hiring priorities. The Targeted Section 3 worker category also incorporates the statutory requirements of contracting with business concerns employing low- and very low-income persons. For other HUD housing and community development financial assistance programs, such as the State CDBG program or HOME Investment Partnerships programs, Targeted Section 3 workers would be low- or very low-income workers residing within a one-mile radius of the Section 3 project. If fewer than 5,000 people live within that one-mile radius, the circle may be expanded outward until that population is reached.

The requirement that contractors verify whether workers are low or very low-income for tracking purposes is not new. Contractors were already required to verify new hires as qualifying for Section 3 status, and the statute requires that employment and other economic opportunities generated by work in connection with housing rehabilitation, housing construction or other public construction projects receiving housing and community development assistance be directed to low- and very low-income persons in the local community. HUD's proposal to use Targeted Section 3 workers for housing and community development programs that fall within a defined service area should reduce burden because HUD's mapping tool

will identify the jurisdiction the contractor should target.

§ 75.5: Section 3 Business Concern Definition

Previous Rule's "Dollar Value" Method

Commenters stated that the previous "dollar value" method of reporting contracts awarded to Section 3 business concerns should be kept, as it gives recipients and general contractors a clear benchmark to achieve when selecting subcontractors and aligns with methods many are already using to report on minority-, women-, and veteran-owned businesses. Commenters noted Section 3 is designed to promote wealth-building in addition to employment opportunities and the "dollar value" method is a better measure of economic opportunities provided to low-income owners of Section 3 business concerns than the labor hours worked by their employees. Without having a metric tied to the number of contracts awarded to Section 3 business concerns, commenters anticipated a reduction in the number of contract awards, and a reduction in employment opportunities. One commenter stated that both definitions will likely continue to be a challenging means of qualifying for eligibility and may prove difficult to document.

HUD Response: HUD found the Section 3 business concern definition to be consistent with both the previous regulation and with the statute, although HUD notes that the final rule's definition does impose more rigorous criteria for qualifying as a Section 3 business concern with respect to the percentage of workers who must be Section 3 workers. This additional rigor in the criteria ensures that, if qualifying on the basis that the firm employs Section 3 workers, a high percentage of workers are in fact Section 3 workers, and ensures that, if qualifying on the basis that the owner is a low-income individual, the owner is in operational control and will benefit from the wealth creation opportunities. The changes to the Section 3 business concern definition do not depend on the change in reporting to a labor hours metric.

HUD recognizes that some in the industry have found the "dollar value" method to be workable, and that the dollar value metric does provide a measure of the extent of contracting to Section 3 business concerns. However, HUD believes there is value in having a unitary reporting metric—labor hours—and has designed the metric to measure both direct employment and to reflect prioritization of contracting with Section 3 business concerns. HUD

believes that this new method will be effective, will encourage wealth creation opportunities for the owners of Section 3 business concerns, and will provide the opportunity for recipients of HUD financial assistance to determine which projects use Section 3 businesses in a way that is not administratively burdensome.

Rule Rewards Creating Opportunities for Persons Who Are Not Low-Income

One commenter stated that the focus on hours worked is appropriate in light of the statute's focus on providing economic opportunities to low-income residents, but aggregating hours poses a risk that non-low-income people at Section 3 business concerns may report hours, though this risk is mitigated by the Section 3 business concern definition. Another commenter stated that the 51% owned and 75% labor hours requirements allow Section 3 business concerns to employ persons who are not low-income or very low-income.

Another commenter supported replacing the aggregate dollars spent metric, but stated that including all Section 3 business concerns' employee hours will lead to the misleading inclusion of non-low-income worker hours in the data; only the hours worked by the low- and very low-income employees of a Section 3 business concern should be reported as Section 3 hours worked.

HUD Response: According to the Section 3 statute, HUD must prioritize businesses that provide economic opportunities for low- and very-low-income persons. The statute does not require that HUD prioritize business that only provide economic opportunities for such persons. If HUD were to include only the Section 3 workers in the reporting metrics, the regulation would not effectuate the statutory requirement to also place an emphasis on Section 3 business concerns. The Section 3 statute states that HUD must prioritize Section 3 business concerns in the awarding of contracts. By collecting labor hour data on all employees of Section 3 business concerns, HUD is creating an incentive to contract with a Section 3 business concern while maintaining a unitary reporting metric for Section 3 performance. The final rule maintains the provision of the proposed rule that all hours worked on the project by the Section 3 business concern counts towards the benchmarks, with the awareness that this reporting framework will collect labor hour data for workers who are not low-income. This serves as the incentive to contract with Section 3

business concerns. HUD believes these changes are consistent with the statute.

Verification

A commenter stated that nothing addresses processes for verification of Section 3 business concern eligibility, and that HUD should enhance the Section 3 business concern registry to include confirmation of eligibility or work with Equal Employment Opportunity Commission to assist jurisdictions with certification programs. One commenter noted that using the Section 3 business concern registry to project availability of Section 3 workers is unreliable because the registry is a self-reporting structure with no mechanism to verify the business on the list, it assumes such businesses are able to work in any geographic area, and many PHAs in rural and suburban areas have reported that there are no Section 3 business concerns in their areas.

Another commenter raised the issue that verifying Census tract designations would create an additional burden, especially Census tract data that changes over time, which will result in fewer contractors participating in Section 3 projects.

One commenter stated apprehension about this part of the definition because accurately tracking and reporting labor hours will be much more challenging than tracking and reporting full-time employees. The proposed definition also makes it difficult for Section 3 business concerns and the entities that contract with them to predict with confidence that they will retain their Section 3 status, as labor hours can be dependent on the number of contracts a business bids for and receives.

Another commenter requested clarification regarding how long a business retains the Section 3 business concern status once it is certified as a Section 3 business concern. Commenters suggested HUD or the local government should bear the responsibility for verifying the eligibility of a Section 3 business concern, rather than shunting that responsibility to the builder, general contractor, or subcontractors. HUD's online Section 3 Business Registry⁴ was a positive first step, but HUD does not verify the self-certifications submitted by the business concerns, and it cautions database users to perform due diligence before awarding contracts.

HUD Response: HUD plans to continue the use of the Section 3 Business Registry as an available public

tool. While HUD appreciates the suggestion that HUD or the local government make determinations of eligibility for Section 3 business concerns, HUD believes that, consistent with other paperwork requirements, it is appropriate that the entity receiving HUD financial assistance ensure compliance with Section 3 requirements, which includes confirming that both Section 3 workers and Section 3 Business concerns qualify as such under this regulation. HUD addressed commenters' concerns about Census tract designations by removing that language from the rule, and concerns about labor hours are addressed in previous comment responses. Once a business is certified as a Section 3 business concern, it will retain that status as long as it continues to meet the definition. Status is determined at the time of hiring for each contract and is no different from any other definition. Currently, business concerns self-certify, and verification is done by HUD. The timing is on a project by project basis.

(1)(i) *"At least 51 percent owned by low- or very low-income persons"*

One commenter stated that this part of the definition follows the statute's intent. Another commenter stated that 51 percent ownership by low- or very low-income persons is unrealistic without training programs on business management.

HUD Response: HUD appreciates the feedback from commenters and is keeping this part of the Section 3 business concern definition as it is. HUD has found this definition to be consistent with both the previous regulation and with the statute. HUD notes that the definition also includes other methods by which a business concern may be defined as a Section 3 business concern. See 24 CFR 135.5; 12 U.S.C. 1701u (e)(2).

(1)(ii) *"Over 75 percent of the labor hours . . . performed by low- or very low-income persons"*

Commenters supported changes to definitions of Section 3 business concerns, Section 3 workers, and Targeted Section 3 workers under the new hire approach. One commenter stated that the decision to focus on percentage of hours worked by Section 3 individuals will result in a decrease of self-identified Section 3 business concerns. The commenter asserted that although it is a better metric for proving actual commitment to long-term employment of Section 3 individuals, gathering the data will be overly burdensome. One commenter stated that this option will present undue hardship

to small businesses and should be omitted. Another commenter stated that this requirement will negatively affect HOME and CDBG funded projects.

Some commenters supported tracking Section 3 hiring separately from Section 3 business concern tracking. Section 3 business concerns are already encouraged to retain existing employees to meet the previous Section 3 business concern definition. Counting existing employees to meet both the contract and hiring goals may result in decreased new hiring in connection with Section 3 covered assistance. Commenters recommended only tracking new Section 3 hires employed by Section 3 business concerns relative to a contractor's hiring goals.

One commenter also stated that even though the proposed rule provides a mechanism for PHAs to continue documenting compliance through a "new hire" metric, this proposed definition would still require PHAs to analyze a business's labor hours in order to determine whether a business could qualify as a Section 3 business concern.

One commenter noted the new burden would affect businesses who may not meet the new markers and might reevaluate the benefits of working with PHAs given the increased work to track labor hours. The commenter noted in an environment where getting bids is already difficult this would further dissuade them from doing business with PHAs. Other commenters suggested focusing on long-term employment goals for employees, developing benchmarks for growth of Section 3 business concerns, providing micro-business support, and targeting capital construction projects for mentorship and sub-contracting with Section 3 business concerns.

Some commenters stated that the definition of a Section 3 business concern should remain defined in part as a business where at least 30% of the permanent, full-time workforce are currently Section 3 residents, or were Section 3 residents within three years of the date of first employment at the business concern.

Commenters stated that this proposed amendment would render most Section 3 business concern owners in the commenter's city ineligible, as over 50% qualified by meeting the existing standard for the makeup of their workforce (30% full time permanent employees who are Section 3 residents). The result will be fewer Section 3 business concerns maintaining and/or seeking certification and will further compound the challenges of helping low-income workers access jobs. Most Section 3 business concerns do not

⁴ HUD, *What is the Section 3 Business Registry?*, Hud.gov, <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.

possess the infrastructure to support tracking this information. A commenter stated that 75 percent of labor hours is too high as a standard for determining Section 3 business concern eligibility. A smaller percentage would be more appropriate, or perhaps HUD could allow businesses to qualify either by labor hours or percentage of staff. Commenters stated that the 75 percent criterion would defeat important purposes of the Section 3 program which include encouraging business creation and increasing contract opportunities for businesses that employ a substantial number of low-income residents.

One commenter stated that it would significantly increase compliance costs, and that HUD appears to assume that every project will be tracking employee hours worked due to the applicability of federal prevailing wage requirements, but this is not the case. This commenter's program includes projects that are not subject to prevailing wage requirements, but that are subject to Section 3. Another commenter stated that the new definitions could pose significant challenges to businesses as they will have to first determine which employees are considered low- and very low-income persons, and then have to calculate if their labor hours are over 75 percent.

One commenter agreed that reporting on business concerns should not be an aggregate of dollars spent. The commenter recommended that HUD keep the self-certification tool and website resource and incentivize Section 3 contractors to register to make this resource as useful as possible. The commenter observed a review of the website shows that some states do not have any Section 3 contractors listed.

Commenters stated that the change from 30 percent of full-time employees to 75 percent of labor hours performed will limit Section 3 business concerns only to those lower-skilled businesses (cleaning companies, moving companies, perhaps landscaping or painting companies) that hire an overwhelming majority of their workers as low-income.

One commenter stated that the proposal will not have the intended impact of increasing access to opportunity. This change would look backwards rather than measuring opportunities provided as a direct result of the contract award. In practice, this change would significantly impact administrative efforts, would adversely affect other qualified Section 3 business concerns, and potentially limit employment opportunities available to the targeted population.

One commenter stated that the rule should keep the threshold at 30% but change it to hours worked rather than new hires and retain other elements of the current definition. The commenter recommended that HUD only count the hours worked by Section 3 residents toward the percentage goals of hours worked by Section 3 residents (not all employees of the Section 3 business concern). The commenter believes the 30% benchmark creates an incentive for established businesses to create a professional development component to their project approach, while 75% is much too high for most businesses to pursue.

One commenter recommended the definition be modified to include more than 75 percent of the labor hours worked at the business are performed by public housing, Section 8, Section 811, or Section 202 residents or persons who, immediately prior to the date of hire, were low- or very low-income, particularly women. Commenters suggested removing the 75 percent labor hour portion all together. If HUD proceeds with this definition, it should consider a transition period so existing Section 3 business concerns can adjust to the new definition.

HUD Response: HUD believes that the refined definition continues to reflect the language and intent of the Section 3 statute, defining Section 3 business concerns in a way that furthers economic opportunities for low- and very low-income persons. HUD recognizes that 75% is a higher number than the prior new hire standard but believes that Section 3 business concerns should be either majority owned by low or very low-income persons or should primarily employ such individuals. HUD believes that the prior 30% standard does not ensure that a sufficiently substantial number of low- or very-low-income persons benefit from the priority contracting status that the Section 3 statute and regulation provide. Section 3 business concern employees are counted as Targeted Section 3 workers, giving HUD funding recipients and Section 3 projects an incentive to hire them to meet their Targeted Section 3 Benchmark numbers. HUD acknowledges that the revised definition of Section 3 business concerns may result in a decrease in firms qualifying for the designation, but the benefits of qualification will be more directly targeted to low- and very-low-income persons. HUD notes that the safe harbor benchmarks can be adjusted by notice periodically, which is intended to allow HUD to modify the benchmarks to accommodate geographies where the initially proposed benchmarks cannot

be met due to the unavailability of Section 3 workers and Section 3 business concerns. HUD amended this provision to clarify that the 75% of labor hours should be determined based on looking back over the last 3 months of work performed for the business. The determination as a Section 3 business concern is made at the time the contract or subcontract is executed, so that the program participants have certainty in their Section 3 strategies. However, the final rule also provides flexibility to establish Section 3 business concern status during the Section 3 covered activity, to provide further incentive to employ Section 3 workers. If the business performed multiple projects, all of the hours on the projects over the prior three-month period should be considered for making the determination.

HUD notes the comment that observed a Section 3 business concern might need to track labor hours to be qualified, even if the federal funding recipient is reporting new hires. By eliminating the new hire alternative reporting metric, HUD anticipates that this dimension of documenting qualification as a Section 3 business concern will be mitigated. HUD further notes that businesses do not need to track labor hours precisely. HUD is not presuming the applicability of prevailing wage requirements, but rather is presuming that all employers paying an hourly wage will have some method to tabulate the number of hours worked, and for those that do not have a tracking mechanism in place, the final rule permits them to rely on a good faith assessment. An objective of Section 3 is to provide employment opportunities for public housing and low-income residents, which can lead to a focus on long-term employment goals. Other activities identified by the commenters are better suited for business development and therefore are outside the scope of this rule.

As for the concern that the definition will limit wage growth or promotion or result in Section 3 business concerns where all employees have low-income wages, HUD provides that the qualification of a Section 3 worker takes place at either the date of the Section 3 covered activity or the date of initial hire by the employer, not more than five years previously. Labor hours of an employee who is low- or very low-income at hire will continue to count for 5 years even if that person grows into a new, more advanced position. HUD anticipates that the employee with 5 years of experience with that same employer would be moving up in the business and would eventually need to

be replaced by a new, presumably low- or very-low-income entry-level employee. The definition has been modified to clarify this framework and to reduce the potential incentive to maintain workers at lower salaries simply to qualify as a Section 3 business concern. HUD also acknowledges that many entry-level opportunities for low-wage workers are in businesses and industries with a high percentage of low-wage employment possibilities. HUD determined not to implement a transition period, although contracts with Section 3 business concerns entered into under the regulations in place prior to the final rule's compliance date will continue to be considered Section 3 business concerns.

(1)(iii) at least 25 percent owned by current public housing residents or Section 8 residents

One commenter stated that the revised definition of at least 25 percent owned by current public housing residents, or residents who currently live in Section 8 assisted housing, will be easier to justify than evidence of a commitment to subcontract 25 percent or more of the dollar amount to all subcontracts. Other commenters stated that the third option for defining "Section 3 business concern" should be modified to require that the business have 51% ownership by public housing or Section 8 residents. These commenters warned that unless residents have majority control there is a danger of the business being a front for owners who might not represent residents' interests.

Further, the statute defines a Section 3 business concern as one with Section 3 residents having a controlling interest, or the business employs a substantial number of Section 3 residents. The commenter does not believe that this new proposed criterion is appropriate. Commenters also thought it would be inconsistent with the Congressional statutory intent that economic opportunities be provided to business concerns that are *majority owned and controlled* by low- and very low-income people and/or residents of government assisted housing. (12 U.S.C. 1701u(b)). Commenters further argued reducing the required ownership percentage would also be inconsistent with HUD's public housing regulations at 24 CFR part 963, which defines resident-owned business as one "(1) which is at least 51% owned by one or more public housing residents and, (2) whose management and daily business operations are controlled by one or more such individuals." Commenters felt reducing the required ownership percentage would invite

manipulation and abuse, the prevention of which would require a significant administrative burden. Commenters recommended the Section 3 regulations should be designed to encourage entrepreneurial development, not a passive ownership interest.

HUD Response: HUD agrees with commenters that the 25% ownership language may create the risk of unscrupulous business practices. Therefore, HUD revised the final rule to require a Section 3 business concern seeking to meet this third test be 51% owned and controlled by PHA residents and Section 8 residents, in place of the 25% test contained in the proposed rule. This number is also more consistent with HUD's current contracting provision for PHA resident owned businesses in 24 CFR part 963.

Wages

Commenters stated that businesses should not be rewarded for paying low wages; businesses should not receive a contracting preference by virtue of the fact that they pay their employees low wages. The commenters asserted Section 3 regulations should be designed to reward businesses that provide economic opportunities to low-income persons so that they have a chance to work their way out of poverty, and the income determination must be made immediately prior to the date of hire. According to the commenters, HUD's regulations should also reward employers who provide decent-paying jobs so that their employees no longer need to depend on HUD assistance to make ends meet. Commenters observed that by determining the low-income status of employees at the time of contract award (the labor hours "are performed by low- or very low-income persons") the definition inadvertently restricts eligibility to businesses whose employees are currently low-income. For these reasons, the commenters proposed that the definition of "Section 3 business concern" be changed to "Over 75 percent of the labor hours performed for the business are performed by persons who were low- or very low-income immediately prior to the date of hire and whose current wage is equal to or greater than 80 percent of the area median income."

HUD Response: The Section 3 regulations are designed to provide jobs for low-income persons. As these individuals gain experience, HUD anticipates wages will increase, and the individuals should be able to work their way out of poverty. The definition has been modified to clarify this framework by including a three-month documentation period and to reduce the

potential incentive to maintain workers at lower salaries simply to qualify as a Section 3 business concern.

Contract Requirement

One commenter expressed concern over the elimination of Section 3 business concern contracting requirements because the commenter's agency spends a lot of resources on outreach, but recognized many housing authorities lack the resources or diverse vendor marketplaces to do the same.

HUD Response: HUD recognizes that not all PHAs will have the same resources to outreach to Section 3 business concerns. HUD believes, however, that counting the Section 3 business concern employees as Targeted Section 3 workers will incentivize PHAs to target Section 3 business concerns to help meet their Targeted Section 3 worker benchmark. HUD will continue to have a Section 3 business concern directory as well to make it easy for PHAs and other entities to identify Section 3 business concerns in their jurisdiction. HUD also believes that making the definition consistent with the PHA resident-owned businesses definition in 24 CFR part 963 will also provide another avenue for finding Section 3 business concerns.

Alternative Suggestions for the Definition of Section 3 Business Concern

One commenter recommended that HUD extend Section 3 business concern status to businesses funded through the Opportunity Zone program.⁵ Commenters suggested defining a Section 3 business concern as meeting one of the following categories, in the following priority order: (1) Businesses owned 100% by Section 3 persons; (2) businesses owned and operated at a minimum 51% by Section 3 Persons; (3) Businesses whose total employees consist of a minimum of 75% Section 3 persons who reside within the project area; (4) Businesses whose total contract specific staffing (not back office administration unless the opportunity created is a back office position) has more than 50% Section 3 persons residing in the project area; (5) businesses owned by persons providing a negotiated employment level greater than 30% of total project staffing to Section 3 persons; (6) businesses who commit to directly conduct or to subcontract professional employment readiness and employment trade skills training related to the project work or other in-demand employment

⁵ See HUD, *Opportunity Now*, *Hud.gov*, <https://opportunityzones.hud.gov/>.

disciplines, at a minimum of 10% of their total contract award, plus or minus change orders, to Section 3 persons. Under (1), (2), (5), and (6), there is a priority order for the Section 3 persons as well: (A) Public housing assisted persons at the property where the work is being executed. When a contract is issued for service work covering multiple properties of the PHA, any public housing person from that PHA's portfolio shall compete equally for any opportunities created as a direct result of the expenditure. (B) When the service contract only covers one public housing property, the persons from that property will receive first priority for opportunities and then persons from other properties of the PHA's public housing portfolio will be secondly considered. (C) Housing Choice Voucher holders of that specific housing authority that administers that voucher will be third priority. (D) Persons residing in any project-based Section 8 property owned in whole or in part by that PHA. (E) Current YouthBuild participants. (F) All other low- and very low-income persons within the legal boundaries of the service area of the project.

HUD Response: HUD appreciates all the different options provided by commenters. However, HUD believes the final Section 3 business concern definition provided in this final rule provides a balance that is consistent with the statute and ensures that most Section 3 business concerns are in fact aimed at employing low- and very low-income persons. See responses above for additional discussion of the Section 3 business concern definition.

Small PHA Reporting

Support

Some commenters supported reporting flexibility for small PHAs, and especially the removal of the non-construction contract goal of 3 percent of all covered contracts to Section 3 business concerns, which they said is challenging to meet due to the amount of professional service contracts. One commenter suggested that for consistency and clarity, the final rule should exclude all PHAs with 250 or fewer units from reporting on benchmarks, regardless of procurement cost. The commenter also suggested that since the proposed rule exempts Section 8 funding from having to meet Section 3 requirements, the final rule should clarify the definition of a small agency for the purposes of Section 3 reporting to mean an agency with 250 or fewer public housing units. Another commenter recommended defining

"small PHA" in a way that alleviates regulatory burdens for as many agencies as possible and suggested defining small PHA as those having 550 or fewer combined public housing and Section 8 units; or, as Section 8 funding is not covered by Section 3, utilize a 250 unit threshold.

Another commenter supported the small PHA reporting exemption suggesting that HUD should define a small PHA in a way that would maximize the number of agencies exempted from detailed reporting, recommending 550 combined units (consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 and the Housing and Economic Recovery Act of 2008) or 250 public housing units (as Section 8 assistance is not covered by Section 3).

HUD Response: HUD continues to support the Small PHA reporting provision in the proposed rule. Small PHAs with less than 250 public housing units will not be required to report the number of labor hours and instead will be required to report their qualitative efforts. The final rule does not require a commitment to award at least 3 percent of the total dollar amount of all other Section 3 covered contracts to Section 3 business concerns. HUD currently is also not changing the number of public housing units for determining the Small PHA exception.

All PHAs Should Report for Data Collection and Compliance

Some commenters recommended that all PHAs, regardless of size, should be required to report for data collection and compliance. Other commenters specifically objected to the labor hours reporting exemption for PHAs with fewer than 250 housing units, because inexpensive software is available for PHAs to track and report labor hours. Other commenters suggested removing all exceptions for PHAs. Additional commenters elaborated that reporting requirements should be the same for all entities with no exceptions, noting that every recipient and every dollar should be included in order to guarantee that opportunities reach the poorest and smallest communities.

Commenters noted that small PHAs should not be exempt because they could have significant contractor and subcontractor activity in any given year. Specifically, one commenter noted that the \$200,000 threshold should apply to small PHAs because they have the same opportunity to create jobs as other entities. Another commenter noted that not requiring small PHAs to report creates a loophole that hinders opportunity.

HUD Response: HUD has heard from small PHAs that they do not receive enough funding or have sufficient pools of Section 3 workers to support annual new hire or labor hour reporting. Close to one-half of small PHAs with less than 250 public housing units receive less than the \$200,000 project threshold applicable to Section 3 projects that receive other HUD assistance such as CDBG and HOME funding. Due to Operating Fund shortfalls, small PHAs can take advantage of the authority under section 9(g)(2) of the United States Housing Act of 1937 to use its Operating and Capital Funds flexibly to fund any eligible activities under either funding stream. Some small PHAs compensate by promoting economic opportunities through referrals of residents to employers and job fairs, providing training facilities and offerings, and other local efforts. To recognize these other activities and the generally low amount of funds available or used for capital projects, small PHAs will report qualitatively on their efforts.

No Good Faith Assessment for Small PHAs

Some commenters objected to allowing small PHAs to supply a "good faith" assessment of hours worked because doing so would invite those entities to bypass important tracking requirements, suggesting that HUD should require quarterly, instead of annual reporting.

HUD Response: The small carve out for good faith assessment is not limited to small PHAs. As stated in the proposed rule, it is a limited exception where PHAs and other recipients of public housing financial assistance could use the reporting of a good faith assessment of the labor hours of a full-time or part-time employee from contractors and subcontractors that have not been subject to requirements specifying time and attendance reporting, and do not have systems already in place to track labor hours. This is to address employers that do not already track labor hours without making changes in time and attendance or payroll. It is not a permanent exception and if in the future the contractor or subcontractor is required to track labor hours under some other authority, or begins to voluntarily track labor hours, the exception would no longer apply.

Qualitative Reporting

Another commenter noted that the rule lacks information on what qualitative reporting will be required of small PHAs to substantiate the claim that such reporting will be less

burdensome and recommended that small PHAs have the option to track labor hours or do qualitative reporting.

HUD Response: The rule seeks not to be too prescriptive on qualitative reporting to provide small PHAs with the flexibility to report on a range of activities. HUD is considering some of the following to signify qualitative efforts: Outreach efforts to generate job applicants who are Targeted Section 3 workers; direct on-the-job training (including apprenticeships); indirect training such as arranging for, contracting for, or paying tuition for, off-site training technical assistance to help Section 3 workers; and outreach efforts to identify and secure bids from Section 3 business concerns. HUD plans to create a form for tracking and reporting qualitative efforts, to ease burden on recipients. HUD agrees that small PHAs should have the option of conforming to the more quantitative reporting standards and has modified the text to permit such option.

Dollar Threshold for Small PHAs

A few commenters also recommended use of a dollar threshold for public housing assistance similar to that used for other HUD assistance as a means to reduce reporting burdens on small agencies. One commenter suggested that using a dollar threshold, rather than a threshold based on number of public housing units, is a more practical and effective means of identifying those smaller projects that are less likely to generate significant Section 3 employment opportunities. Another commenter further suggested that thresholds established in the proposed rule for Community Planning and Development (CPD) should be applied across the board to all programs and noted that using a per-project or per-recipient threshold would more accurately exclude or include small PHAs based on funding. This commenter also suggested establishing a threshold for work-able non-working residents below which small PHAs would not have to report.

HUD Response: HUD continues to maintain that a dollar threshold for public housing financial assistance is not consistent with the statute. Section 3 applies to public housing operating, development, modernization, and management assistance, which covers virtually all housing authority projects and activities. HUD believes that the statute's expansive coverage of public housing projects and activities indicates that any attempt to diminish the coverage would be inconsistent with the statute.

Subcontractors

Several commenters noted that Section 3 requirements should not apply to subcontractors. Commenters stated that extending reporting requirements to subcontractors would discourage participation in PHA contracting opportunities, adversely impacting competition in the market, driving up construction costs and limiting economic opportunities. Other commenters added that HUD should consider ways to reduce administrative requirements on subcontractors wherever possible, echoing concerns that regulatory burdens which do not acknowledge subcontractor's practical limitations will discourage private sector partners from working with PHAs.

The commenters also suggested that regulatory relief for subcontractors could be achieved in a number of different ways, which range from exempting small subcontractors, excluding subcontractors from Section 3 obligations if their contracts are below a certain dollar threshold or below a percentage of the total covered funding on the Section 3 project. Commenters also suggested HUD consider limiting Section 3 obligations to the recipient, general contractor and immediate subcontractor(s), noting that relieving some or all Section 3 obligations on subcontractors may attract more high-quality tradespeople to affordable housing construction projects and possibly also lower the construction costs on Low Income Housing Tax Credit (LIHTC) and other affordable housing projects with covered HOME or CDBG funds.

Other commenters who expressed concerns about the reporting requirements for grantees and subcontractors also suggested thresholds for subcontractor reporting. Some commenters suggested retaining the existing \$100,000 threshold, though one commenter recommended a reduced compliance level, allowing subcontractors to track Section 3 employees instead of labor hours, to reduce the administrative burden on small entities who lack the capacity to track hours. Some commenters suggested a reporting requirement threshold of \$250,000 to align with the OMB procurement threshold, one of whom recommended this threshold also apply to contractors and offered the \$10,000 micro purchase threshold as an alternative. Other commenters suggested a compliance threshold of \$200,000.

A number of commenters supported reporting requirements for both contractors and subcontractors. One

commenter recommended excluding second tier and below subcontractors from requirements, noting that large PHAs are more likely to award or fund multimillion-dollar projects that have more than 25 first-tier subcontractors. Two commenters mentioned the role of contractors simplifying the reporting mechanism for subcontractors and encouraging subcontractors to comply with requirements. One commenter also suggested that the funding recipient should be allowed to decide the extent of the Section 3 reporting requirements for subcontractors.

One commenter requested clarification as to how Section 3 requirements "flow down" to contractors and subcontractors for housing and community development financial assistance, noting the current regulation includes references to recipients as well as contractors and subcontractors when describing numerical goals and hiring/contracting preferences. The commenter went on to state that Subpart C of the Proposed Rule references only the recipient when describing the employment, training and contracting requirements and safe harbors, and removes the \$100,000 contractor and subcontractor threshold in the current regulation for triggering Section 3 requirements. The commenter noted that while the Proposed Rule does mandate that each recipient "require subrecipients, contractors, and subcontractors" to meet the hiring/contracting requirements, they would propose a clarification on the extent to which contractors, subcontractors and subrecipients on Section 3 projects are bound by the requirements.

HUD Response: HUD is sensitive to the potential burden that Section 3 compliance may impose and has focused on outcomes, allowing the recipient to direct where the recipient's efforts, and its contractors' and subcontractors' efforts, will have maximum effect.

In the statute, the sections addressing public housing programs specifically include "contractors and subcontractors" in Section 3 requirements. In contrast, the statute does not reference "subcontractors" in the sections addressing other covered housing and community development assistance. Section 3's applicability to subcontractors as set forth in this final rule closely tracks the statute's requirements, however, focus on outcomes, deferring to the recipient to focus their efforts for maximum impact with respect to Section 3, and aligning the contractual obligations the recipient imposes on contractors and

subcontractors accordingly. Unlike the current rule, which applies Section 3 compliance to all subcontractors in excess of a \$100,000 contract threshold, the final rule does not apply specific Section 3 reporting obligations to any subcontractor and instead such requirements would stem from the recipient. See § 135.3(a)(3)(ii)(B). The proposal to reinstate the \$100,000 contract size threshold or any alternative threshold would limit the recipient's flexibility to determine how to achieve the "greatest extent feasible" standard most effectively. Similarly, subcontractors are excluded from the contract language provisions in Section 75.27(a), but subcontractors are still required to meet Section 3 requirements in Section 75.19, which provides the recipient flexibility to achieve the goal. The rule implements the suggestion provided in the comments that the recipient be allowed to decide on the extent of the Section 3 reporting requirements for subcontractors where the statute does not constrain HUD from providing this flexibility.

Definition for "neighborhood" or "service area"

Some commenters supported the proposed definition, stating that the definitions are reasonable and will simplify compliance. Other commenters accepted only the one-mile radius definition of "service area" or "neighborhood," but suggested that HUD eliminate the population requirement given the impact on rural areas.

Some commenters disagreed with the proposed definition, stating that metrics will be skewed based on close proximity to more affluent areas. Another commenter thought the definition is inconsistent with the statutory intent to encourage employment opportunities among low- and very low-income persons, noting a single definition cannot capture the expansive geographic areas. Another commenter noted the definition will actually limit mobility and the long-term success of resident programs because contracts will not provide opportunities to residents in successive projects in different neighborhoods. Some commenters wrote that the definition limits businesses in diverse economies and in high-cost cities that need more flexibility to recruit. One commenter wrote that this new definition would significantly reduce the labor pool of eligible Section 3 new hires, making it difficult to achieve benchmarks. Other commenters wrote that it may exclude local public housing or Section 8 residents. Another commenter thought

that it would add challenges for contractors in identifying and prioritizing eligible workers.

Other commenters noted that the restriction does not account for Section 3 covered projects in areas that are not low-income, such as some CDBG expenditures. In addition, commenters noted that such a limitation could have the unintended consequence of excluding large groups of people from the pool of potential employees, especially in cities that are combatting racial segregation. Another commenter stated that the requirements are too geographically limited as to whom and where recipients/contractors must provide opportunities. Additionally, it does not account for opportunities that are accessible beyond the prescribed radii by using mass transit and other commuting opportunities.

Some commenters noted that a new definition would add unnecessary administrative burdens which increases the cost of program management and compliance. One commenter wrote that determining how to meet a 5,000-person radius would be burdensome. Other commenters wrote that completing data analysis of employee home locations and certification would be administratively burdensome and could be covered under state and local data privacy laws. In addition, a commenter stated that the definition may limit PHAs' abilities to hire individuals in their communities who would otherwise qualify as a Section 3 worker and stated that entities receiving community development funds are better at determining which individuals would benefit most from Section 3 employment.

Several commenters suggested that HUD retain the definition of "service area" as it exists in the current rule at 24 CFR 135.5. Another commenter supported Section 3 and encouraged the retention of flexible approaches to compliance, such as those outlined in 24 CFR 135.30. Any proposed rule changes should consider geographical and service population differences. The commenter supported maintaining the rule as is, noting it provides flexibility for compliance through training, hiring, or contracting. Similarly, another commenter noted that there should be flexibility and factors other than hours worked and earned to provide Section 3 credit.

HUD Response: HUD notes that the neighborhood or service area requirement applies to the prioritization of effort with respect to housing and community development financial assistance, not public housing funds. The hiring prioritization is different for

this category of funding, and pursuant to the statute is focused on residents of the geographic area in which the work is being done, not on the rent-assisted status of the workers. Consequently, in this context, HUD is not adjusting the regulatory text to acknowledge the availability of transit or to prioritize employment of low- and very-low-income people from a broader geography.

The rule seeks not to limit the labor pool available within specific geographic areas, but to allow flexibility for smaller and more rural areas through the definition. HUD believes counting individuals who live within one mile of the worksite and within an expandable circle centered around the worksite that encompasses 5,000 people provides a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the project neighborhood. Where the one-mile radius circle centered around the worksite has less than 5,000 people, the radius would be expanded outwardly to achieve the desired population of 5,000 people. This expansion would address many of the commenters' concerns regarding smaller communities or rural areas. For the benefit of densely settled urban areas, HUD recognizes there may be more than 5,000 people, but will hold at the one-mile geographic diameter.

HUD believes this final rule does take into consideration geographical and service population differences and retains flexibility for compliance through training, hiring, or contracting. Additionally, the rule is meant to streamline the Section 3 process to make it consistent with the statute and easier to implement. Compliance can be evaluated qualitatively if the labor hours benchmark cannot be met. Under this rule, both measurements are permissible, and the requirements for qualitative evaluation are laid out in the rule. In addition, HUD intends to create a web-based tool to support recipients, subrecipients, contractors, and subcontractors in determining the geographic area encompassing Targeted Section 3 workers.

Allow Grantees To Define "Neighborhood" or "Service Area"

Commenters recommended that grantees be given the ability to define "service area" for themselves. Another commenter urged HUD to adopt something other than a "one-size-fits-all" approach so that small rural counties would not have difficulty utilizing federal funding. One commenter noted for example that in New Orleans, there are clearly defined

neighborhoods that most residents and officials understand and recognize, some having a larger area than a one-mile radius. The commenter stated that allowing for a more localized definition of 'project area,' rather than using HUD's definition of a one-mile radius or 5,000 person population guideline, increases local participation in projects that impact those individuals and their immediate surroundings and makes the most sense for their community. This commenter stated that recipients should be able to define their geographic size for purposes of how they focus their priorities regarding low-income persons residing within the service area or neighborhood in which the project is located, and communicate their determination to sub-recipients, contractors and subcontractors. Another suggestion was to have localities work with their local HUD office to define service area based on the locality's characteristics.

Commenters suggested that HUD allow residents and businesses from anywhere in the state to receive priority consideration or to give state recipients deference in establishing areas for purposes of meeting Section 3 requirements. Additionally, one commenter stated that service area may change based on project type, some serving entire communities while others serve smaller sections of a community, rendering the one-mile radius inapplicable depending on the project's scope of impact.

The commenters noted that limiting preference to a certain "service area" may have the unintended consequence of excluding large groups of people from the pool of potential employees. The commenters proposed allowing localities to either target job opportunities to low-income hires from anywhere within the locality, or work with their local HUD offices to define appropriate service areas based on the characteristics of the locality. One commenter wrote that the one-mile radius is too limiting and that residents within the community should be considered.

Some commenters suggested that HUD define service area to be "the area within or contiguous to a PHA's jurisdictional boundaries." Other commenters suggested that HUD define "service area" or "neighborhood" in the following tiered manner: (1) PHA residents in project area; (2) Section 3 residents in project area; (3) extremely low-income or homeless individuals in project area; (4) YouthBuild in project area; and (5) next closest PHA in project area.

One commenter suggested that HUD should give preference to eligible residents of the neighborhood surrounding the PHA before other residents of the metropolitan area and should utilize the language in Subpart C § 75.19 reading "Section 3 workers residing within the service area or the neighborhood of the project." One commenter stated that Section 3 Employment Priorities, as written, is very clear as to the order of Section 3 applicant priorities, starting with residents in closest proximity to the construction project, but disagreed that the one mile and 5,000 population radius is an appropriate geographic, using two PHA examples of Cayce Place and Edgehill to show that these metrics would be skewed based upon the close proximity to those earning twice the AMI and with property values in the hundreds of thousands of dollars.

HUD Response: As noted above, the neighborhood or service area requirement applies to the prioritization of effort with respect to housing and community development financial assistance, not public housing funds, and the focus in this context is on residents of the geographic area in which the work is being done. HUD believes that its proposed framework of counting individuals who live within one mile of the worksite and within an expandable circle centered around the worksite that encompasses 5,000 people provides a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the neighborhood of the project. HUD believes the proposed Section 3 regulation takes the varied geographical areas into account and provides a streamlined framework that more specifically determines who might benefit from employment and training opportunities available within the area surrounding a Section 3 project. Where the radius or circle centered around the worksite has less than 5,000 people, the radius would be expanded outwardly to achieve the desired population of 5,000 people. All Targeted Section 3 workers identified by the geographic radius must also qualify as Section 3 workers, so this would not include higher-income workers within the neighborhood or service area.

Rural Areas and Contractors

Several commenters noted concerns about the effect of the proposed "service area" definition on Section 3 implementation in rural areas. One commenter stated it would be unrealistic and burdensome for employers in rural areas to administer and monitor the one-mile radius, and

that it does not reflect the realities of construction employment in small rural states where the service area is the entire state. One commenter also stated that in areas of low population density, there often will not be sufficient residents or businesses that are capable of performing the work required for housing and community development projects. Other commenters wrote that, given chronic and widespread labor shortages, it is inadvisable to have such a small geographic restriction on the labor pool of Section 3 workers.

Other commenters accepted the one-mile radius definition of "service area" or "neighborhood," but stated the 5,000-person population radius is too large for rural areas. Another commenter noted that the population threshold could increase the service area size exponentially in cities and counties where the population is less than 5,000.

One commenter in Utah opposed the proposed definition, arguing that changing the definition of "neighborhood" to 5,000 people would not work because of the state's very large rural geographic area. The commenter stated HUD's determination that most (77%) current CPD projects had a population of 5,000 people within one mile of the project site is not applicable in Utah, which has only 29 counties. The commenter detailed that 70% of Utah's population resides in its 4 urban counties, and Utah's CDBG projects are part of the 23% that do not have 5,000 people within a one-mile radius of a project site.

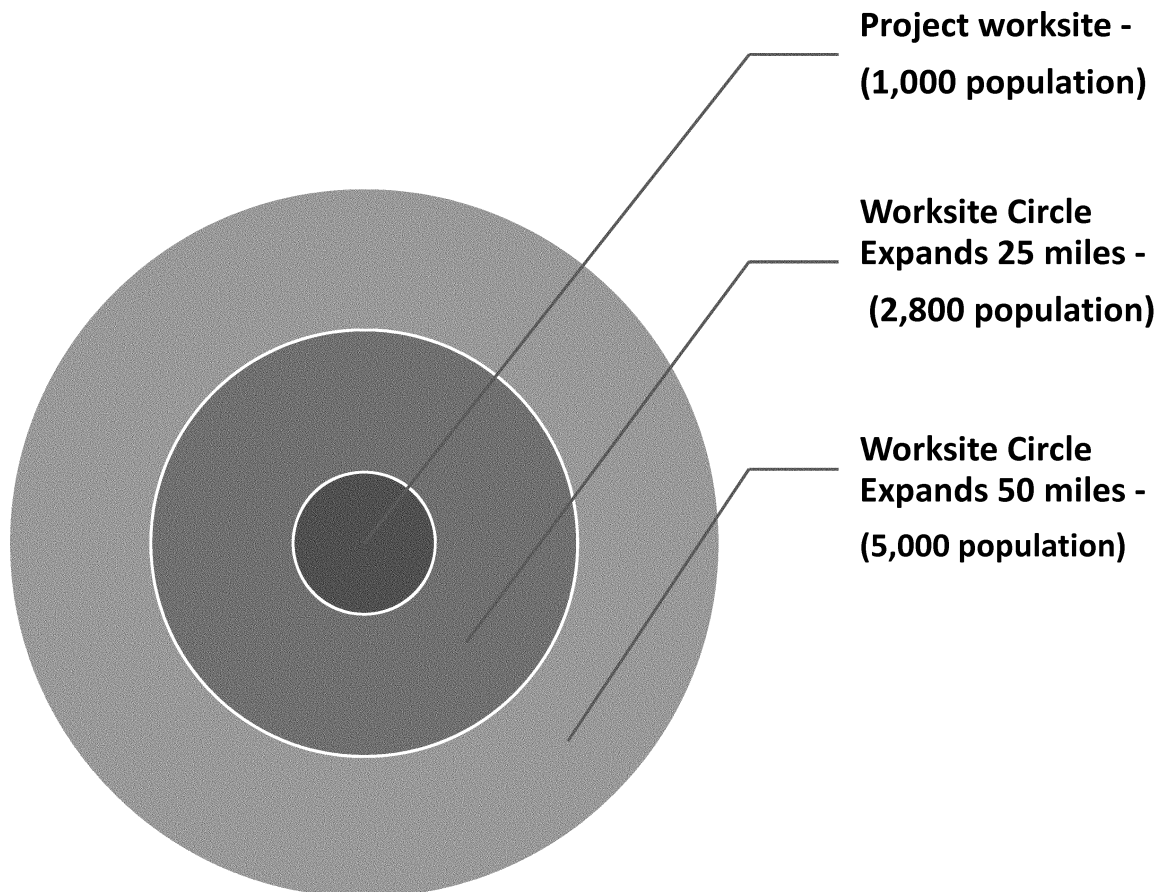
One commenter mentioned the impact of the proposed definition on small contractors or those outside the immediate service area, noting that CDBG and HOME funds are often financing projects completed by small contractors who need to travel outside of a service area to complete work on a project. Another commenter rejected the proposed definition, suggesting that for small town jurisdictions, the "service area" or "neighborhood" should apply within the recipient's jurisdiction, which may be an entire county. One commenter mentioned that finding Section 3 contractors or businesses is already challenging and should not be limited by a "service area" or "neighborhood" definition.

HUD Response: HUD acknowledges and has carefully considered the concerns of commenters representing small and rural areas regarding the proposed definition of neighborhood/service area. As previously stated, HUD supports the proposed framework of counting individuals who live within one mile of the worksite and within an expandable circle centered around the

worksite that encompasses 5,000 people. This concept was designed specifically to address the unique needs and challenges facing rural and small

communities. The graphic provides an example on how a circle centered around a worksite with fewer than 5,000 people may be expanded until the

desired population goal of 5,000 people is met or eligible Targeted Section 3 workers are counted.



Above: Graphic depiction showing how the one-mile radius can be expanded where there are fewer than 5,000 people until the 5,000-person population is found.

The text as written will provide a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the neighborhood of the project. HUD believes the proposed Section 3 regulation takes the varied geographical areas into account and provides a streamlined framework that more specifically determines who might benefit from employment and training opportunities available within the area surrounding a Section 3 project. HUD also notes that over time, as outcome results are reported to HUD, the benchmarks may be tailored to certain types of projects and geographies by notice, with the explicit intention that it may be appropriate to set different benchmarks for rural areas given the

availability of labor and the patterns of contracting work in rural areas.

Web Tool

Some commenters noted that HUD's proposal to provide a web tool to aid in the process of determining a geographic service area would be helpful. One commenter urged HUD to provide the proposed web tool that will help determine the geographic area that encompasses Targeted Section 3 workers before it proceeds with the current definition and finalizes the rule. Commenters requested that HUD provide it to state and local recipients, sub-recipients, contractors, and subcontractors for testing before implementation. Though encouraged by the prospect of a web tool to help determine the geographic area that

encompasses Targeted Section 3 workers, some commenters still argued for a broader definition and geographic areas that define Targeted Section 3 workers. Some commenters thought the web tool would not alleviate burden from the contractor that would still need to determine if a worker meets the requirements to be in the geographically defined area.

HUD Response: HUD agrees with the suggestion to provide a web tool to aid in the process of determining a geographic neighborhood/service area. As stated in the proposed rule, HUD will create and provide this tool at the issuance of the final rule to aid recipients, subrecipients, contractors, and subcontractors to determine the geographic area that encompasses Targeted Section 3 workers under this

definition. HUD will also explore the option of creating a mobile tool to help recipients with monitoring and compliance determinations.

Exceptions

Commenters suggested the proposed definition should not apply to Puerto Rico considering its geographic composition.

HUD Response: HUD has decided to retain the proposed definition for all recipients, including Puerto Rico. HUD believes the proposed regulation takes the varied geographical areas into account and provides a streamlined framework that will enable eligible workers to benefit from employment and training opportunities available within the area surrounding a Section 3 project.

YouthBuild Participants

Some commenters were in favor of or not opposed to expanding the definition to include previous YouthBuild workers that are under 24 years of age and those who are still eligible to participate in YouthBuild but may have graduated out of the program. One commenter was opposed to expanding the definition on the grounds that it would require onerous and complex background checks and research to determine whether a participant meets the alternate definition. One commenter recommended that the definition be changed to include previous YouthBuild workers who successfully graduated from the program and are either under age 24 or are otherwise still eligible for YouthBuild programs. Other commenters proposed that the definition of YouthBuild participant should be as broad as possible, regardless of age, while other commenters proposed the definition to include other programs which teach relevant skills, such as Service and Conservation Corps participants and graduates, participants/graduates of “pre-apprenticeship” training programs, participants/graduates of “youth corps,” VFW Local Program participants, and AmeriCorps participants.

HUD Response: HUD appreciates the commenters’ support of the YouthBuild program, and after careful deliberation, has decided to keep the definition consistent with the current regulations and current YouthBuild participants. See 29 U.S.C. 3226; 24 CFR 135.5. HUD determined that given the work required to certify current YouthBuild workers, that adding a longer-term duration would create an additional paperwork requirement on both the person claiming the status and the entity reporting the status. It may also cause

confusion using a certain period of time. Additionally, a YouthBuild worker can still qualify for 5 years if they are employed at the end of their YouthBuild experience.

Applicability and Scope

One commenter supported the rule’s change to applicability. Another commenter supported Section 3 as an important mechanism to strengthen communities, reduce poverty, and increase residents’ economic self-sufficiency. One commenter proposed that these rules should apply to all developers, contractors, and sub-contractors; all professional, skilled, unskilled, technical, and consulting service contracts compensated partially or fully by HUD funds—no exceptions. Another commenter suggested these rules shall be applicable to all professional, skilled, unskilled, technical, and consulting service contracts line items.

Other commenters suggested that HUD should clarify that owners and managers of HOPE VI, Choice Neighborhoods and Mixed-Financed Developments are subject to Section 3 Hiring and Contracting requirements in their own operations and should extend this requirement to Rental Assistance Demonstration (RAD) converted projects. One commenter supported HUD’s separation of PHA requirements from non-PHA requirements because it did not make sense for non-PHAs to follow regulations intended for PHAs.

A commenter supported HUD’s clarification regarding Section 3 applicability to projects receiving HUD assistance of \$200,000 or greater. Another commenter warned that this rule states that Section 3 will apply when the amount of HUD assistance is greater than \$200,000 on a per-project basis, which would potentially exempt projects where the HUD funding is less than \$200,000, even though the combined total funding is much higher, leading to a decrease in number of projects subject to Section 3.

One commenter suggested that PBV and PBRA contracts should be exempt from Section 3 compliance. Another commenter suggested that, rather than a per-project basis, it would be simpler to apply Section 3 to individual contracts for housing and public construction funded with HUD assistance.

HUD Response: HUD shares the view that Section 3 is an important mechanism to strengthen communities, reduce poverty, and increase economic self-sufficiency. HUD seeks to focus Section 3’s applicability where it can have a real impact, and to exempt from Section 3 those cases where

applicability imposes burdens not commensurate with outcomes. HUD has concluded that in certain circumstances, particularly professional services, there are very few opportunities for Section 3 outcomes. The proposed definitions defined the scope of programs subject to Section 3 requirements but did not expand such coverage beyond what HUD’s existing regulations already required for compliance. HUD proposed the \$200,000 threshold for housing rehabilitation, housing construction and other public construction projects because work below that amount would likely not trigger long-term employment opportunities for which the recipient could show measurable labor hours. HUD disagrees that Section 3 should be applied to all types of work, without exception, and reaffirms in the final rule the exception for professional services. The proposed rule does, however, give credit in the reporting for opportunities that are created in the professional services context by including professional services labor hours in the numerator, and not in the denominator, of the reported outcome ratios. The final rule applies Section 3 in a manner consistent with the statute. HUD has determined that monthly rental assistance payments, such as those provided under Section 8 project-based voucher or project-based rental assistance housing assistance payment contracts, are not covered by the statute. Properties converted to Section 8 rental assistance through the RAD are covered by the rules applicable to Section 8. However, the RAD governing notice does apply Section 3 requirements to those activities occurring after the date of the RAD conversion which are contractually obligated as part of the RAD conversion.

Employment Priorities § 75.9 / § 75.19

Some commenters supported separating the agencies which fund Section 3 projects from PHAs and mirroring the statute. Other commenters felt that the priorities should be the same for both Section 3 projects and PHA financial assistance. Other commenters suggested that HUD give preferences to certain groups, while other commenters thought HUD should consider adding geographic considerations into the definition. One commenter suggested that the last priority level should be expanded to any person if the PHA can reasonably demonstrate there are not sufficient Section 3 residents with the requisite job skills within a project’s geographic area. Commenters also asked HUD to clarify that otherwise eligible workers of PHAs, even if under private

management, are included in this category, as well as recipients of Section 8 assistance or voucher assistance residing in properties managed by other entities. One commenter suggested HUD change the regulatory language to insert the word “priority” in § 75.19 to clarify the requirement and make the sections consistent with § 75.9.

HUD Response: HUD appreciates the comments that supported the employment prioritizations. These prioritizations follow the statutory prioritizations, and HUD is including that language for clarity for recipients implementing the regulations. HUD has rephrased § 75.19 to include the word “priority,” consistent with the language of the statute. While HUD appreciates the alternative suggestions, these regulations are meant to streamline the Section 3 process to make it consistent with the statute and easier to implement. HUD believes that the existing regulatory text does that and is making no changes to this section. HUD, however, encourages the HUD financial assistance recipients to consider all the diverse suggestions provided when working on outreach to persons who are low- and very low-income persons to meet the Section 3 benchmarks including residents of PHAs under private management such as those residing in a mixed-finance development project.

Reporting § 75.15 / § 75.25

Consolidated Plan Regulations

A commenter recommended that the Consolidated Plan regulations at 24 CFR 91.520(a) be amended to specifically include Section 3 reporting; PIH will need to develop a Section 3 reporting format.

HUD Response: HUD will review Department-level strategies on how to effectively incorporate Section 3 reporting into current systems and data collection tools, including the Consolidated Plan. As a result, HUD will issue sub-regulatory guidance on reporting per program area and provide technical assistance to recipients for Section 3 compliance.

Systems

A commenter warned that HUD will need to modify IDIS to allow CDBG and HOME recipients to report on their Section 3 actions annually because CDBG and HOME recipients will report on their Section 3 actions in IDIS using a similar form as HUD Form 60002 that has been modified to capture labor hours worked. This commenter stated that this move will eliminate

redundancy and ease the administrative burden for grantees.

HUD Response: HUD agrees that the Integrated Disbursement and Information System (IDIS) and DRGR should be modified to ensure accurate Section 3 compliance reporting for CDBG and HOME recipients. HUD will also adjust our data collection systems as necessary to ease administrative burden for grantees and to eliminate redundancy.

Report Through Action Plan and/or CAPER and Effective Date

A commenter supported HUD’s effort and recommended reporting through the Action Plan and/or the Consolidated Annual Performance Evaluation Report (CAPER), only on completed projects. One commenter recommended that the final rule be effective for funds granted in the next Federal fiscal year after publication of the final rule so there is time for contracts/written agreements with sub-awardees to be amended, and in order to avoid having CAPER reporting requirements from annual federal years with two separate program requirements.

HUD Response: HUD supports efficient and effective Section 3 compliance reporting through current mechanisms, such as the Annual Action Plan and/or CAPER, for applicable HUD programs. As stated in the proposed rule, HUD believes that requiring reporting annually, but consistent with timeframes that PHAs and other recipients of other housing financial assistance are already using to submit documents to HUD, will relieve existing burden. HUD may also look into reporting into other existing systems rather than requiring PHAs and other recipients to log into and report under a separate system, such as the existing SPEARS.

Double Counting

A commenter stated that reporting responsibilities when multiple government agencies provide HUD CPD funds are unclear and requested HUD determine whether agencies will be responsible for reporting outcomes for each federal investment or whether HUD will prevent double counting by limiting reporting to one funding agency per Section 3 project.

HUD Response: Section 75.29(b) specifies that when there is funding from multiple programs that exceed the threshold in § 75.3(a)(2), the recipient will report to the applicable HUD program office. Some HUD systems allow for indicating when there are multiple HUD funds so that reporting can be limited to one system. However,

not all HUD systems provide for that type of designation. HUD will provide additional guidance to recipients that have multiple funding sources on the proper process for reporting Section 3 project completion.

Separate Reporting by Funding Source

One commenter requested HUD clarify whether PHAs will still be required to report separately by funding source (e.g., Operating Funds and Capital Funds) or whether the hires report will be aggregated to report only on PHA total funds. This decision will impact how PHAs currently collect and track Section 3 hires. A commenter supported elimination of separate reporting on contracting with Section 3 business concerns. Other commenters stated that the reporting and monitoring required to remove professional services labor hours from overall labor hours would add additional administrative burden to PHAs and could prove challenging in the overall reporting process.

HUD Response: Under the final rule, for non-MTW agencies, reporting initially will remain at the grant or individual program level, but HUD may explore agency-level reporting where possible to streamline and simplify. PHAs will still be required to report by separate funding source or in the aggregate for MTW agencies. For ease in administration, the rule will provide separate definitions for these types of funding and separate subparts relating to: (1) Public housing financial assistance, which covers (a) development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act), (b) operations and management assistance provided pursuant to Section 9(e) of the 1937 Act (Operating Fund), and (c) development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act (Capital Fund); and (2) Section 3 projects, which means housing rehabilitation, housing construction and other public construction projects assisted with HUD housing and community development assistance when the amount of the assistance to the project exceeds \$200,000, or \$100,000 where the assistance is from HUD’s Lead Hazard Control and Healthy Homes programs. There are no current plans to aggregate the information or eliminate reporting on contracting with Section 3 business concerns. Small PHAs with less than 250 public housing units will be permitted to report qualitatively. HUD is exploring how best to implement qualitative reporting for small PHAs, and as indicated above

may study whether other reporting methods should be contemplated in the future. As stated in the final rule, HUD believes that tracking labor hours consistent with existing tracking for prevailing wage requirements would reduce burden on recipients. HUD also believes that tracking labor hours will better allow HUD to determine if long-term employment opportunities are being generated.

Exempt Commodity Purchases, Non-Construction, and Professional Services

Commenters strongly agreed with the change to exempt both commodities purchases (material supply contracts) as well as professional services (contracts for legal, accounting, financial consulting, environmental assessment, A&E services and other professional services) from the calculation of contract dollars and new hires for reporting. One commenter supported exclusion of Section 3 requirements on non-construction professional services (e.g., legal, accounting, and engineering) but has concerns that not all Section 3 workers want careers in the construction field and some employment is generated in non-construction contracts.

HUD Response: The final rule maintains the exemption of material supply contracts and maintains the structure presented in the proposed rule which does not require separate reporting of contracting with Section 3 business concerns. HUD is providing clarification on the exemption for professional services in the definition of “professional services” in this final rule, by defining professional as services that require an advanced degree or professional licensing.

HUD acknowledges that many low-income workers seek employment in jobs other than construction. However, data indicate that there are relatively few opportunities for Section 3 hiring in professional services fields such as legal services and civil engineering. Many of the positions within these professional services fields require specialized degrees and in many cases the hiring is not directly tracked to a specific federally funded project or activity. The reporting structure in the rule allows a recipient to count as Section 3 labor hours and as Targeted Section 3 labor hours any work performed by a Section 3 worker or a Targeted Section 3 worker (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able

to report Section 3 hires in the professional services context.

Frequency of Reporting

Commenters stated that annual reporting does not facilitate capture and correcting of non-compliance. Some commenters recommended all PHAs should provide Section 3 reports quarterly instead of at the end of the fiscal year. Another commenter recommended that reporting should be done on a monthly basis.

One commenter strongly supported a return to annual reporting and integration of reporting with other funding program reporting requirements. Another commenter supported annual reporting for reducing administrative burden of more frequent reporting. Another commenter supported the proposed change to annual reporting on projects completed within the reporting year.

HUD Response: The reporting requirements represents a balance between frequent reporting, effective reporting, and administrative burden. Frequent reporting allows HUD to keep a closer eye on compliance, and early oversight can result in identification of non-compliant actors when there is still opportunity to influence change. Frequent reporting also risks identifying as non-compliant those endeavors where the Section 3 opportunities are sequenced later in the effort’s timeline, resulting in ineffective reporting. This is often the case in construction efforts that begin with heavy machinery work and end with trades where Section 3 opportunities are more commonly created. Additionally, there is an administrative burden for the reporting entity, and an oversight responsibility for HUD, each time Section 3 reports must be submitted. HUD notes the variety of opinion represented in the comments, with suggestions of monthly, quarterly, and annual reporting, as well as the project-based reporting permitted in the proposed rule. HUD has determined not to revise the rule. As a result, reporting is on an annual basis for ongoing endeavors such as PHA operations or multi-year infrastructure or disaster recovery efforts. For discrete projects such as development of a singular multifamily apartment building, the reporting is on a project basis, and reported to HUD in the recipient’s annual report corresponding to the year of the project’s completion. Acknowledging the value of early intervention, the final rule also shifts oversight of Section 3 from a centralized HUD office, which typically does not have visibility into whether the funding recipient is embracing and effectively

implementing its Section 3 obligations, to the program office which is in regular communication with the funding recipient. Part of HUD’s intention with respect to this shift in oversight is to integrate discussions of Section 3 compliance into regular oversight discussions so that there are opportunities to influence improvement in Section 3 performance on an ongoing basis.

Submission Timing

Commenters recommended that HUD should provide further guidance on how and when annual reports will be submitted and stated that meeting the current January 10th deadline is a challenge for PHAs because end-of-year hires may be undercounted because paperwork may still be in process in January. Commenters stated that if the new regulations require reporting consistent with the timeframes that PHAs are already using, it will assist PHAs in providing the most accurate and up-to-date information. The commenters recommended that HUD refine the proposed reporting frequency regulations to read: “recipients must report annually after the end of their reporting year to HUD . . .” and HUD should provide PHAs 90 days from the end of their reporting year to have sufficient time to collect and aggregate data.

Another commenter noted that MTW PHAs provide annual reports based on the past fiscal year and updating the system to include such Section 3 reporting would be easier to use. This commenter also noted that it needs to be clarified how the reporting would deal with differing timelines for annual reporting versus the duration of projects with funds triggering Section 3 reporting.

HUD Response: As noted above, HUD will issue sub-regulatory guidance on reporting by program area. HUD anticipates that it may be able to integrate Section 3 reporting into the funding recipients’ other, programmatic, reporting structures, which already have existing time frames for submission of reports. The rule does specify that reporting is based on the recipient’s fiscal year, which language has not been changed. Section 3 requirements may not be waived by MTW agencies. MTW only provides flexibility for requirements promulgated under the 1937 Act, while Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968. Since HUD has a specific online system to collect Section 3 data—SPEARS—all PHAs, including MTW agencies, should report into that system. HUD will consider providing

training specific to MTW agencies, in addition to training for a more general audience, on how to use the SPEARS system.

Major Construction Project Administrative Burdens

Commenters warned that large workforces and the use of multiple subcontractors on major construction projects would lead to heavy administrative burdens which may discourage subrecipients or contractors from bidding. These commenters recommended contractors be allowed to self-certify to relieve administrative burdens.

HUD Response: HUD appreciates the commenters' concerns but determined that self-certification would not provide HUD with an adequate compliance oversight mechanism. There is no provision in the rule for self-certification of meeting the benchmark requirements.

Increasing Costs

One commenter stated that the requirements are already burdensome to their local governments, administrators, contractors and sub-contractors and the proposed rule would increase the burden, leading to fewer contractors willing to participate in CDBG projects, driving up costs, and leading to smaller projects and fewer beneficiaries. One commenter supported keeping reporting requirements to a minimum because both PHAs and HUD staff have limited capacity for reporting and providing constructive feedback.

One commenter stated the ability to identify workers individually rather than relying on the business concern to meet Section 3 definitions provides additional opportunity to demonstrate Section 3 compliance where there was none before, but this creates an additional burden to document safe harbor, particularly for Lead Hazard and Healthy Homes projects where a lower project dollar threshold is imposed. The commenter went on to suggest HUD consider providing additional funding for contractors to meet the financial impact of the paperwork burden of documenting compliance. Similarly, other commenters noted that under the previous rule the dollar threshold is zero, whereas under the proposed rule, despite the type of HUD funds received, every penny contracted, invested, or applied to any contract project, regardless of ownership, would have triggered full Section 3 compliance.

Commenters also expressed concern for the burden on contractors to meet hourly benchmarks while working through a pool of unskilled new hires

and potential costs to the owner if a new hire fails to meet job requirements. One commenter stated that a significant increase in Federal funding would be required to fund the increased administrative burden of the proposed rule. Other commenters stated that due to the lack of resources many PHAs have, HUD should ask for increased funding for public housing so that PHAs can sufficiently meet Section 3's intended goals. Commenters suggested HUD consider creating Section 3 technical assistance funding that can be used to build PHAs' technical knowledge and capacity.

HUD Response: HUD will continue to look for ways to reduce the impact of Section 3 reporting requirements using existing reporting and compliance systems that decrease administrative burden on recipients. HUD believes the use of labor hours, rather than new hires, will reduce costs as many construction contractors already track labor hours to meet prevailing wage requirements. This practice is proposed to provide a consistent labor hour tracking mechanism that will make compliance with Section 3 easier not only for recipients of HUD assistance, but also for contractors and subcontractors. HUD anticipates a reduction in reporting and recordkeeping burdens equal to approximately 64,270 hours, or \$2.4 million annually. This rule will not have any impact on the level of funding for covered HUD programs. Funding is determined independently by Congressional appropriations, authorizing statutes and regulatory formulas that set the amounts of Federal financial assistance provided by HUD grants. HUD is exploring ways to build upon ongoing Section 3 technical assistance and capacity building activities for recipients.

Disaster Recovery

A commenter warned that additional reporting requirements will be problematic for those managing disaster recovery and requested additional guidance for flexibility with the CDBG-DR program. Another commenter recommended HUD provide outreach and guidance on using CDBG-DR funds for job training and hiring initiatives during rebuilding efforts.

HUD Response: Reporting requirements already exist for reporting Section 3 compliance for CDBG-DR program activities. The proposed Section 3 rule will change the reporting scope, such as reporting hours instead of new hires. The rule, however, does not create additional reporting requirements. Like current practice, the

size of a grant award and project scope will dictate the length of time it takes to complete reporting. Technical assistance on using CDBG-DR funds for job training and hiring initiatives during rebuilding efforts, as well as other Section 3 topics, will be provided to grantees upon request and as part of the ongoing grant management process.

Reporting Should Be on Projects Underway

One commenter recommended CPD project reporting should be based on projects underway, not only those projects completed during the program year. The rule is unclear on how Safe Harbor is met for Section 3 projects, though Reporting § 75.25 states HUD requires a compilation of data through the recipient's fiscal year. Commenter recommends Section 3 compliance be measured by combining all workers for all Section 3 projects. If percentages of Section 3 workers and Targeted Section 3 workers are met, this will show intent to comply.

HUD Response: HUD believes that CPD project reporting should be based on those projects completed during a program year. HUD anticipates that CPD programs will continue to report on Section 3 through CPD's current data collection mechanism. At minimum, CPD programs are required to report annually, but many programs update status more frequently during a recipient's fiscal year. HUD intends to issue guidance on the Section 3 requirements and provide technical assistance on a program-by-program basis.

Special Oversight Role of States in State Programs

One commenter recommended that the proposed Section 3 rule be amended to acknowledge the special oversight role of states in State programs. The current Section 3 regulation provides guidance on this point, while the proposed rule fails to include such guidance. Any final rule should include such guidance. See 24 CFR 135.32(f) and 24 CFR 570.

HUD Response: HUD supports retaining the current proposed rule's language. HUD believes the proposed language does fully address the roles and responsibilities of Section 3 recipients and provides adequate guidance to implement, monitor, and enforce Section 3 requirements.

Qualitative Form

One commenter recommended that HUD should provide the form for qualitative reporting required of small

PHAs to allow commenters to provide informed feedback.

HUD Response: HUD will provide a form for Small PHAs and others to use for qualitative reporting when an entity does not meet the benchmark. The form will be issued consistent with Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and HUD will provide the opportunity for the public to provide comments on the form.

Recordkeeping (§ 75.31)

One commenter recommended moving § 75.31 to Subpart A where it would have general applicability to all recipients.

HUD Response: Subpart A and Subpart D provisions apply across the board. The rule is structured so that Section 3's general requirements are in Subpart A. Subpart B and C only apply depending on funding source. Other detailed requirements that apply across the board, such as recordkeeping and compliance, are in Subpart D. HUD believes this structure makes sense and is consistent with other rule structures.

Administrative and Compliance Costs

According to one commenter, this section implies the responsibility for ensuring workers meet the defined requirements in § 75.5, such as Census tract designation and annualized wage calculations, for CDBG Section 3 projects will lie with contractors, which will therefore be costly for contractors who lack the capacity or are already burdened by paperwork. The commenter suggested it may be easier to have recipients bear this burden.

In contrast, one commenter noted contractors would have to provide a personnel profile that includes, at a minimum, income, current address, address at time of hire, and YouthBuild status to establish whether an employee of a non-Section 3 business concern meets any of these criteria. Contractors and employees may balk at a request for this type of personal information, which may become public record. The additional administrative burden placed on otherwise qualified contractors may reduce contractor participation, thereby increasing costs and lessening the impact of Section 3 covered programs on their intended beneficiaries.

HUD Response: HUD believes the rule will not impose additional administrative and/or compliance costs for contractors. Administrative and compliance costs associated with Section 3 requirements should be properly resourced within a contractor's bid for a project and are already required for confirming compliance

with existing Section 3 requirements. Contrary to the comments, contractors do not have to provide a personnel profile or any sort of personally identifiable information. HUD has never requested this detailed information and this rule does not change that; the data is only reported in aggregate, and records are maintained for verification only. Recipients may, but are not required to, assist contractors who lack capacity to adequately implement the Section 3 requirements.

Contracting Provision § 75.17 and § 75.27

Commenters urged HUD to retain standard Section 3 language to be included in contracts because the use of consistent language makes it easier for contractors to be certain of their obligations, limits the possibility of confusion for contractors working on multiple projects, and decreases administrative burden for agencies. Other commenters expressed concern about whether the Voluntary Compliance Agreement clause will continue to exist in contracts and who will enforce it.

HUD Response: HUD considered commenters' requests for standard contract language; however, the contract language must be customized depending upon the contract and the program. HUD anticipates providing sample language and/or discussion of contracting best practices but determined that the recipient is in the best position to determine what contract language is appropriate in each context.

Multiple Funding Sources/Recordkeeping for Multiple Funding § 75.29 / § 75.31

Clear Standards and Secure Online Tool

Other commenters recommended that there should be clear standards for reporting on Section 3 regardless of the funding source to reduce the possibility of errors and to eliminate the need to report in different formats. These commenters suggested that if HUD defers to localities, the agency that is the primary recipient of HUD funding should determine which option of reporting should be used by subrecipients to allow for consistency in reporting approach. These commenters also recommended that public housing financial assistance guidelines should dictate reporting requirements for PHAs administering projects with multiple funding sources. For projects that are mix-funded with PHA and other HUD funding, § 75.29(a) says that the other HUD funding stream (e.g. CDBG) may report using the PHA criteria.

Commenters recommended that compliance documentation be accessible in a secure online tool or standard form which would measure new hires, hours percentages and training persons and hours. These commenters went on to suggest developing a form for contractors or subcontractors to complete to confirm workers' Section 3 eligibility, which would ease administration and will foster consistency. With respect to the self-certifications discussed in proposed § 75.31, it would be helpful if HUD were to provide a form for this purpose.

HUD Response: HUD thanks the commenters for their recommendation and notes that there will be a standard set of data reporting regardless of which system is used for reporting. The same data will be collected across programs for consistency; the only difference will be how it looks when reported.

Benchmarks for Section 3 Workers and Targeted Section 3 Workers

Many commenters supported including benchmarks for Section 3 workers and Targeted Section 3 workers. Some commenters supported HUD's initial benchmarks, as a starting point, and focus on labor hours. Additional commenters supported using both benchmarks stating that limiting the benchmark to only Targeted Section 3 workers would fail to encourage hiring of other Section 3 workers. Another commenter supported elimination of the 3% goal for non-construction contracts to be Section 3 business concerns. Other commenters supported the benchmarks with the caveat that HUD retain the new hire framework for PHAs or the tracking of the labor hours if they do not have an hour tracking system already in place. These commenters suggested evaluating the efficacy of this approach and revising as necessary if data indicates the change is not supporting sustained employment.

Other commenters stated that HUD's benchmark that Targeted Section 3 workers make up 5 percent of the total number of labor hours is too low. The commenters proposed that at least 15 percent of labor hours worked be the benchmark for Targeted Section 3 workers. The commenters stated that the Section 3 statute clearly prioritizes employment for residents of public housing and other HUD-assisted housing programs.

Some commenters noted that the benchmark for labor hours is too ambitious and unreasonable. Commenters cited to the fact that low-income workers are not necessarily qualified for construction jobs, even those jobs at the lower end of the

construction pay scale, and finding low-income workers who are both qualified for the positions and willing to work in construction is much harder than identifying the number of potentially eligible low-wage workers. Commenters also noted that many low-income persons have childcare and transportation challenges and many contractors do not have open positions to fill by low-income persons.

Another comment opposed the 5% Targeted Section 3 goal, stating it was unrealistic given most PHA residents are seniors, have some form of disability, or already work. Commenters also noted that the benchmarks will be especially difficult to achieve in rural locations.

One commenter opposed the two categories of Section 3 workers, noting the pool of workers is already small, and makes achievement of benchmarks challenging. While the additional categorization provides data collection value, it creates additional burden and goes beyond the statute's requirement. The commenter noted that the benchmark fails to recognize many other initiatives to assist residents to work towards long-term employment and self-sufficiency (such as Family Self-Sufficiency (FSS) programs).

Commenters also noted the current benchmarks have been difficult to meet, and that the new bar would likely require that all positions engaged, rather than only new hires, go to Section 3 workers. The commenter recommends that in an environment of under-funding and over-regulating that HUD establish a modest benchmark that recognizes training and adjust upward later, if necessary. The commenter noted the current recommendation is extremely aggressive and unreasonable; and would result in few agencies meeting the mark. Additionally, it would fail to reduce reporting burdens, align regulations with standard business practices, or increase Section 3 successes.

Other commenters focused on the Targeted Section 3 worker benchmark, noting that the category complicates tracking and decreases the likelihood of meeting benchmarks. The commenter suggested taking an alternate approach to tracking Targeted Section 3 workers without establishing a separate benchmark. One commenter stated that the benefits and goals of the Section 3 statute would be difficult to measure by tracking only Targeted Section 3 workers in that it would fail to represent the value of providing economic opportunities to individuals who are low-income but may live outside the immediate project area, who otherwise still qualify for Section 3 preference.

Other commenters stated that for Subpart C, HUD should only measure compliance of Section 3 with overall Section 3 worker tracking and should not apply Targeted Section 3 workers metrics or benchmarks. The commenters stated support for retaining the existing 30 percent benchmark for all Section 3 new hires but that it should not be required to be disaggregated between Section 3 and Targeted Section 3 workers. The commenters stated that this approach would keep the benchmarks in line with the goals of Section 3 while providing contractors and administering agencies with the ability to tailor implementation depending on the composition of the local workforce and specific project needs.

A commenter noted that they ran numbers with the new metric, along with other PHAs, and they all reported much lower percentages, in most cases half of the proposed numbers. The commenter raised a concern with employee displacement if contractors are required to meet this new ratio, which is inconsistent with the goal of Section 3 to create new jobs rather than displace existing employees or inflate project costs. The commenter noted that recipients hiring contractors instead of replacing or hiring more employees could game the system or add significant costs by hiring additional but unnecessary Section 3 workers for the project life.

HUD Response: The statute requires Section 3 prioritization and this rule's goal is to ensure statutory adherence and streamlined reporting. HUD created the Targeted Section 3 worker category to include both the statutory priorities and policy priorities, for example, tracking the hiring of public housing residents where public housing assistance is involved and tracking the residents of the neighborhood or service area when other housing and community development assistance is used. Prioritization is meaningless without the categorical distinction and HUD believes that technology enables better tracking compared to at the statute's inception. As for the benchmarks, HUD will establish the benchmarks via Federal Register Notices which will allow them to change over time, as data is reported and gathered. HUD believes 5% is a reasonable estimate from the Office of Policy Development and Research (PD&R) data. Additionally, compliance can be evaluated qualitatively if the hours benchmark cannot be met. Under this rule, both measurements are permissible, and the requirements for qualitative evaluation are laid out in the

rule. HUD believes this flexibility will deter any incentive to hire unnecessary Section 3 workers.

Qualitative Measurement

One commenter supported changes to reporting requirements and appreciated the ability to report qualitative efforts if benchmarks are not met. One commenter stated that compliance should be evaluated qualitatively rather than using hours as a benchmark. Commenters stated that the proposed certification related to prioritization of Section 3 hiring efforts would be burdensome to agencies and contractors. The commenter wrote that HUD should require agencies to certify what efforts they have implemented to achieve the goals of the Section 3 program to be considered in compliance. This approach would maintain the benefits and incentives of the program and provide HUD with a tool for accountability.

HUD Response: The statute requires agencies and contractors to prioritize their hiring efforts according to the statute's terms. The rule requires funding recipients to certify that they have acted in compliance with the statute, and to report on the quantitative outcomes of their efforts relative to the benchmarks. HUD does not consider it burdensome for a recipient of HUD funding to certify that they have acted in compliance with the statute. Furthermore, compliance can be evaluated qualitatively if the hours benchmark cannot be met. Under this rule, both measurements are permissible, and the requirements for qualitative evaluation are laid out in the rule. If reporting is above the benchmark, then HUD will presume compliance with the regulatory requirements; HUD wants to see actual positive outcomes rather than just a recipient's inputs. HUD appreciates the request for additional compliance tools but believes that requiring such reporting for all agencies would be overly burdensome.

Safe Harbor

Commenters stated that the proposed rule is not clear on how Safe Harbor would be met for Section 3 projects. The commenters questioned what type of data collection would be used to assure accurate reporting and how to meet the percentages of Section 3 and Targeted Section 3 workers. The commenters asked whether there would be a tool to assist with this data collection.

HUD Response: HUD will issue sub-regulatory guidance and provide technical assistance on a program-by-program basis to assist recipients with

clearly understanding the Section 3 safe harbor parameters. Recipients will provide data regarding Section 3 and Targeted Section 3 workers through existing HUD information systems, as defined by each covered program. HUD will not impose additional data collection burdens on recipients because of the rule.

Small PHAs Should Have a Separate Benchmark

One commenter recommended that Safe Harbor benchmarks should be established for small PHAs and suggested HUD establish a minimum threshold of work-able and non-working residents. Another commenter stated that some smaller businesses do not usually track labor hours performed on specific projects, and it can be a struggle for them to learn how to do so. On Davis-Bacon projects, contractors are required to submit certified payroll; however, some projects may be subject to Section 3 that are not subject to Davis-Bacon and related acts. The commenter stated that requiring the tracking and reporting of labor hours could pose a significant additional burden to small contractors.

HUD Response: One of HUD's goals through this rule is to ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly (though not exclusively) those who receive government assistance for housing. HUD believes that it is essential to achieving this goal that small PHAs report on their efforts to comply with Section 3 but acknowledges that small PHAs may have more difficulty achieving the quantitative benchmarks and consequently has permitted a qualitative reporting alternative for small PHAs. HUD is considering further ways to streamline and ease qualitative reporting by creating a tracking form and timing submission deadlines consistently with timeframes that PHAs and other recipients of public housing financial assistance are already using to submit documents to HUD. HUD has established that small PHAs with less than 250 public housing units will not be required to report labor hours or meet benchmarks, but instead will be permitted to submit qualitative reports on their efforts to involve residents in job-seeking and training endeavors. HUD recognizes the challenge when small PHAs have very few work-able, non-working residents that would make meeting benchmarks very difficult.

Alternatives

One commenter suggested limiting the benchmark to only Targeted Section 3 workers in order to provide a more streamlined approach to reporting. The commenter stated that if the benchmark is narrowed to Targeted Section 3 workers, then tracking data for Section 3 workers should not be required. Other commenters recommended removing the Targeted Section 3 worker benchmark. One commenter stated that if labor hours are tracked, the requirement should be limited to Section 3 workers in general and that the benefits of adding the Targeted Section 3 worker subcategory are not apparent enough to outweigh the complications. One commenter supported giving PHAs and entities using housing and community development assistance a choice to use either targeted Section 3 workers or Section 3 workers as their benchmark.

Other commenters recommended other benchmarking alternatives. Some commenters recommended that the benchmark include a focus on Section 3 business concerns, such that 3% of all contracts are for Section 3 business concerns. One commenter stated benchmarks should ensure that local jobs are provided to local persons to reduce commute times and recommended using geographically determined numbers. The commenter noted that many factors can affect regions and a national number can skew the worker availability distribution. One commenter suggested that such regional benchmarks allow HUD to forecast how many PHAs and Section 3 projects could meet the benchmarks assuming agencies are using their "best efforts" to hire Section 3 workers and Section 3 projects are hiring and contracting with Section 3 workers and business concerns to the "greatest extent feasible." According to comments, regional benchmarks can help account for uneven distribution of potential Section 3 workers throughout the country. Geographic standards may also help address differences between union and non-union states. If HUD were to set regional standards, there should be a national level appeals process. Commenters also suggested allowing use of local adjustment factors and economic data when establishing compliance benchmarks, especially unemployment rates which affect the ability to meet benchmarks.

One commenter stated the benchmark does not ensure Section 3 workers are engaged in a mix of job categories or trades, or opportunities for upward mobility; 30% of hours worked should

be measured for each job category/trade and protected classes. Other commenters suggested HUD consider the type of public housing financial assistance or other variables. The commenter recommended that in addition to different types of benchmarks HUD should maintain a ceiling for these benchmarks. The commenter noted a goal of 80% of entities meeting the benchmarks would be appropriate.

Other commenters stated that in order to fulfill the statutory objectives of Section 3 to direct the financial opportunities to low- and very low-income persons and recipients of housing assistance, the final rule must: (1) Set benchmarks in a way that actually prioritizes HUD tenants; and (2) employ a definition of Section 3 worker and Targeted Section 3 worker that includes exclusively low-income individuals. Commenters also proposed separate benchmarks for public housing projects and non-public housing projects and provided a specific hierarchy of workers. Other commenters noted proposed benchmarks for PHAs should reflect the law's emphasis on providing opportunities for public and assisted housing recipients.

Commenters suggested an alternative approach for workforce utilization setting goals for all construction and other blue-collar employment, such as landscaping and janitorial. The commenters suggested that labor hours also consider demographics, length of project, geography, and size of contractors.

One commenter recommended that the determination of Section 3 compliance be measured by combining all workers for all Section 3 projects to get an overall picture of the number of low-income workers being paid with these federal dollars. If the percentages of Section 3 and Targeted Section 3 workers are met, this better shows intent to comply with the spirit of Section 3.

HUD Response: HUD appreciates the suggestions and has considered multiple benchmarking options. Creating separate benchmarks would make projects with co-funding difficult; the commenter's suggestions increase both complexity and the burden of reporting. HUD believes the current benchmark is a good starting place and notes that the regulation permits adjusting the benchmarks via **Federal Register** publication. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD is most interested in strong outcomes for

Section 3 employees. In addition, HUD has no programs that align with specific regions and intends to see reporting data before making any additional distinctions, if appropriate.

Compliance (§ 75.33)

General

A comment stated HUD needs to strike a balance between the limits of state and local agency resources and Section 3's goals to provide more effective resources to foster compliance. Similarly, another comment suggested HUD utilize Community Compass technical assistance funds to create best practice resources and employ contractors to provide Section 3 compliance support to those jurisdictions and PHAs without designated staff for this purpose. Another comment recommended HUD simplify the compliance requirements by establishing a "presumed eligibility" criteria for businesses or residents located in HUD-approved Neighborhood Revitalization Strategy Areas, Choice Neighborhood target areas, Promise Zones, Empowerment Zones and Enterprise Communities, Opportunity Zones and other areas defined at 24 CFR part 570.208(a)(1)(vii).

A commenter suggested states and entitlement communities be required to develop Section 3 Plans that become part of the 5-year Consolidated Plan to allow time for compliance with the labor hours percentages while requiring demonstrated improvement over time. The plan should track Section 3 performance and demonstrate labor partnerships, construction, and training programs to target and find workers and an environment that promotes Section 3 goals. HUD should describe the plan's components, including how to notify the public of opportunities for involvement in designing the plan, how and when to notify the public when Section 3 employment and bidding opportunities arise, how to inform workers of their rights, and complaint processes. Commenters recommended HUD establish ethics standards for organizations who have a fiduciary responsibility over Section 3 funds. Other commenters suggested compliance failures to adhere to Section 3 business concern criteria should be cured within two payroll periods or be terminated; terminated contractors should be banned from receiving HUD funds for 3 years from the termination date; and that persons found to have falsified their residence to qualify as a Section 3 worker should be suspended from participation for 3 years.

Commenters stated HUD should: provide greater clarity on the obligations created by § 75.33(a), especially since the preceding section, § 75.31, imposes highly specific recordkeeping requirements; explain whether the recordkeeping obligation in § 75.33 is a restatement of the recordkeeping obligations set forth in § 75.31, or whether additional records are required to demonstrate compliance; and HUD should provide guidance on documentation and recordkeeping related to "best efforts" or "greatest extent feasible" efforts.

HUD Response: This rule is intended to strike a balance and foster compliance with Section 3's goals and will result in a reporting and recordkeeping burden reduction. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. HUD will review Department-level strategies on how to effectively incorporate Section 3 reporting into current systems and data collection tools, including the Consolidated Plan. HUD will issue sub-regulatory guidance on reporting by program area and provide technical assistance to recipients for Section 3 compliance. HUD appreciates the suggestions and notes that there will be standardized compliance procedures across programs, and this will include ethics standards. Section 75.33 is a reaffirmation of the recordkeeping requirement set forth in § 75.31, as recipients of HUD funding will need to have the records described in § 75.31 available if HUD needs to do a compliance review of a recipient's Section 3 performance. HUD determined not to define the difference between "best efforts" or "greatest extent feasible," but rather to increase the emphasis on outcomes as a result of these efforts. Please see the "Best efforts" and "greatest extent feasible" section above. A recipient's reported results will be compared to the outcome metrics defined in the benchmark Notice. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced.

Complaints and Monitoring

Commenters stated each HUD program should have a detailed complaint process. A commenter supported the integration of Section 3 into each program area but noted the

lack of detailed complaint provisions, and suggested the final rule require each HUD program to have a detailed complaint process, with enforcement assigned to Davis-Bacon and Labor Relations (DBLR), Office of Field Policy and Management (FPM), or the Office of Fair Housing and Equal Opportunity (FHEO).

Commenters supported removing Section 3 enforcement from FHEO but strongly suggested HUD identify an office independent of the program offices to monitor and enforce Section 3 requirements, such as FPM, or a new Section 3 office fully funded and trained to work on Section 3. Giving responsibility for Section 3 compliance to the program that is responsible for funding that triggers Section 3 obligations is problematic because (1) HUD program staff have in the past referred to PHAs and jurisdictions, not the residents who are supposed to benefit from HUD programs, as their "constituents," (2) there is currently no process for accepting and reviewing complaints in the proposed rule, (3) significant training and resources will be required to prepare program staff to oversee Section 3 compliance since they are not currently engaged in it. HUD should require that Section 3 policies, plans, procedures, and complaints are made publicly available by both the recipient and on HUD's website.

Other commenters agreed with the proposed shift of oversight from FHEO to program offices and believed this will improve oversight because program offices already monitor recipients on a day-to-day basis, thus Section 3 monitoring will become part of normal overall monitoring. Another commenter stated transferring oversight and compliance from FHEO to program offices is an appropriate change on the condition that oversight practices are standardized across program offices. Another commenter was concerned about the Section 3 complaint process for residents; HUD program areas do not have detailed provisions for residents to file complaints on the part of PHAs or jurisdictions that do not meet program requirements. At a minimum, if HUD defers to grantees to field complaints from individuals, the process should require a grantee to inform HUD of the resolution of each complaint much like CPD does with CDBG-DR complaints.

A further commenter stated it is not clear how the public will make complaints if the current complaint process is removed and asked how they will know which program office to contact. Other commenters suggested the final rule require a detailed complaint process identical or similar to

what is in the current rule. Further commenters expressed that HUD should keep the existing complaint process until it adopts a new one after public review and comment. Other commenters were concerned about the 958 Complaint Form's elimination and the impact on residents who will be left without protections or a process for monitoring and overseeing contractors who are violating Section 3 requirements. One commenter felt that to move the review process from FHEO to local HUD CPD would be disastrous.

A commenter noted that HOME and CDBG recipients do not seem to understand the importance of Section 3 and the compliance enforcement—appropriate remedies are not in place. According to one commenter, the promise of Section 3 has not yet been realized, largely due to the fact that none of the entities responsible for its administration—HUD, state and local governments, PHAs—have been sufficiently resourced to implement, monitor, and enforce Section 3 requirements. The HUD program offices responsible for funding all are currently under-resourced and could better fulfill their obligations in monitoring and enforcing Section 3 with dedicated staff.

One commenter had concerns about moving Section 3 regulations from 24 CFR part 135 under FHEO to the new part 75 under the Office of the Secretary; the commenter assumed Office of Field Policy and Management would have oversight of Section 3 under the proposed rule amendment and expressed concern over FPM's lack of capacity and technical knowledge to oversee monitoring and enforcement of Section 3. The commenter argued HUD has never seriously monitored and enforced the statute and that HUD program staff treat PHAs and jurisdictions as their constituents, not the residents who are the intended beneficiaries. Additionally, alternative procurement provisions should be created to help Section 3 business concerns compete with larger more established businesses.

One commenter was concerned about different program offices providing conflicting information and hoped HUD would provide standardization and clear guidance; others suggested HUD request adequate funding to hire the necessary headquarters and field office staff to provide Section 3 technical assistance and to robustly monitor and enforce Section 3, as well as seeking adequate funding so that all jurisdictions and PHAs can hire and retain staff to serve as Section 3 coordinators and to monitor and enforce Section 3 obligations. A commenter has

received conflicting guidance from different program offices, resulting in findings and fines on several occasions.

HUD should provide further detail as to what standards each program office would be using to provide oversight and what procedures are in place to ensure that PHAs receive consistent oversight across offices. Further clarification is also needed as to how the responsible program office would be designated for oversight when a project uses multiple funding sources and triggers oversight from multiple program offices.

A commenter recommended HUD strengthen its compliance practices to incentivize performance while recognizing legitimate constraints. The commenter also recommends stating in the rule that HUD will deduct points in relevant HUD program Notices to applicants for competitive HUD funding who have not achieved Section 3 benchmarks and allowing applicants the ability to provide justifications for failure to meet benchmarks despite good faith efforts. The commenter also recommended allowing program offices to incentivize Section 3 compliance in funding Notices but have a Department-wide entity focus on all aspect of compliance (reporting, analysis, and information technology systems).

HUD Response: HUD took the concerns about the complaint process under advisement, and § 75.33(b) has been amended to include “or local HUD field office.” HUD believes Section 3's objectives will be better achieved by moving Section 3 oversight into the program offices so that HUD staff who are actively engaged with recipients in their program planning and activities will bring Section 3 concerns and considerations into their routine interactions with the recipients. HUD will provide external and internal technical guidance on complaint handling and routing. The Office of Field Policy and Management (FPM) will be taking a greater role at the field level by filtering complaints to the corresponding office, rather than every HUD program office having its own complaint process. The local HUD field office is part of the FPM organizational structure, and also provides individuals with a complaint venue when the complainant does not know which program office would be responsible. There will be variation in what guidance and/or compliance looks like for each program office, but HUD will provide support to the extent it is standardized across program offices.

Enforcement

Commenters stated any contractor or Section 3 resident found to falsify data

in order to receive benefits from HUD funded training, contracting, and employment should be immediately removed and/or barred from participation in Section 3 programs for ten years. Violations should be posted and made available to the public for review. Every PHA should have a written Section 3 Plan-Policy in place and attached to any Request for Proposals for bids.

HUD Response: HUD believes that recipients should have the flexibility to determine how to implement Section 3. HUD also believes this new regulation will make such implementation easier. While the final rule does not require recipients to have Section 3 plans or policies, HUD views having them as a best practice that will aid recipients in achieving the Section 3 benchmarks. As for the concern about potential fraud, program offices will continue to monitor compliance with Section 3 requirements through evaluation of qualitative or quantitative reporting, complaint review, and program audits, if appropriate.

General Comments

One commenter said all policies should be expressed in “simple” terms for all stakeholders, especially residents, to understand. Commenters stated there is little point in creating policies and programs that produce only six-week or six-month jobs, or jobs that do not lead workers out of poverty. HUD recipients have difficulty in assisting residents in obtaining and maintaining any jobs, let alone high-wage jobs that will lead to careers and help residents leave poverty behind.

A commenter expressed the Section 3 rule is “of great benefit to have in effect and keep up to date.” Section 3 funding recipients should be mandated to actively seek employment at all times to the best of their ability and report an employment log to track job applications.

One commenter indicated many of the proposed changes do not reflect the construction trade's current realities and would impose costly new obligations on PHAs without a funding source to pay for those requirements. Another commenter argued Section 3 is “just another burdensome regulation” that “doesn't produce a positive outcome.” One commenter stated the proposed rule would have an adverse impact on the Section 3 participation that HUD desires, whereas others supported the proposed rule amendments.

One commenter stated public housing living conditions are poor; Section 3 programs are practically non-existent in the commenter's area; and the way that

public housing residents' income is calculated is problematic.

A commenter stated Section 3 is one of HUD's most important responsibilities since it creates the standards for employment, training, and contracting opportunities generated from HUD financial assistance. This commenter felt a stronger Section 3 rule can lead to increased hiring and contracting opportunities; overall the proposed rule has many merits and is an improvement. Similarly, another commenter stated the potential benefits of Section 3 have never been realized; the improvements to the rule have potential to improve outcomes.

According to one comment, the proposed rule amendments try to address Section 3 program implementation difficulties but still present incongruities; HUD should consider methods to enact preferences or incentives. A commenter stated it is difficult to find Section 3 employers in some jurisdictions, and some jurisdictions have no active YouthBuild program. Commenters noted most HUD households are headed by or include females, minorities, or female minorities. Section 3 regulations should be designed to give low- and very low-income people (particularly recipients of Federal housing assistance) a pathway out of poverty, and PHAs should be required to work with organizations that have a proven track record of successfully recruiting, training, and retaining women and minorities in the construction industry. A commenter recommended HUD work directly with the National Task Force on Tradeswomen's Issues.

HUD Response: HUD thanks the commenters for their responses. This rule is intended to strike a balance and foster compliance with Section 3's goals and will result in a reduction of reporting and recordkeeping burdens. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. HUD agrees that this regulation is designed to give low- and very low-income people (particularly recipients of Federal housing assistance) a pathway out of poverty. There is no mandate in the rule for Section 3 funding recipients to constantly apply for new jobs, nor are there requirements for PHAs to work with certain organizations.

Other Programs

Commenters noted opportunity discrimination is unconstitutional; all citizens have a right to wealth and prosperity. States can support and invest in their cities' workforce through equity and management but should first complete a local needs assessment. One commenter referred to Perkins V (the Strengthening Career and Technical Education for the 21st Century Act) requirements for eligible recipients to conduct a comprehensive local needs assessment every two years. One commenter suggested creating a Section 3 Score Card for public information to capture grantee compliance and ensure that contractor compliance with Section 3 requirements are considered for future employment and contracting opportunities, and improving the effectiveness of the program will enhance compliance to realistically measure targeted outcomes.

A commenter recommended HUD consider developing an annual recognition program for PHAs, subrecipients, contractors, and subcontractors for excellence in Section 3 performance, rather than redesigning the tracking and reporting requirements.

HUD Response: HUD thanks the commenters for their responses. HUD affirms that discrimination based on protected classes is unconstitutional. The Perkins programs noted in the comment are administered by the U.S. Department of Education and there are no requirements for eligible recipients to conduct a comprehensive local needs assessment every two years in the rule. There are no provisions to create a public Section 3 Score Card or an annual PHA recognition program at this time.

Technical Fix

One commenter noted in the amendment to 24 CFR 93.407(d), the proposed rule still references 24 CFR part 35 instead of 24 CFR part 75. The commenter recommended that HUD change the citation to reflect 24 CFR part 75.

HUD Response: Thank you for your comment, but HUD declines to change the citation. The amendment referred to is a technical amendment to the regulations unrelated to the Section 3 regulations. The cross-reference to 24 CFR part 35 is in reference to records demonstrating compliance with lead-based paint requirements, which continue to be covered by 24 CFR part 35.

HUD Program Collaboration

Commenters stated that funding for Section 3 coordinators, and technical

assistance or written guidance on coordination with other self-sufficiency programs such as FSS would allow for Section 3 to more effectively meet its goals. One commenter opposed changes to the rule stating that HUD should not scale back its existing operations and rule. The commenter also recommended that HUD and other agencies ensure coordination with benefit planners so that people with disabilities are involved in planning neighborhoods and community opportunities for work.

HUD Response: HUD appreciates the suggestion for more funding for Section 3 coordinators. HUD believes that this rule will streamline the Section 3 regulations to create additional incentives and streamline reporting requirements, thereby offsetting the need for more funding. HUD notes that by conducting in-service trainings and proactively engaging with appropriate partners in the Social Security Administration (Work Incentives Planning Assistance), Department of Labor (ETA & ODEP) and Health and Human Services (CMS, ACF & ACL) to identify best practices and model approaches, FPM will make the appropriate decisions regarding potential coordination with FSS, other self-sufficiency programs, and/or programs for people with disabilities. HUD continues to encourage PHAs and recipients of HUD funds to coordinate with other agencies and local communities to assist in hiring Section 3 workers. This rule does not change that. Moving the oversight of the rule to FPM and the program offices will not scale back HUD's role in ensuring compliance with Section 3 requirements. HUD believes that the move will actually ensure better compliance given the new location of oversight and the new tracking mechanisms.

Title VI

One commenter suggested the Section 3 rule should include information that Title VI of the Civil Rights Act also applies to Section 3, prohibits against discrimination, and requires language assistance.

HUD Response: Title VI applies to any program or activity receiving Federal financial assistance from HUD. Section 3 is a requirement, not a program that receives HUD funding.

Extend Comment Period

One commenter recommended HUD extend the comment period for affordable housing developers to suggest more effective changes.

HUD Response: HUD believes that the 60-day comment period provided ample

opportunity for affordable housing developers and other members of the public to suggest changes to this rule.

Outside the Rulemaking Scope

One commenter, a stakeholder in a major metropolitan area PHA that is being monitored by a “Federal Monitor” as a result of a 958 Complaint, stated that the appointed Federal Monitor has no housing experience and that all parties involved have missed the most important purpose of Section 3, which is economic empowerment for low and very low-income persons residing in local communities for HUD invested projects.

One commenter proposed defining an execution fee as a “percentage of bidder’s final submitted price added by the recipient or general contractor because the contractor/subcontractor provided no Section 3 benefit.”

One commenter stated concern about the lack of focus on higher level training as a vehicle for individuals to develop skills and build a better future. The commenter stated that the proposed benchmarks and guidelines provide no framework for differentiating training or skilled work classifications from general labor, so there would be no incentive for creating higher level opportunities. The commenter requested that HUD provide guidance on how to encourage this sort of activity under the new benchmarks.

HUD Response: HUD thanks the commenters for their suggestions, however, these comments are outside the scope of this rulemaking.

Miscellaneous

Impact on Rural Areas and States

Commenters stated it is difficult to comply with Section 3 requirements in rural areas. The goals of Section 3 are more feasible in densely populated urban areas. The proposed rule does not improve this circumstance. Section 3 eligible individuals cannot take advantage of Section 3 opportunities in rural areas because they are nonexistent. There are not ample conditions to facilitate Section 3 in small communities and rural areas. Rural areas have less availability of contractors and employees and there needs to be flexibility to engage people outside their service area to complete projects. One commenter noted benchmarking methodology seems strongly skewed toward large urban centers and overlooks geographically large states with relatively small rural populations, and asked HUD to make exceptions for jurisdictions with smaller and more rural populations. Some commenters noted that contractors in

rural states rarely need to hire new employees because the projects are small, the contractors have limited growth potential, or the employers have tenured staff. The commenter further stated that the new hire’s length of employment coincides with the project and terminates at project completion.

Commenters noted Section 3 is particularly difficult for states to administer. Another commenter explained that as a state, it does not hire the contractors for the CDBG projects. The local jurisdictions do that. It has no opportunity to promote the hiring of Section 3 business concerns. The very small communities with which it works have implemented procurement policies that award contracts to the lowest responsible bidder. They will not award a contract to a higher bidder just because the bidder is a Section 3 business concern. The commenter stated that the Section 3 regulation should apply to the CDBG Entitlement program and not the Small Cities program. One commenter suggested that state CDBG recipients should have the same flexibility in reporting as small PHAs.

HUD Response: HUD acknowledges that implementing Section 3 in various geographic areas presents different challenges for rural areas versus densely populated urban areas. HUD believes this has been addressed within the proposed Section 3 regulation by using a circle centered around the worksite that expands until it reaches a population of at least 5,000. HUD further acknowledges that, in particularly remote areas, the expandable circle may reach a size that may be impracticable to match those benefiting from the project with the Section 3 benchmark. If the recipient is unable to meet the Section 3 benchmark described in § 75.11, it will be required to report in a form prescribed by HUD on the qualitative nature of its activities or those of its contractors and subcontractors. This will allow the recipient to explain in qualitative means why it was unable to meet the Section 3 benchmark. HUD is sympathetic to the issues raised for rural areas and will watch implementation carefully as it progresses, allowing for updates as deemed necessary. HUD will also provide sub-regulatory guidance on the submission of qualitative reports to enable smoother implementation of the requirement.

Coordination With Nonprofit Organizations and Other Agencies

Commenters suggested HUD require PHAs and other recipients to work with organizations with a proven record of accomplishment of success in the

recruitment, training, and retention of women and minorities in the construction industry and other blue-collar occupations. The Department of Labor is already working with many of these organizations and has a list of apprenticeship training and technical assistance providers to help with the recruitment of Section 3 residents, pre-apprenticeship training and ongoing support. Commenters also suggested that HUD work directly with the many tradeswomen organizations, and other nonprofits already providing construction readiness training programs (also called pre-apprenticeship training) and the National Task Force on Tradeswomen’s Issues. In 2018, women made up only 3.4% of construction workers. While this figure represents progress, it demonstrates the need for HUD and its recipients to partner with tradeswomen and other organizations who have expertise in successfully getting women and minorities into the construction trades, and, more importantly, creating a real opportunity for careers in the construction industry. One commenter recommended forging closer ties with the Tribal Employment Rights Offices and directing the HOME and CDBG programs to consider this approach to ensure tribal communities’ benefit from HUD program projects nearby. Other commenters suggested planning grants to form or strengthen partnerships with Workforce Investment Boards or inter-agency collaborations with workforce programs within the Department of Labor.

HUD Response: HUD concurs that building strong collaborations between and among several Federal, state, and local partners will aid Section 3’s goals. HUD will consult with the Departments of Labor, Health and Human Services, Commerce, Small Business Administration, and other agencies as determined by the HUD Secretary to meet the Section 3 statute’s mandate at 12 U.S.C. 1701u(f). HUD will also take the comments provided under consideration as it looks for ways to conduct successful outreach and technical assistance strategies for Section 3 implementation.

Outreach and Training

Commenters recommended that HUD facilitate the competition for Section 3 excellence among developers and contractors by developing an online database of completed Section 3 covered projects that includes the names of the developer and general contractor, the nature and size of the project, and the Section 3 employment, contracting, training and retention outcomes

achieved. Commenters urged HUD to create a national database of Section 3 outcomes and to facilitate the inclusion of training and retention programs in bid materials by collecting and sharing best procurement practices.

One commenter suggested HUD should explicitly require PHAs and CDBG recipients to make reasonable efforts to connect Section 3 workers and Targeted Section 3 workers with local workforce development and career and technical education training. Another commenter recommended that the rule should give emphasis to training opportunities as is emphasized in the Section 3 statute because training is a potential response for recipients who are submitting qualitative reports for failure to meet Section 3 benchmarks.

One commenter stated there are no provisions in the rule regarding training. Similarly, another commenter noted the benchmark fails to recognize the statutory reference to training and employment opportunities. Likewise, commenters requested HUD clarify whether it is proposing new ways to track or report on Section 3 training. In the discussion of proposed §§ 75.15 and 75.25, HUD states that one of the qualitative measures a locality could use is paying for apprenticeship programs and/or offsite job training. One commenter welcomes any opportunity to expand these programs and recommends that HUD make job training an economic development activity instead of public service under the CDBG regulations. Alternatively, HUD could consider raising the public service cap for CDBG funds in order to accommodate additional job training programs.

A commenter recommended HUD provide outreach on training, employment and asset building programs to HUD assisted residents, including Family Self Sufficiency, Jobs Plus, and the Resident Opportunity and Self-Sufficiency programs. HUD should create resource guides on how CDBG has been used to support effective job training programs. A commenter suggested HUD should design a Section 3 worker's rights poster with input from HOME and CDBG grantees. Commenters noted changes to Section 3 reporting and tracking requirements may require additional resources for administering agencies, particularly PHAs in receipt of public housing assistance funds. HUD funding for the implementation of an IT system to enhance the current system and integrate with contractors would be particularly welcome to ease Section 3 monitoring and reporting for all parties. Having dedicated funding for the overall program, including support for resident

training, IT system enhancements, and other related measures, would help to further Section 3 goals while limiting potential administrative burdens.

One commenter stated PHAs noted they are most successful in helping residents find employment when they can offer employment services and trainings to help them gain the skills necessary to access jobs. However, additional funding is needed for programs like Family Self Sufficiency, Resident Opportunities and Self-Sufficiency, Jobs-Plus Initiative, and the Public Housing Operating Fund. One commenter recommended that HUD provide recipients the addresses of all public housing, PBRA projects, and Housing Choice Voucher projects by counties to assist in matching workers' addresses and automatically designating them as Section 3 workers; that HUD assist Section 3 workers in housing assistance; that Section 3 workers receive a living wage; that HUD help provide life skills such as budget counseling; and that HUD be proactive in supporting and developing (in conjunction with the Department of Labor) apprenticeship and other training programs for assisted housing residents and other low-income people.

One commenter recommended that HUD incentivize widespread replication of successful mentorship programs; create regional programs patterned after successful mentorship programs that smaller PHAs can access cooperatively; ensure the program allows for a tiered approach that allows Section 3 contractors to gain vital experience on smaller projects then graduate up to increased responsibility; and ensure that the Section 3 program continues to allow PHAs to use Section 3 contractors to complete work at all levels, including very small projects. One commenter suggested HUD request that the President's Budget include adequate funding to enable HUD to hire the necessary headquarters and field office staff to provide Section 3 technical assistance and to robustly monitor and enforce Section 3. Also, the President's Budget should seek adequate funding so that all jurisdictions and PHAs can hire and retain staff to serve as Section 3 coordinators and to monitor and enforce Section 3 obligations.

HUD Response: HUD thanks the commenters for their suggestions; as HUD updates its systems, HUD will take the suggestions under advisement. HUD encourages CDBG recipients to collaborate with local workforce development boards and training providers to create effective connections between them and Section 3 and Targeted Section 3 workers. HUD will

also provide sub-regulatory guidance and technical assistance promoting career and technical education training. HUD believes tracking labor hours provides a picture as to the success of providing job opportunities with HUD financial assistance, but as noted in the proposed rule the qualitative reporting will consider training. Reporting entities may consider training to help meet its employment goals and provide such information if goals are not met and entities are required to respond qualitatively. HUD will not provide a separate funding source; however, HUD will build on this final rule by providing technical assistance guidance for all HUD Section 3 programs. HUD will consider such guidance in creating materials for use by grantees. PHAs should already be tracking labor hours for Davis-Bacon or wage requirements and should not be doing anything more than what they did before to verify Section 3 workers as new hires. This rule just lays out the process for such verification. Once a PHA determines a Section 3 worker or Targeted Section 3 worker is hired or currently employed, the PHA would just report those hours as the numerator over the total labor hours funded with Operating and Capital Funds as the denominator.

HUD appreciates the input on ways HUD can help residents and is continuing to look at ways to make programs like Family Self Sufficiency, Resident Opportunities and Self-Sufficiency, Jobs-Plus Initiative more effective. HUD will be sure to consider those recommendations in future rulemaking. Section 3, however, is focused on how to provide job opportunities created by HUD federal financial assistance and does not have funding directly associated with it that can be used for those programs. Reporting entities may consider training to help meet their employment goals and provide such information if goals are not met and entities are required to respond qualitatively. HUD does not think it is appropriate to provide access to a list of all public housing, PBRA projects and Housing Choice Voucher residents to the public; such data sharing would implicate privacy concerns. Additionally, the PHA would have that information for seeking to hire such persons as Targeted Section 3 workers for public housing assistance.

HUD appreciates the suggestions and will consider them in providing guidance and technical assistance by both FPM and the program offices. HUD believes that there will be adequate funding for Section 3 technical assistance and monitoring in FPM. The FY2020 President's Budget Request

Congressional Justification specifically requested: “\$51.5 million to support 334 FTEs, consistent with the estimated 2019 Annualized CR level. Resources will support ongoing community engagement, monitoring and technical assistance pertaining to Section 3, compliance with the Davis-Bacon and Related Acts, enhancement of the overall customer experience and disaster recovery responsiveness at the state and local levels for clients and customers.”⁶ Federal financial assistance recipients should make their own determinations about staffing levels necessary to implement the assistance received.

Rental Assistance Demonstration (RAD)

Commenters recommended the RAD Notice should be amended to indicate that Section 3 obligations be extended post-conversion to PBV because currently Section 3 no longer applies unless additional Federal financial assistance is later used for rehabilitation. Commenters also asked for further clarification regarding RAD conversion applicability during and after construction. Eliminating RAD projects from Section 3 applicability will reduce contract awards that can provide opportunities to Section 3 residents. HUD should revise the rule to expand the definition of Targeted Section 3 worker to cover RAD and other HUD assisted tenants, and should require owners and managers of RAD-converted projects to hire, train, and contract with Section 3 residents to the greatest extent feasible in their own operations.

HUD Response: The Section 3 statute does not apply to properties that are recipients of Section 8 rental assistance unless they are recipients of other Federal funding covered by the Section 3 statute. A RAD transaction is a conversion at a moment in time and, subsequent to the conversion, the property is governed by the Section 8 requirements. HUD has administratively applied Section 3 during the RAD-related construction period even though not required by the RAD statute or the Section 3 statute. *See* RAD Notice Revision 4 and RAD program documents.⁷ HUD has declined to extend Section 3 to the Section 8 portfolio, as that would be a significant expansion of the Section 3 statute's parameters. HUD has defined “Targeted

Section 3 workers” to include residents of public housing and Section 8 housing, which means that HUD funding recipients must report on hiring of these types of HUD-assisted tenants, which includes tenants of RAD-converted Section 8 properties.

Notice of Funding Availability (NOFA)

One commenter wrote in support of the NOFA certification's removal. Several commenters supported the current requirement that NOFA applicants submit a certification of intent to comply with Section 3 requirements along with a statement of their proposed Section 3 activities. Commenters noted that performance among PHAs, developers, and contractors varies greatly when it comes to meeting Section 3 requirements. One commenter gave an example where a contractor might merely hold a job fair and interview any qualified Section 3 residents who apply, while another might make Section 3 hiring a condition of all major subcontract awards, contract with a community organization to conduct outreach and referral services, establish a pre-construction and/or on-the-job training program, provide job coaching and other supports, and retain Section 3 workers after completion of the Section 3 project. Commenters went on to state that using a bidder's past Section 3 performance and the quality of their proposed Section 3 plan can have a profound effect on the quality of economic opportunities provided to Section 3 residents.

HUD Response: HUD decided to continue with the change in the proposed rule and to omit specific requirements for Notices of Funding Availability (NOFA) in the final rule; however, the final rule will require that all NOFAs issued by HUD that announce the availability of funding covered by section 75.3 will include notice that part 75 is applicable to the funding and may include, as appropriate for specific NOFAs, points or bonus points for Section 3 plans. Where Section 3 is applicable, the inclusion of specific requirements in the regulation regarding the NOFA does not change the recipient's obligation to have a compliant Section 3 implementation strategy. Similarly, where Section 3 is not applicable, the regulatory language would not apply. The presence or absence of the NOFA clause in the regulation has no effect on applicability of Section 3. HUD anticipates that program offices will include scoring for Section 3 plans where relevant and exclude Section 3 scoring where the nature of the grant being awarded is incompatible with Section 3 endeavors

(such as funding for sweat-equity homeownership initiatives). HUD is in the process of developing improved databases to inform program offices, funding recipients, and the public-at-large regarding Section 3-covered projects and the outcomes achieved. HUD hopes that these databases, plus anticipated technical assistance to disseminate information regarding Section 3 best practices, will provide a foundation for more impactful implementation of Section 3 over time.

Professional Services Exclusion

Commenters stated HUD should retain the 3% benchmark for professional services contracts, as it is not uncommon for professional services companies to meet the qualifications of a Section 3 business concern. It helps businesses who employ workers who were low-income when they were hires or businesses who were started by low-income or public housing residents that have grown professionally to provide employment opportunities to other low-income people.

Other commenters noted excluding professional services positions—typically higher paying, higher career growth—would effectively limit Section 3 workers to construction services, diminishing the potential positive impact of the statute. Ultimately, it will not provide HUD with adequate data on positive or negative impacts of Section 3's intended goals. The intended goal of the Section 3 statute is to positively impact the lives of HUD assisted residents through meaningful job placement and training that will ultimately lead to greater self-sufficiency. The current rule includes a goal of 30% of new hires in management and administrative jobs, technical, professional, building trades, and non-construction jobs and all levels. Professional service jobs include accounting, legal services, financial consulting, architectural and engineering services. The proposed rule indicates that professional services will be excluded from benchmarking requirements, but HUD will allow voluntary reporting of these workers. A commenter suggested maintaining the current rule's requirement of reporting on professional services but moving to total labor hours worked in both construction and non-construction services, and better tracking this data through streamlined reporting systems.

Other commenters supported excluding professional services from benchmarking requirements while allowing voluntary reporting of such workers; excluding certain types of contracts such as material and supply,

⁶ HUD's FY2020 Congressional Justification for President's Budget, <https://www.hud.gov/sites/dfiles/CFO/documents/2020HUDCongressionalJustifications4-2-19.pdf>.

⁷ Rental Assistance Demonstration—Final Implementation, Revision 4 Notice H-2019-09 PIH-2019-23 (HA), issued September 5, 2019.

and professional service; and excluding professional services from covered activities and suggested adding a benchmark for training activities. One commenter noted it experienced the same challenges as other HUD partners in meeting Section 3 goals when working with professional service vendors. However, the commenter noticed that in some cases vendors can carve out small segments of highly skilled work or training for low-income residents (e.g., providing an internship or hiring a recent graduate to perform a small scope of work.) While the rule allows voluntary participation of professional service vendors, commenter suggests that HUD give discretion to recipients to mandate Section 3 participation by these partners, without necessarily holding them to specific benchmarks like contractors.

HUD Response: HUD acknowledges that there are occasions when employers can create opportunities for Section 3 employment in the professional services context, and HUD lauds these efforts. At the same time, data indicate that there are relatively few such opportunities for Section 3 hiring in professional services fields such as legal services and civil engineering. Many of the positions within these professional services fields require specialized degrees and in many cases the hiring is not directly tracked to a specific Federally funded project or activity. To ensure that the carve-out for professional services is relatively narrow, however, HUD has revised the definition of professional services. While keeping the modified exclusion for professional services in the final rule, HUD notes that the reporting structure in the proposed rule allows a recipient to count as Section 3 labor hours and as Targeted Section 3 labor hours any work performed by a Section 3 worker or a Targeted Section 3 worker (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able to report Section 3 hours in the professional services context. As referenced in the comments, vendors can sometimes create opportunities in the professional services context, and HUD seeks to reward this behavior. In addition, recipients are provided significant discretion in how they seek to implement their Section 3 obligations. A recipient could elect to require, at the local level, additional Section 3 obligations with respect to

professional services through the terms of the funding contract.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a “significant regulatory action” as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order). Consistent with Executive Order 13563, this rule creates new part 75 regulations that would replace the part 135 regulations, with the intention to make compliance with Section 3 more effective and less burdensome, and therefore, help to contribute to job creation for low- and very low-income persons. HUD has prepared a Regulatory Impact Analysis (RIA) that addresses the rule’s costs and benefits. HUD’s RIA is part of the docket file for this rule.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at toll-free 800–877–8339.

Environmental Impact

The final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new

construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As has been discussed in this preamble, this rule updates HUD’s Section 3 regulations and replace them with a new 24 CFR part 75, for which the objective is to increase employment opportunities for low- and very low-income persons and businesses that are owned by or employ such persons. These entities generally are small and therefore strengthening the requirements of Section 3 should benefit small businesses that are Section 3 business concerns. This rule also considers the burden on small public housing agencies (PHAs), defined in this rule as a PHA that manages or operates fewer than 250 public housing units, and reduces the burden on them through a new streamlined reporting process that would not require them to report labor hours or new hires. There are approximately 2,950 PHAs, of which approximately 2,250 are small.

As more fully discussed in the accompanying RIA, the number of economic opportunities generated for Section 3 residents and businesses will not increase to the degree that this rule would have a significant economic impact on a substantial number of small entities. In addition, for those small entities that must comply with this rule, the changes made by this proposed rule are designed to reduce burden on them, as well as all recipients. The current recordkeeping and reporting requirements for Section 3 is 90,180

hours with a cost of \$1,817,000. HUD estimated that this new rule will reduce the number of hours by 68 percent to 25,910 hours. The biggest reduction will be for small PHAs that will no longer need to do quantitative analysis with a total estimated time saving of 12,375 hours with a cost of \$281,036, or approximately \$125 for small PHAs. HUD also anticipates an across the board savings in recordkeeping given the time savings resulting from less time reporting new hires as a separate metric. For these reasons, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt state law within the meaning of the Executive Order.

Paperwork Reduction Act

Currently, 24 CFR part 135 requires that all recipients track and report Section 3 information to HUD, includes prescriptive contractual language, requires compliance by contractors of the Section 3 requirements, contains reporting and recordkeeping requirements, and provides for the filing of Section 3 complaints. SPEARS is the main site in which HUD captures the number of Section 3 residents hired and the number of contracts awarded to Section 3 business concerns. The existing information collection requirement for these requirements has

been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2529–0043.

The rule would change the existing reporting requirement to decrease qualitatively those who need to report, excluding small PHAs and recipients of Section 3 projects under the \$200,000 threshold, and require reporting only once a year by recipients of completed projects. HUD provides in §§ 75.15 and 75.25 that recipients would be required to submit reports to HUD annually either in a qualitative form or quantitative form. HUD includes all the large PHAs in the § 75.15(a) reporting number for reporting on the Section 3 benchmarks and estimates 2 hours to track and report annually given the amount of funds handled by these PHAs. HUD also estimates that a PHA will employ approximately seven contractors or subcontractors each fiscal year that would need to track and report up to the PHA, each at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 700 large PHAs may fail the Section 3 benchmarks and would need to report on their qualitative efforts along with the 2,250 small PHAs and estimates that such reporting would take one-half an hour.

As for § 75.25(a), HUD estimates that 66 percent of most program recipients would complete projects in a fiscal year that need to be reported except that for the HOME program, HUD estimates that 90 percent of HOME recipients would complete projects in a fiscal year, at an estimate of 3,600 recipients. Given these projects are more diverse in size, HUD estimates that the average time to report on the Section 3 benchmarks for recipients would be 1 hour. HUD also estimates that a Section 3 project will engage approximately five contractors or subcontractors each fiscal year that would also need to track and report up to the Section 3 project recipient, each

at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 3,600 recipients may fail the Section 3 benchmarks and would need to report on their qualitative efforts and estimates that such reporting would take one-half an hour.

HUD also notes that the rule no longer requires the inclusion of prescriptive contractual language. See §§ 75.17 and 75.27. HUD believes that this change will result in a de minimis upfront burden related to updating contracts, if recipients, subrecipients, and contractors chose to do so, but that removing the requirement will actually reduce burden on recipients, subrecipients, and contractors on a sustained basis by giving them flexibility to use alternative or existing contractual language. HUD also provides for recordkeeping requirements at § 75.31 and believes that the maintaining of records by recipients will take a recipient approximately 2 hours. However, HUD notes that some programs, such as HOME, already have recordkeeping requirements that are part of existing approved Information Collection Requests and, thus, excludes those programs from the burden matrix. Lastly, HUD maintains the option for individuals to file complaints and retains the frequency number that was in the existing Section 3 reporting burden.

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The current recordkeeping requirements for Section 3 is 90,180 hours with a cost of \$1,817,000. HUD estimates that this new rule will reduce the number of hours by 68 percent to 25,910 hours for a total cost savings of approximately \$1.2 million. The overall reporting and recordkeeping burden is estimated as follows:

Information collection	Number of respondents	Frequency of response per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 75.15(a) Labor Hour or New Hire Reporting for PHA	700	1	2	1,400	\$22.71	\$31,794.00
§ 75.15(a) Labor Hour or New Hire Reporting for Contractors or Subcontractors of PHAs	4,900	1	0.5	2,450	22.71	55,639.50
§ 75.15(b)–(d) Qualitative Reporting for PHAs	2,300	1	0.5	1,150	22.71	26,116.50
§ 75.25(a) Labor Hour Reporting for Section 3 Projects	3,600	1	1	3,600	22.71	81,756.00
§ 75.25(a) Labor Hour Reporting for Contractors and Subcontractors on Section 3 Projects	10,800	1	0.5	5,400	22.71	122,634.00

Information collection	Number of respondents	Frequency of response per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 75.25(b) Qualitative Reporting for Section 3 Projects	180	1	0.5	90	22.71	2,043.90
§ 75.31 Recordkeeping	5,900	1	2	11,800	22.71	267,978.00
§ 75.33 Complaints	20	1	1	20	10.00	200.00
Total				25,910		588,161.90

HUD will update the appropriate OMB control number 2529–0043 to reflect this reduction in burden.

Congressional Review of Final Rules

The Office of Information and Regulatory Affairs has determined that this final rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

24 CFR Part 75

Administrative practice and procedure, Community development, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs—housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 266

Intergovernmental relations, Low- and moderate-income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low- and moderate-income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, under the authority 12 U.S.C. 1701u; 42 U.S.C. 3535(d), HUD amends 24 CFR parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 576, 578, 905, 964, 983, and 1000 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1701u and 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936; Sec. 607, Pub. L. 109–115, 119 Stat.

3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR 2010 Comp., p. 273.

§ 5.105 [Amended]

■ 2. Amend § 5.105(a) by removing “; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.”

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

■ 3. The authority for part 14 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 42 U.S.C. 3535(d).

§ 14.115 [Amended]

■ 4. Amend § 14.115 by removing and reserving paragraph (a)(5).

■ 5. Add part 75 to read as follows:

PART 75—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Subpart A—General Provisions

Sec.

75.1 Purpose.

75.3 Applicability.

75.5 Definitions.

75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

Subpart B—Additional Provisions for Public Housing Financial Assistance

75.9 Requirements.

75.11 Targeted Section 3 worker for public housing financial assistance.

75.13 Section 3 safe harbor.

75.15 Reporting.

75.17 Contract provisions.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

75.19 Requirements.

75.21 Targeted Section 3 worker for housing and community development financial assistance.

75.23 Section 3 safe harbor.

75.25 Reporting.

75.27 Contract provisions.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping and Compliance

75.29 Multiple funding sources.

75.31 Recordkeeping.

75.33 Compliance.

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 75.1 Purpose.

This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C.

1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

§ 75.3 Applicability.

(a) *General applicability.* Section 3 applies to public housing financial assistance and Section 3 projects, as follows:

(1) *Public housing financial assistance.* Public housing financial assistance means:

(i) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act);

(ii) Operations and management assistance provided pursuant to section 9(e) of the 1937 Act;

(iii) Development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act; and

(iv) The entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in paragraphs (a)(1)(i) through (iii) of this section.

(2) *Section 3 projects.* (i) Section 3 projects means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 1701z–2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

(ii) The Secretary must update the thresholds provided in paragraph (a)(2)(i) of this section not less than once every 5 years based on a national construction cost inflation factor through **Federal Register** notice not subject to public comment. When the Secretary finds it is warranted to ensure

compliance with Section 3, the Secretary may adjust, regardless of the national construction cost factor, such thresholds through **Federal Register** notice, subject to public comment.

(iii) The requirements in this part apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

(b) *Contracts for materials.* Section 3 requirements do not apply to material supply contracts.

(c) *Indian and Tribal preferences.* Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of this part.

(d) *Other HUD assistance and other Federal assistance.* Recipients that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

§ 75.5 Definitions.

The terms *HUD*, *Public housing*, and *Public Housing Agency (PHA)* are defined in 24 CFR part 5. The following definitions also apply to this part:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

Contractor means any entity entering into a contract with:

(1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or

(2) A subrecipient for work in connection with a Section 3 project.

Labor hours means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

Low-income person means a person as defined in Section 3(b)(2) of the 1937 Act.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Professional services means non-construction services that require an

advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

Public housing financial assistance means assistance as defined in § 75.3(a)(1).

Public housing project is defined in 24 CFR 905.108.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

(1) A business concern meeting at least one of the following criteria, documented within the last six-month period:

(i) It is at least 51 percent owned and controlled by low- or very low-income persons;

(ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or

(iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Section 3 project means a project defined in § 75.3(a)(2).

Section 3 worker means:

(1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

(i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.

(ii) The worker is employed by a Section 3 business concern.

(iii) The worker is a YouthBuild participant.

(2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.

(3) Nothing in this part shall be construed to require the employment of

someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in §§ 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

§ 75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by § 75.3 will include notice that this part is applicable to the funding and may include, as appropriate for the specific NOFA, points or bonus points for the quality of Section 3 plans.

Subpart B—Additional Provisions for Public Housing Financial Assistance

§ 75.9 Requirements.

(a) *Employment and training.* (1) Consistent with existing Federal, state, and local laws and regulations, PHAs or other recipients receiving public housing financial assistance, and their contractors and subcontractors, must make their best efforts to provide employment and training opportunities generated by the public housing

financial assistance to Section 3 workers.

(2) PHAs or other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (a)(1) of this section in the following order of priority:

(i) To residents of the public housing projects for which the public housing financial assistance is expended;

(ii) To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;

(iii) To participants in YouthBuild programs; and

(iv) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(b) *Contracting.* (1) Consistent with existing Federal, state, and local laws and regulations, PHAs and other recipients of public housing financial assistance, and their contractors and subcontractors, must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers.

(2) PHAs and other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (b)(1) of this section in the following order of priority:

(i) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;

(ii) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by the PHA that is providing the assistance;

(iii) To YouthBuild programs; and

(iv) To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

§ 75.11 Targeted Section 3 worker for public housing financial assistance.

(a) *Targeted Section 3 worker.* A Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) A resident of public housing or Section 8-assisted housing;

(ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or

(iii) A YouthBuild participant.

(b) [Reserved]

§ 75.13 Section 3 safe harbor.

(a) *General.* PHAs and other recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary, if they:

(1) Certify that they have followed the prioritization of effort in § 75.9; and

(2) Meet or exceed the applicable Section 3 benchmarks as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the **Federal Register**. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. HUD will update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of PHAs and other recipients meeting benchmarks, as well as other metrics reported pursuant to § 75.15 as deemed appropriate by HUD, for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.15(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

(ii) The number of labor hours worked by Targeted Section 3 workers, as defined in § 75.11(a), divided by the total number of labor hours worked by

all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

§ 75.15 Reporting.

(a) *Reporting of labor hours.* (1) For public housing financial assistance, PHAs and other recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked with public housing financial assistance in the fiscal year of the PHA or other recipient, including labor hours worked by any contractors and subcontractors that the PHA or other recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) PHAs and other recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the PHA, other recipient, contractor, or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) PHAs and other recipients may report on the labor hours of the PHA, the recipient, a contractor, or a subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the PHA's or other recipient's reporting under paragraph (a) of this section indicates

that the PHA or other recipient has not met the Section 3 benchmarks described in § 75.13, the PHA or other recipient must report in a form prescribed by HUD on the qualitative nature of its Section 3 compliance activities and those of its contractors and subcontractors. Such qualitative efforts may, for example, include but are not limited to the following:

(1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.

(2) Provided training or apprenticeship opportunities.

(3) Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

(4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

(5) Held one or more job fairs.

(6) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).

(7) Provided assistance to apply for/attend community college, a four-year educational institution, or vocational/technical training.

(8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.

(9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) *Reporting frequency.* Unless otherwise provided, PHAs or other recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

(d) *Reporting by Small PHAs.* Small PHAs may elect not to report under

paragraph (a) of this section. Small PHAs that make such election are required to report on their qualitative efforts, as described in paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.17 Contract provisions.

(a) PHAs or other recipients must include language in any agreement or contract to apply Section 3 to contractors.

(b) PHAs or other recipients must require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.

(c) PHAs or other recipients must require all contractors and subcontractors to meet the requirements of § 75.9, regardless of whether Section 3 language is included in contracts.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

§ 75.19 Requirements.

(a) *Employment and training.* (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

(i) Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) Participants in YouthBuild programs.

(b) *Contracting.* (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) YouthBuild programs.

§ 75.21 Targeted Section 3 worker for housing and community development financial assistance.

(a) *Targeted Section 3 worker.* A Targeted Section 3 worker for housing and community development financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) Living within the service area or the neighborhood of the project, as defined in § 75.5; or

(ii) A YouthBuild participant.

(b) [Reserved]

§ 75.23 Section 3 safe harbor.

(a) *General.* Recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:

(1) Certify that they have followed the prioritization of effort in § 75.19; and

(2) Meet or exceed the applicable Section 3 benchmark as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the **Federal Register**. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the nature of the Section 3 project, or other variables. HUD will update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of recipients meeting benchmarks, as well as other metrics reported pursuant to § 75.25 as deemed appropriate by HUD, for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.25(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

(ii) The number of labor hours worked by Targeted Section 3 workers as defined in § 75.21(a), divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

§ 75.25 Reporting.

(a) *Reporting of labor hours.* (1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) Recipients reporting under this section, as well as subrecipients, contractors and subcontractors who report to recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is

otherwise subject to requirements specifying time and attendance reporting.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

- (1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- (2) Provided training or apprenticeship opportunities.
- (3) Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- (4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- (5) Held one or more job fairs.
- (6) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).
- (7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- (8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- (9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
- (10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- (11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- (12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) *Reporting frequency.* Unless otherwise provided, recipients must report annually to HUD under paragraph (a) of this section, and, where

required, under paragraph (b) of this section, on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.27 Contract provisions.

(a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(b) Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

§ 75.29 Multiple funding sources.

(a) If a housing rehabilitation, housing construction or other public construction project is subject to Section 3 pursuant to § 75.3(a)(1) and (2), the recipient must follow subpart B of this part for the public housing financial assistance and may follow either subpart B or C of this part for the housing and community development financial assistance. For such a project, the following applies:

(1) For housing and community development financial assistance, a Targeted Section 3 worker is any worker who meets the definition of a Targeted Section 3 worker in either subpart B or C of this part; and

(2) The recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients. PHAs and other recipients must report the following information:

(i) The total number of labor hours worked on the project;

(ii) The total number of labor hours worked by Section 3 workers on the project; and

(iii) The total number of labor hours worked by Targeted Section 3 workers on the project.

(b) If a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 because the project is assisted with funding from multiple sources of housing and community development assistance that exceed the thresholds in § 75.3(a)(2), the recipient or recipients must follow subpart C of this part, and must report to the applicable HUD program office, as prescribed by HUD.

§ 75.31 Recordkeeping.

(a) HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program by which the Section 3 project is governed, or the public housing financial assistance is provided or otherwise made available to the recipient, subrecipient, contractor, or subcontractor.

(b) Recipients must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

(1) For a worker to qualify as a Section 3 worker, one of the following must be maintained:

(i) A worker's self-certification that their income is below the income limit from the prior calendar year;

(ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

(iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or

(v) An employer's certification that the worker is employed by a Section 3 business concern.

(2) For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

(i) For a worker to qualify as a Targeted Section 3 worker under subpart B of this part:

(A) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;

(B) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(C) An employer's certification that the worker is employed by a Section 3 business concern; or

(D) A worker's certification that the worker is a YouthBuild participant.

(ii) For a worker to qualify as a Targeted Section 3 worker under subpart C of this part:

(A) An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

(B) An employer's certification that the worker is employed by a Section 3 business concern; or

(C) A worker's self-certification that the worker is a YouthBuild participant.

(c) The documentation described in paragraph (b) of this section must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200.

(d) A PHA or recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

§ 75.33 Compliance.

(a) *Records of compliance.* Each recipient shall maintain adequate records demonstrating compliance with this part, consistent with other recordkeeping requirements in 2 CFR part 200.

(b) *Complaints.* Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office.

(c) *Monitoring.* HUD will monitor compliance with the requirements of this part. The applicable HUD program office will determine appropriate methods by which to oversee Section 3 compliance. HUD may impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under which the violation was found.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 6. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

§ 91.215 [Amended]

■ 7. Amend § 91.215(j) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

§ 91.225 [Amended]

■ 8. Amend § 91.225(a)(7) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

§ 91.325 [Amended]

■ 9. Amend § 91.325(a)(7) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

§ 91.425 [Amended]

■ 10. Amend § 91.425(a)(1)(vii) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 11. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

■ 12. Amend § 92.508 as follows:

- a. Remove paragraph (a)(7)(i)(B);
 - b. Redesignate paragraph (a)(7)(i)(C) as (a)(7)(i)(B); and
 - c. Add paragraph (a)(7)(xi).
- The addition reads as follows:

§ 92.508 Recordkeeping.

(a) * * *

(7) * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

PART 93—HOUSING TRUST FUND

■ 13. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

■ 14. Amend § 93.407 as follows:

- a. Redesignate paragraphs (a)(5)(ii) through (ix) as paragraphs (a)(5)(iii) through (x);
 - b. Remove paragraph (a)(5)(i)(B);
 - c. Redesignate paragraph (a)(5)(i)(A) as paragraph (a)(5)(ii);
 - d. In newly redesignated paragraph (a)(5)(iv), remove “24 part 35” and add in its place “24 CFR part 35”; and
 - e. Add paragraph (a)(5)(xi).
- The addition reads as follows:

§ 93.407 Recordkeeping.

(a) * * *

(5) * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75, which implements section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT [AMENDED]

■ 15. Under the authority of 42 U.S.C. 3535(d), in chapter I, remove designated subchapter headings A and B.

PART 135 —[REMOVED]

■ 16. Remove part 135.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

■ 17. The authority citation for part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

§ 266.220 [Amended]

■ 18. Amend § 266.220(c) by removing “; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135”.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 19. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

§ 570.487 [Amended]

■ 20. Amend § 570.487(d) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

§ 570.607 [Amended]

■ 21. Amend § 570.607(b) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 22. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

§ 574.600 [Amended]

■ 23. Amend § 574.600 by adding “and part 75” after the phrase “24 CFR part 5”.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 24. The authority citation for part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

§ 576.407 [Amended]

- 25. Amend § 576.407(a) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 578—CONTINUUM OF CARE PROGRAM

- 26. The authority citation for part 578 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11381 *et seq.*, 42 U.S.C. 3535(d).

§ 578.99 [Amended]

- 27. Amend § 578.99 by removing “federal” in the section heading and adding in its place “Federal” and removing “24 CFR part 135” in paragraph (i) and adding in its place “24 CFR part 75”.

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

- 28. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, 42 U.S.C. 1437z–7, and 3535(d).

§ 905.308 [Amended]

- 29. Amend § 905.308(b)(10) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

- 30. The authority citation for part 964 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

- 31. Revise § 964.320 to read as follows:

§ 964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 75, PHAs, their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 75.3) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

- 32. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.4 [Amended]

- 33. Amend § 983.4 by removing the definition of “Section 3—Training, employment and contracting opportunities in development”.

§ 983.154 [Amended]

- 34. Amend § 983.154 by removing (c) introductory text and paragraph (c)(1) and redesignating paragraph (c)(2) as paragraph (c).

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

- 35. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

- 36. Revise § 1000.42 to read as follows:

§ 1000.42 Are the requirements of Section 3 of the Housing and Urban Development Act of 1968 applicable?

No. Recipients shall comply with Indian preference requirements of Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)), or employment and contract preference laws adopted by the recipient’s tribe in accordance with Section 101(k) of NAHASDA.

Benjamin S. Carson, Sr.,

Secretary.

[FR Doc. 2020–19185 Filed 9–28–20; 8:45 am]

BILLING CODE 4210–67–P

DEO provided Section 3
required contract language and sample employee and business applications

HUD Section 3 Opportunity portal link below:

<https://hudapps.hud.gov/OpportunityPortal/>

Other potential Section 3 sources:

<https://www.kwha.org/mcha/section/?structureid=21>

<https://www.kwha.org/kwha/section/?structureid=15>

<https://youthbuild.org/>

<http://www.careersourcesfl.com/index.php/career-center/>

SECTION 3 CONTRACT CLAUSE

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).

SECTION 3 WORKER AND TARGETED WORKER APPLICATION

Completed applications should be submitted to:

[Contractor

Attn: Section 3 Program

[Address]

[City, State ZIP]

If you have any questions on the application process

Please contact the Section 3 Program at

[Contractor phone number and email]

Section 3 Worker and Targeted Worker Application

Name _____

Physical Address _____

City, State, Zip _____

Mailing Address, if different _____

City, State, Zip _____

Telephone Number, including area code _____

Email _____

I qualify as a Section 3 worker or Targeted Section 3 worker because (choose one):

- ☐ I am employed by a Section 3 business concern.
(Attach proof of employment such as a current pay stub.)
- ☐ I have completed a YouthBuild program within the past twelve (12) months or I am a current Youthbuild participant.
(Attach a copy of your certificate of completion or documentation of Youthbuild participation.)
- ☐ My income is below 80% of the Area Median Income for a household size of one for the area in which I reside.
(Attach proof of income such as most recent W-2, recent paystubs and/or proof of public assistance OR complete the Zero Income Statement on Page 5 of this application.)
- ☐ I reside within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.
(Attach proof of residency.)

Section 3 Worker and Targeted Worker Application

Fields of Experience and Interest

If you have skills in a particular area and you are interested in working in that field, please check the "Interest" box and provide your length of experience.

Construction-Related Services	Interest	Length of Experience	Non-Construction/Post-Construction Services	Interest	Length of Experience
Architecture			Appraisal Services		
Bricklaying			Archeology		
Carpentry			Building Inspection Services		
Cement/Masonry			Building Maintenance		
Demolition			Catering		
Drywall			Computers/IT		
Electrical			Courier Services		
Elevator Construction			Engineering		
Engineering			Janitorial		
Environmental Services			Landscaping		
Fencing			Legal Services		
Flooring Installation			Management Consulting		
Heating			Marketing/Photography		
Insulation/Siding			Printing		
Iron Works			Real Estate Services		
Landscaping			Security		
Machine Operation			Surveying Services		
Painting			Transportation		
Plastering			Other:		
Plumbing			Other:		
Roofing			Other:		
Other:			Other:		

Section 3 Worker and Targeted Worker Application

Required Documents

Submit the following with this application:

- ☐ Proof of Identity (a photo ID: state-issued, college, employee badges are all accepted)
- ☐ Proof of Address if qualifying based on residency (a piece of official mail such as a utility bill, paycheck stub or government document with your current address on it)
- ☐ Income Documentation for last 30 days (most recent W-2, paystubs, Social Security/SSI/SSDI income statement, unemployment statement, worker's comp award letter, and any other item which would be considered cash income). Non-cash items like food stamps aren't needed.
- ☐ Zero-income statement (if applicable)

Applicant Certification

I understand that Section 3 Resident certifications are valid for five (5) years. It is my responsibility to contact the office that holds my certification in order to update my contact information and my qualifications, or, if I no longer wish to be a certified Section 3 Resident.

I understand that a Section 3 Resident certification **is not an offer of employment**. By signing this document, I give [Monroe County] permission to place my contact information on a list to be shared with businesses and community partners when they are hiring for Section 3 covered projects in the area. I may or may not be contacted about a position. If contacted, I will have to undergo the job application or interview process of that potential employer. If selected, I agree to comply with all federal and local reporting requirements.

I understand that a more detailed review of my information may be requested for any reason. I affirm that the information I provided was true to the best of my knowledge and belief, and that I have not withheld information in order to obtain certification. I further understand that if I have failed to provide truthful information, or to provide all information, I will be removed from the certification list and will not be able to reapply for one (1) year.

Signature of Applicant _____ Date _____

FOR INTERNAL USE ONLY

Date Application Received: _____ Reviewed by: _____ Date: _____

Applicant qualifies as ☐ Section 3 Worker ☐ Targeted Section 3 Worker ☐ Does not qualify for Section 3

Section 3 Worker and Targeted Worker Application

Exhibit A: Zero Income Statement:

If you have no income, complete this section. If homeless, attach a letter from the shelter where you receive assistance, regardless of the type of assistance you receive.

I, _____, certify that I have no income. I understand this means wages from work, unemployment, TANF, SSI/SSDI, Social Security, or any other program which I would receive a cash payment from.

The reason I am able to survive with no income is because (choose one):

☐ I am currently homeless. I am able to meet my basic needs by doing the following: _____

☐ I am living with someone not in my household who provides me with support.

Their name is: _____

Their telephone number is: _____

Their relationship to me is (mother, uncle, friend, etc.): _____

To be filled out by the supporting party: How do you provide support to the applicant? Provide approximate cash amounts for all major expenses (\$50 or more). *Example: "I pay \$500 in rent; I spend \$200 on food that he/she shares with me", etc.:* _____

Signature of Supporting Party: _____ Date: _____

Signature of Applicant: _____ Date: _____

SECTION 3 BUSINESS APPLICATION

Completed applications should be submitted to:

Contractor Name

Attn: Section 3 Program

Address

[City, State ZIP]

If you have any questions on the application process

Please contact the Section 3 Program

[contractor phone number and email]

Section 3 Business Application

Section 3 Business Application Checklist:

- ☐ Complete Section 3 Business Application
- ☐ Organizational Information
 - Articles of Incorporation or Organization (as applicable to business type)
 - Assumed Business Name Certificate
 - Certificate of Good Standing or Active status (as applicable to business type)
 - Partnership Agreement (if applicable)
 - Organizational Chart with Job Titles and Duties
 - Evidence of Business License
 - Other Applicable Documentation
- ☐ Qualifying Section 3 Criteria (Check applicable qualifying criteria below and include all requested supporting documentation)
 - 51% or more owned by low- or very low-income individual;
 - 51% or more owned by a resident of public housing; or
 - 75% of all hours worked over the prior three months worked by Section 3 workers
- ☐ Other Pertinent Information
 - Insurance Certificates
 - Current Financial Statement
 - Statement of Ability to Comply with Public Policy
 - List of all contracts for the past two years
 - W-9 (see last page of this application)

Section 3 Business Application

Name of Business _____

Physical Address _____

City, State, Zip _____

Mailing Address, if different _____

City, State, ZIP _____

Owner's Name (Please include a copy of State ID or Driver's License) _____

Telephone Number, including area code _____

Email _____

Date Company was established _____

ORGANIZATIONAL INFORMATION

All questions must be answered and the data given must be clear and comprehensive. If necessary, questions may be answered on separate attached sheet(s).

The company is a: ☐ Sole Proprietorship ☐ Partnership ☐ Joint Venture
☐ Corporation (please enclose a copy of corporation papers and corporate seal)
☐ Limited Liability Company (LLC)

General type of work performed by your Company (i.e. general contracting, HVAC, etc):

Are you minority owned (MBE)? Yes ☐ No ☐ Woman owned (WBE)? Yes ☐ No ☐
(Optional – For reporting purposes only)

Is this business licensed to operate in the certifying locality? Yes ☐ No ☐ (Enclose a copy if yes)

Please check and attach the following Business Entity documents, as applicable:

- | | |
|--|--|
| <input type="checkbox"/> Copy of Articles of Incorporation | <input type="checkbox"/> Assumed Business Name Certificate |
| <input type="checkbox"/> Certificate of Good Standing | <input type="checkbox"/> Partnership Agreement |
| <input type="checkbox"/> Organization Chart with titles & duties | <input type="checkbox"/> Other Documentation |

Section 3 Business Application

The Applicant must have at least the following insurance coverage for Section 3 contract work:

- Commercial General Liability on an occurrence form for:
 - Bodily injury, and
 - Property damage liability

General Contractor limits of \$2,000,000 combined single limit each occurrence covering the Project specifically, and umbrella excess liability of \$5,000,000

Subcontractor limits will be \$1,000,000 combined single limit occurrence, and \$2,000,000 umbrella excess liability
- Worker's Compensation:
 - Statutory limits required by State Law
 - Employer's Liability: \$100,000
- Comprehensive Automobile Liability
 - Bodily Injury: \$1,000,000 Each Person
\$1,000,000 Each Occurrence
 - Property Damage: \$1,000,000 Each Occurrence

A copy of above insurance certificates must accompany this application. Coverage shall be maintained for the life of each contract or subcontract. Lapse of coverage may result in termination of contract and/or termination of approval to participate by the certifying entity.

The Applicant must have a satisfactory record of past work. Applicants with limited or no past performance will be accepted on a "probation" basis, and will not be awarded more than one contract at a time.

Please provide evidence of ability to perform successfully under the terms and conditions of other contracts:

- ☐ Current Financial Statement
- ☐ Statement of Ability to Comply with Public Policy
- ☐ List of all contracts for the past two (2) years

Section 3 Business Application

QUALIFYING SECTION 3 CRITERIA

The Applicant must satisfy at least one of the following minimum requirements to be qualified as a Section 3 Business Concern. Please check the appropriate box(es):

- ☐ At least 75% of all hours worked over the prior three-month period worked by Section 3 workers (attach supporting documentation)
- ☐ 51% or more owned by low- or very low-income individuals as determined by current HUD income limits for the area where the individual resides (<https://www.huduser.gov/portal/datasets/il.html>)

NAME & ADDRESS OF OWNER(S)	TITLE	% OWNER	ADJUSTED GROSS INCOME (Attach current proof of income)

- ☐ 51% or more owned by residents of public housing

NAME & ADDRESS OF OWNER(S)	TITLE	% OWNER	PUBLIC HOUSING RESIDENT (Attach current public housing lease)

Section 3 Business Application

Please sign the statement below certifying accuracy and authorizing the release of information to the certifying entity for the purpose of verifying your references. We have the right to request any additional information to validate information presented.

I certify that my answers are true and complete to the best of my knowledge. I hereby authorize the release of information to the certifying entity for the purpose of verifying my references.

Signature

Date

SAMPLE

Section 3 Business Application

FIELDS OF INTEREST AND EXPERIENCE

Please indicate the areas of interest and the length of experience within each capacity:

Construction-Related Services	Interest	Length of Experience	Non-Construction/Post-Construction Services	Interest	Length of Experience
Architecture			Appraisal Services		
Bricklaying			Archeology		
Carpentry			Building Inspection Services		
Cement/Masonry			Building Maintenance		
Demolition			Catering		
Drywall			Computers/IT		
Electrical			Courier Services		
Elevator Construction			Engineering		
Engineering			Janitorial		
Environmental Services			Landscaping		
Fencing			Legal Services		
Flooring Installation			Management Consulting		
Heating			Marketing/Photography		
Insulation/Siding			Printing		
Iron Works			Real Estate Services		
Landscaping			Security		
Machine Operation			Surveying Services		
Painting			Transportation		
Plastering			Other:		
Plumbing			Other:		
Roofing			Other:		
Other:			Other:		

What size of jobs in the areas indicated above are preferred?

Please list the suppliers with whom you do business (include the name, address and phone number):

Please list the Subcontractors with whom you regularly do business, if any, and indicate if they are Section 3 qualified*.

Section 3 Business Application

- A. Carpentry: _____ Y/N
- B. Electrical: _____ Y/N
- C. Plumbing: _____ Y/N
- D. Roofing: _____ Y/N
- E. Masonry: _____ Y/N
- F. Mechanical: _____ Y/N
- G. Painting: _____ Y/N
- H. Other: _____ Y/N
- I. Other: _____ Y/N
- J. Other: _____ Y/N

*Section 3 qualified businesses receive preference on federally funded projects

OTHER PERTINENT INFORMATION

Have you ever been convicted of violating Federal, State or Local Law in the course of discharging your duties as a contractor? YES _____ NO _____

If yes, please explain:

Have you ever been disbarred from participating as a contractor in any Federal, State or Local Housing program? YES _____ NO _____

If yes, please explain:

Are you a licensed lead-based paint abatement contractor? YES _____ NO _____

If yes, please provide a copy of all worker supervisor and contractor licenses.

Section 3 Business Application

Please complete and return the attached W-9 form (found on the last page of this application) along with this application.

REFERENCES

Name	Address	Phone number	Years Associated
Banks			
Trades			
Subcontractors			

Section 3 Business Application

CERTIFICATION

I certify that all of the above information is correct and true to the best of my knowledge, under the penalty of law. I understand that this information will be used to determine my eligibility for the [Monroe County] Section 3 Program, which utilizes funds from the U.S. Department of Housing and Urban Development. The participating agencies do not discriminate against any person because of race, color, religion, sex, handicap, family status, or national origin. I understand that this application may be rejected if I withhold information requested or provide falsified information.

I understand that a Section 3 Business Concern certification is not an offer of employment. By signing this document I give the certifying entity permission to place my contact information on a list to be shared with businesses and community partners when they are hiring for Section 3 covered projects in the area. If awarded a HUD-funded contract, I agree to comply with all federal and local reporting requirements.

*Printed Name: _____ *Title: _____

*Authorized Signature: _____ Date: _____

*CORPORATE OFFICER OR PERSON AUTHORIZED TO SIGN BIDS AND CONTRACTS ON BEHALF OF THE COMPANY.

FOR INTERNAL USE ONLY

Date Application Received: _____ Reviewed By: _____ Date: _____

Contractor: Does _____ or Does Not _____ qualify as a Section 3 Business Concern

Section 3 Program

Form W-9 (Rev. December 2011) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give Form to the requester. Do not send to the IRS.																																								
Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)																																									
	Business name/disregarded entity name, if different from above																																									
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____																																									
	<input type="checkbox"/> Exempt payee																																									
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)																																								
	City, state, and ZIP code																																									
List account number(s) here (optional)																																										
Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3. Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.																																										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="10" style="text-align: center;">Social security number</td> </tr> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="10" style="text-align: center;">Employer identification number</td> </tr> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table>			Social security number																				Employer identification number																			
Social security number																																										
Employer identification number																																										
Part II Certification Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined below). Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.																																										
Sign Here	Signature of U.S. person ▶ _____	Date ▶ _____																																								
General Instructions Section references are to the Internal Revenue Code unless otherwise noted. Purpose of Form A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to: 1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued), 2. Certify that you are not subject to backup withholding, or 3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.																																										
Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9. Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are: • An individual who is a U.S. citizen or U.S. resident alien, • A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, • An estate (other than a foreign estate), or • A domestic trust (as defined in Regulations section 301.7701-7). Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.																																										

ATTACHMENT B

Wage Rates -
may be
updated at
contract
award if
revised by
Department
of Labor

"General Decision Number: FL20230147 01/06/2023

Superseded General Decision Number: FL20220147

State: Florida

Construction Type: Highway

County: Monroe County in Florida.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
0 01/06/2023

ELEC0349-002 09/01/2021

	Rates	Fringes
ELECTRICIAN.....	\$ 37.61	11.72

SUFL2013-008 08/19/2013		

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 11.95 **	1.44
CEMENT MASON/CONCRETE FINISHER...	\$ 13.65 **	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine).....	\$ 12.70 **	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Spray Nozzleman).....	\$ 13.08 **	0.00
INSTALLER - GUARDRAIL.....	\$ 14.44 **	0.00
IRONWORKER, REINFORCING.....	\$ 13.85 **	0.00
LABORER (Traffic Control Specialist).....	\$ 12.17 **	1.71
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$ 13.60 **	0.00
LABORER: Common or General.....	\$ 11.96 **	2.90
LABORER: Flagger.....	\$ 9.87 **	0.00
LABORER: Grade Checker.....	\$ 11.45 **	0.00
LABORER: Landscape & Irrigation.....	\$ 11.16 **	0.00
LABORER: Pipelayer.....	\$ 12.68 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 17.20	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 11.60 **	0.00
OPERATOR: Broom/Sweeper.....	\$ 10.89 **	0.00
OPERATOR: Bulldozer.....	\$ 13.90 **	0.00
OPERATOR: Crane.....	\$ 17.83	0.00
OPERATOR: Forklift.....	\$ 11.03 **	0.00
OPERATOR: Grader/Blade.....	\$ 16.08 **	0.00
OPERATOR: Loader.....	\$ 16.59	0.00
OPERATOR: Mechanic.....	\$ 13.55 **	0.00
OPERATOR: Milling Machine.....	\$ 13.23 **	0.00
OPERATOR: Oiler.....	\$ 12.61 **	0.00

OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 18.17	0.00
OPERATOR: Roller.....	\$ 13.28 **	2.39
OPERATOR: Screed.....	\$ 15.79 **	0.00
OPERATOR: Trencher.....	\$ 16.00 **	0.00
TRAFFIC SIGNALIZATION:		
Traffic Signal Installation.....	\$ 19.03	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.66 **	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 14.94 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 13.05 **	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can

be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

ATTACHMENT C
Federal Lobbying Form

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

(To be submitted with each bid or offer exceeding \$100,000)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

DISCLOSURE OF LOBBYING ACTIVITIES
 COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) if necessary)		
15. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>		
16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		Authorized for Local Reproduction Standard Form - LLL

Federal Use Only:

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity 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 a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered Federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box. Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project

(0348-0046), Washington, D.C. 20503.
90«ENDIF»

SF-LLL-Instructions Rev. 06-04-

CONDITIONS OF THE CONTRACT

Section 00750

General Conditions of the Contract for Construction

Table of Articles

1.	General Provisions	8.	Time
2.	Owner	9.	Payments and Completion
3.	Contractor	10.	Protection of Persons and Property
4.	Administration of the Contract	11.	Insurance and Bonds
5.	Subcontractors Work	12.	Uncovering and Correction of Work
6.	Construction by Owner or By Other Contractors	13.	Miscellaneous Provisions
7.	Changes in the Work	14.	Termination or Suspension of the Contract

General Conditions of the Contract for Construction
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ARTICLE 1
GENERAL PROVISIONS

1.1 Basic Definitions

1.1.1 The Contract Documents: The Contract Documents consist of the Agreement between Owner and CONTRACTOR (hereinafter), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive issued by the Owner or (4) a written order for a minor change in the Work issued by the Owner.

1.1.2 The Contract: The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other the Owner and CONTRACTOR.

1.1.3 The Work: The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the CONTRACTOR to fulfill the CONTRACTOR’s obligations. The Work may constitute the whole or a part of the Project.

1.1.4 The Project: The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other CONTRACTORS and by the Owner’s own forces including persons or entities under separate contracts not administered by the Owner.

1.1.5 The Drawings: The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 The Specifications: The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 The Project Manual: The Project Manual is the volume usually assembled for the Work, which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 Execution, Correlation and Intent

1.2.1 Execution of the Contract by the CONTRACTOR is a presentation that the CONTRACTOR has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.2 The intent of the Contract Document is to include all items necessary for the proper execution and completion of the Work by the CONTRACTOR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the CONTRACTOR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.3 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.4 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.5 Where on any of the drawings, a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall also apply to all other like portions of the Work.

1.3 Ownership and Use of Owner's Drawings, Specifications and Other Documents

1.3.1 The Drawing, Specifications and other documents prepared by the Owner are instruments of the Owner's service through which the Work to be executed by the CONTRACTOR is described. The CONTRACTOR may retain one contract record set. Neither the CONTRACTOR nor any Subcontractor, Subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Owner, and unless otherwise indicated the Owner shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the CONTRACTOR's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Owner, and copies thereof furnished to the CONTRACTOR, are for use solely with respect to the Project. They are not to be used by the CONTRACTOR or any Subcontractor, Subcontractor or material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Owner appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Owner. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights.

1.3.2 Unless otherwise provided in the Contract Documents, the CONTRACTOR will be furnished, free of charge, three copies of Drawings and Specifications for the execution of the Work, additional copies will be made available at \$100.00 a set.

1.4 Capitalization

1.4.1 Terms capitalization in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Owners.

1.5 Interpretation

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2 **OWNER**

2.1 Definition

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Owner” means Monroe County and its authorized representative employed by the County.

2.2 Information and Services Required of the Owner

2.2.2 The owner shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site as needed.

2.2.3 Except for permits and fees, which are the responsibility of the CONTRACTOR under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.4 Information or services under the Owner’s control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Not Used.

2.2.6 The Owner shall forward all communications to the CONTRACTOR through the Owners Representative. In absence of the Owners Representative the CONTRACTOR shall communicate with the Owner

2.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Other CONTRACTORS), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 Owner’s Right to Stop the Work

2.3.1 If the CONTRACTOR fails to correct Work which is not in accordance with the requirements of the contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the CONTRACTOR or any other person or entity.

2.4 Owner’s Right to Carry out the Work

2.4.1 If the CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such three-day period

give the CONTRACTOR a second written notice to correct such deficiencies within a three-day period. If the CONTRACTOR within such second three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the CONTRACTOR the cost of correcting such deficiencies, including compensation for the Project Manager's and the Owner and their respective consultants' additional services and expenses made necessary by such default, neglect or failure.

ARTICLE 3

CONTRACTOR

3.1 Definition

3.1.1 The CONTRACTOR is the person or entity identified as such in the Agreement and is referred to throughout this Agreement as if singular in number. The term "CONTRACTOR" means the CONTRACTOR or the CONTRACTOR's authorized representative.

3.1.2 The plural term "CONTRACTORS" refers to persons or entities that perform construction under Conditions of the Contract that are administered by the Owner, and that are identical or substantially similar to these Conditions.

3.2 Review of Contract Documents and Field Conditions by CONTRACTOR

3.2.1 The CONTRACTOR shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Owner errors, inconsistencies or omissions discovered. The CONTRACTOR shall not be liable to the Owner, for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the CONTRACTOR recognized such error, inconsistency or omission and knowingly failed to report it to the Owner. If the CONTRACTOR performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owners Representative and Owner, the CONTRACTOR shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The CONTRACTOR shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CONTRACTOR with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Project Manager and Owner at once.

3.2.3 The CONTRACTOR shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.2.4 The Contract Documents are complementary, and what is called for by any, shall be as binding as if called for by all.

3.2.5 The Owner maintains that the Contract Documents are complementary and that precedence clauses are typically not called for—the drawing and specification are a unified whole, and any conflict between or within them is subject first to interpretation by the architect/engineer, and if not resolved, is subject to resolution through the claims process. The captions or subtitles of the several Articles and Divisions of these Contract Documents constitute no part of the context hereof but are only labels to assist in locating and reading the provisions hereof.

3.2.6 Full size details shall take precedence over scale drawings and large-scaled drawings shall take precedence over small-scale drawings. Dimensions given in figures shall take precedence over scaled

dimensions.

3.2.7 When measurements are affected by conditions already established or where items are to be fitted into constructed conditions, it shall be the CONTRACTOR's responsibility to verify all such dimensions at the site and the actual job dimensions shall take precedence over scale and figure dimensions on the drawings.

3.2.8 Wherever a stock size of manufactured item or piece of equipment is specified by its nominal size, it shall be the responsibility of the CONTRACTOR to determine the actual space requirements for setting and for entrance to the setting space to make all necessary allowances and adjustments there for in his work without additional cost to Owner.

3.2.9 Standard specifications or other specifications of the organizations, societies or bodies referred to herein or to specifications listed therein, shall be to their current editions and whenever it is stated in the Specifications that materials or work shall conform to the requirements of any of these specifications, work and/or material shall also conform to any other specification referred to herein.

3.2.10 The CONTRACTOR shall test all figures on the drawings before laying out the work.

3.3 Supervision and Construction Procedures

3.3.1 The CONTRACTOR shall supervise and direct the Work, using the CONTRACTOR's best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, subject to overall coordination of the Owners Representative as provided in Subparagraphs 4.6.3 and 4.6.4.

3.3.2 The CONTRACTOR shall be responsible to the Owner for acts and omissions of the CONTRACTOR's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the CONTRACTOR.

3.3.3 The CONTRACTOR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by either activities or duties of the Owners Representative or Owner in their administration of the Contract, or by test, inspections or approvals required or performed by persons other than the CONTRACTOR.

3.3.4 The CONTRACTOR shall inspect portions of the Project related to the CONTRACTOR's Work in order to determine that such portions are in proper condition to receive subsequent work.

3.4 Labor and Materials

3.4.1 Unless otherwise provided in the Contract Documents, the CONTRACTOR shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The CONTRACTOR shall enforce strict discipline and good order among the CONTRACTOR's employees and other persons carrying out the Contract. The CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.3 The CONTRACTOR is responsible for the conduct of his employees at all times. Misconduct, destruction of property, unsafe practices, or violation of any Federal or State regulations including abuse of alcohol or drugs, will be cause for permanent dismissal from the project. If any CONTRACTOR employee is determined to be detrimental to the Project, as deemed by the Owners Representative, the CONTRACTOR will remove and/or replace the employee at the request of the Owners Representative. Employees dismissed from the project will be transported from the job site at the CONTRACTOR's expense.

3.4.4 The CONTRACTOR shall be totally responsible for the security of his work, materials, equipment, supplies, tools, machinery, and construction equipment.

3.4.5 The CONTRACTOR shall be responsible for complete, timely and accurate field measurements as necessary for proper coordination, fabrication and installation of his materials and equipment. The CONTRACTOR agrees to cooperate with the Owners Representative, if required, to accommodate any discovered variations or deviations from the Drawings and Specifications so that the progress of the Work is not adversely affected.

3.5 Warranty

3.5.1 The CONTRACTOR warrants to the Owner and Owners Representative that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The CONTRACTOR's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the CONTRACTOR, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owners Representative or Owner, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 Taxes

3.6.1 The CONTRACTOR shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the CONTRACTOR which is legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 Permits, Fees and Notices

3.7.1 The CONTRACTOR shall secure and pay for all permits, impact fees, governmental fees, licenses, inspections and surveys required by Federal, State, or Municipal bodies having jurisdiction over the project for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time bids are received. The Owner will not assess any County building permit or County impact fees. The CONTRACTOR will be responsible for any other building permit costs or impact fees required for this project. The CONTRACTOR shall secure and pay for all building and specialty permits including plumbing, electrical, HVAC, etc.

3.7.2 The CONTRACTOR shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the CONTRACTOR's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the CONTRACTOR observes that portions of the Contract Documents are at variance therewith, the CONTRACTOR shall promptly notify the Owners Representative and Owner in writing and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the CONTRACTOR performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the CONTRACTOR shall assume full responsibility for such Work and shall bear the attributable costs.

3.8 Not Used

3.9 Superintendent

3.9.1 The CONTRACTOR shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the CONTRACTOR, and communications given to the superintendent shall be as binding as if given to the CONTRACTOR. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendent shall be satisfactory to the Owners Representative and shall not be changed except with the consent of the Owners Representative, unless the superintendent proves to be unsatisfactory to the CONTRACTOR or ceases to be in his employ.

3.10 CONTRACTOR's Construction Schedule

3.10.1 The CONTRACTOR, promptly after being awarded the Contract, shall prepare and submit for the Owner's information and the Owners Representative's approval a CONTRACTOR's Construction Schedule for the Work. Such schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project construction schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. This schedule, to be submitted within seven (7) days after Contract Award, shall indicate the dates for the starting and completion of the various stages of construction, shall be revised as required by the conditions of the Work, and shall be subject to the Owners Representative's approval.

3.10.2 The CONTRACTOR shall cooperate with the Owners Representative in scheduling and performing the CONTRACTOR's Work to avoid conflict, delay in or interference with the Work of other CONTRACTORS or the construction or operations of the Owner's own forces.

3.10.3 The CONTRACTOR shall conform to the most recent schedules.

3.10.4 The Owners Representative will conduct a weekly scheduling meeting, which the CONTRACTOR shall attend. At this meeting, the parties can discuss jointly such matters as progress, scheduling, and problems.

3.11 Documents and Samples at the Site

3.11.1 The CONTRACTOR shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and shall be delivered for submittal to the Owner upon completion of the Work.

3.12 Shop Drawings, Product Data and Samples

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the CONTRACTOR or a Subcontractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CONTRACTOR to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CONTRACTOR proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Owner's Representative is subject to the limitations of Subparagraph 4.6.11.

3.12.5 The CONTRACTOR shall review, approve and submit to the Owners Representative, in accordance with the schedule and sequence approved by the Owner, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. The CONTRACTOR shall cooperate with the Owner in the coordination of the CONTRACTOR's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other CONTRACTORS. Submittals made by the CONTRACTOR which are not required by the Contract Documents may be returned without action.

3.12.6 The CONTRACTOR shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Owner. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the CONTRACTOR represents that the CONTRACTOR has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The CONTRACTOR shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owners Representative's and Owner's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CONTRACTOR has specifically informed the Owners Representative and Owner in writing of such deviation at the time of submittal and the Owners Representative and Owner have given written approval to the specific deviation. The CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owners Representative's and Owner's approval thereof.

3.12.9 The CONTRACTOR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals.

3.12.10 Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.12.12 If materials specified in the Contract Documents are not available on the present market, the CONTRACTOR may submit data on substitute materials to the Owners Representative for approval by the Owner.

3.13 Use of Site

3.13.1 The CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 The CONTRACTOR shall coordinate the CONTRACTOR's operations with, and secure the approval of, the Owner before using any portion of the site.

3.14 Cutting and Patching

3.14.1 The CONTRACTOR shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly; he shall also provide protection of existing work as required.

3.14.2 The CONTRACTOR shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other CONTRACTORS by cutting, patching, excavating or otherwise altering such construction. The CONTRACTOR shall not cut or otherwise alter such construction by other CONTRACTORS or by the Owner's own forces except with written consent of the Owner and such other CONTRACTORS: such consent shall not be unreasonably withheld. The CONTRACTOR shall not unreasonably withhold from the other CONTRACTORS or the Owner the CONTRACTOR's consent to cutting or otherwise altering the Work. When structural members are involved, the written consent of the Owner shall also be required. The CONTRACTOR shall not unreasonably withhold from the Owner or any separate CONTRACTOR his consent to cutting or otherwise altering the Work.

3.14.3 The CONTRACTOR shall arrange for any blockouts, cutout, or opening required for the installation of his materials and equipment and the execution of his work, whether or not shown or indicated on the Drawings. The CONTRACTOR shall be further responsible for sealing and/or finishing, in an acceptable fashion and meeting any applicable code requirements, and such block-out, cutout opening, or other hole in any fire-related floor, ceiling, wall, security wall, or any other finished surface.

3.15 Cleaning Up

3.15.1 The CONTRACTOR shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the CONTRACTOR shall remove from and about the project waste materials rubbish, the CONTRACTOR's tools, construction equipment, machinery and surplus materials. Clean up shall be performed to the satisfaction of the Owner.

3.15.2 If the CONTRACTOR fails to clean up as provided in the Contract Documents, the Project Manager may do so with the Owner's approval and the cost thereof shall be charged to the CONTRACTOR.

3.16 Access to Work

3.16.1 The CONTRACTOR shall provide the Owner's Representative and the Owner access to the Work in preparation and progress wherever located.

3.17 Royalties and Patents

3.17.1 The CONTRACTOR shall pay all royalties and license fees. The CONTRACTOR shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the CONTRACTOR has reason to believe that the required design, process or product is an infringement of a patent; the CONTRACTOR shall be responsible for such loss unless such information is promptly furnished to the Owner.

3.18 Indemnification and Hold Harmless

Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, the CONTRACTOR covenants and agrees that he shall defend, indemnify and hold the COUNTY and the COUNTY's elected and appointed officers and employees and DEO harmless from and against (i) claims, actions or causes of action, (ii) litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) costs or expenses that may be asserted against, initiated with respect to, or sustained by the County and the COUNTY's elected and appointed officers and employees from liabilities damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the indemnifying party in the performance of the construction contract. The monetary limitation of liability under this contract shall be not less than \$1 million per occurrence pursuant to F. S. 725.06. Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this Agreement, this section will survive the expiration of the term of this Agreement or any earlier termination of this Agreement.

In the event the completion of the project (including the work of others) is delayed or suspended as a result of the CONTRACTOR's failure to purchase or maintain the required insurance, the CONTRACTOR shall indemnify the County from any and all increased expenses resulting from such delay.

In the event the completion of the project (including the work of others) is delayed or suspended as a result of the CONTRACTOR's failure to purchase or maintain the required insurance, the CONTRACTOR shall indemnify the County from any and all increased expenses resulting from such delay.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

ARTICLE 4 **ADMINISTRATION OF THE CONTRACT**

4.1 Owner

4.1.1 The Owner for the Project is Monroe County. The CONTRACTOR shall work with the Owner's Representative for all oversight.

4.2 Owner's Representative

4.2.1 Where the term Owner's Representative is used, it shall mean the Monroe County Project Manager or Construction Engineering and Inspection (CEI) Consultant.

4.3 Engineer

4.3.1 The Engineer is the person lawfully licensed to practice engineering or any entity lawfully practicing engineering identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Engineer" means the Engineer or the Engineer's authorized representative.

4.4 Not Used.

4.5 Not Used.

4.6 Administration of the Contract

4.6.1 The Owners Representative will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representatives (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Owners Representative will advise and consult with the Owner and will have authority to act on behalf of the Owner only to the extent provided in the Contract Document, unless otherwise modified by written instrument in accordance with other provision of the Contract.

4.6.2 The Owners Representative will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.6.3 The Owners Representative will provide for coordination of the activities of other CONTRACTORS and of the Owner's own forces with the Work of the CONTRACTOR, who shall cooperate with them. The CONTRACTOR shall participate with other CONTRACTORS and Owner in reviewing their construction schedules when directed to do so. The CONTRACTOR shall make any revisions to the Construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall constitute the schedules to be used by the CONTRACTOR, other CONTRACTORS and the Owner until subsequently revised.

4.6.4 The Owner will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Owner will not be required to make exhaustive or continuous onsite inspections to check quality or quantity of the Work. On the basis of on-site observations, the Owners Representative will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the work.

4.6.5 The Owners Representative and Owner will not have control over or charge of and will not be responsible for construction means, method, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the CONTRACTOR's responsibility as provided in Paragraph 3.3, and neither will be responsible for the CONTRACTOR's failure to carry out the Work in accordance with the Contract Documents. Neither the Owners Representative nor the Owner will have control over or charge of or be responsible for acts or omissions of the CONTRACTOR, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.6.6 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and CONTRACTOR shall communicate through the Owners Representative and shall contemporaneously provide the same communications to the Owner. Communications by and with Subcontractors and material suppliers shall be through the CONTRACTOR. Communications by and with other CONTRACTORS shall be through the Owners Representative and shall be contemporaneously provided to the Owner.

4.6.7 The Owners Representative will review and certify all Applications for Payment by the CONTRACTOR, including final payment. After reviewing and certifying the amounts due the CONTRACTORS, the Owners Representative will submit the Project Application and Project Certificate for Payment, to the Owner.

4.6.8 Based on the Owner's observations and evaluations of CONTRACTORS' Applications for Payment, and the certifications of the Owners Representative, the Owner will review and certify the amounts due the CONTRACTORS and will issue a Project Certificate for Payment.

4.6.9 The Owner will have authority to reject Work which does not conform to the Contract Documents, and to require additional inspection or testing, in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such

Work is fabricated, installed or completed, but will take such action only after notifying the Owners Representative. Subject to review by the Owner, the Owners Representative will have the authority to reject Work that does not conform to the Contract Documents. Whenever the Owners Representative considers it necessary or advisable for implementation of the intent of the Contract Documents, the Owners Representative will have authority to require additional inspection or testing of the work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

4.6.10 The Owner's Representative will receive from the CONTRACTOR and review and approve all Shop Drawings, Product Data and Samples, coordinate them with information received from other CONTRACTORS, and transmit to the Owner those recommended for approval. The Owner's Representative's actions will be taken with such reasonable promptness as to cause no delay in the Work of the CONTRACTOR or in the activities of other CONTRACTORS or the Owner.

4.6.11 The Owner's Representative will review and approve or take other appropriate action upon the CONTRACTOR's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Owner's Representative's action will be taken with such promptness consistent with the constraints of the project schedule so as to cause no delay in the Work of the CONTRACTOR or in the activities of the other CONTRACTORS, the Owner, or the Owners Representative, while allowing sufficient time in the Owner's Representative's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the CONTRACTOR as required by the Contract Documents. The Owner's Representative's review of the CONTRACTOR's submittals shall not relieve the CONTRACTOR of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Owner's Representative's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner's Representative, of any construction means, methods, techniques, sequences or procedures. The Owner's Representative's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.6.12 The Owners Representative will prepare Change Orders and Construction Change Directives.

4.6.13 Following consultation with the Owners Representative, the Owner will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7 and will have authority to order minor changes in the Work as provided in Paragraph 7.4.

4.6.14 The CONTRACTOR will assist the Owner's Representative in conducting inspections to determine the dates of Substantial completion and final completion and will receive and forward to the Owner's Representative written warranties and related documents required by the Contract and assembled by the CONTRACTOR. The Owners Representative will forward to the Owner a final Project Application and Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.6.15 If the Owner and CONTRACTOR agree, the CONTRACTOR will provide one or more project representatives to assist in carrying out the CONTRACTOR's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.6.16 The Engineer will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Owners Representative, Owner or CONTRACTOR. The Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Engineer shall be furnished in compliance with this Paragraph 4.6, then delay shall not be recognized on account of failure by the Engineer to furnish such interpretations until 15 days after written request is made for them.

4.6.17 Interpretations and decisions of the Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by the CONTRACTOR and will not be liable for results of interpretations or decisions so rendered in good faith.

4.6.18 The Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.6.19 CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, the Federal Water Pollution Control Act as amended, and the National Environmental Policy Act. For FDOT funded projects, the Local Agency must obtain approval from the FDOT regarding any proposed changes during construction, as needed. Coordination with FDOT is required to determine if changes to the project's proposed design would require a NEPA Reevaluation/Update, prior to the commencement of any additional work. FDOT requires a minimum of 15 calendar days (excluding weekends and FDOT observed holidays) to review any proposed changes and comment for all project deliverables. This review time does not include review time performed by outside agencies. If required, the FDOT shall conduct all coordination with the appropriate outside agencies during the preparation of the Reevaluation/Update.

4.7 Claims and Disputes

4.7.1 **Definition.** A Claim is demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and CONTRACTOR arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the claim.

4.7.2 **Decision of Owner.** Claims, including those alleging an error or omission by the Engineer or Owner, shall be referred initially to the Owner for action as provided in Paragraph 4.8. A decision by the Owner, as provided in Subparagraph 4.8.4, shall be required as a condition precedent to litigation of a Claim between the CONTRACTOR and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Owner in response to a Claim shall not be a condition precedent or litigation in the event (1) the position of Owner is vacant, (2) The Owner has not received evidence or has failed to render a decision within agreed time limits, (3) the Owner has failed to take action required under Subparagraph 4.8.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Owner or (5) the Claim relates to a mechanic's lien.

4.7.3 **Time Limits on Claims.** Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

4.7.4 **Continuing Contract Performance.** Pending final resolution of a Claim unless otherwise agreed in writing the CONTRACTOR shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.7.5 **Not Used.**

4.7.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance of any part of the Work, will recommend and equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Owner and CONTRACTOR in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the Owner and CONTRACTOR cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Owner for initial determination, subject to further proceedings pursuant to Paragraph 4.6.

4.7.7 Claims for Additional Cost. If the CONTRACTOR wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3 If the CONTRACTOR believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) Not Applicable (3) a written order for a minor change in the Work issued by the Owner, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

4.7.8 Claims for Additional Time.

4.7.8.1. If the CONTRACTOR wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given.

4.7.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

4.7.8.3 Whenever the Engineer or County's Representative suspends the Contractor's operations, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension.

4.7.9 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.7.7 or 4.7.8.

4.8 Resolution of Claims and Disputes

4.8.1 The Owner will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties

indicating when the Owner expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.8.2 If a Claim has been resolved, the Owner will prepare or obtain appropriate documentation.

4.8.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Owner's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Owner, (2) modify the initial Claim or (3) notify the Owner that the initial Claim stands.

4.8.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Owner, the Owner will notify the parties in writing that the Owner's decision will be made within seven days, which decision shall be final and binding on the parties. Upon expiration of such period, the Owner will render to the parties the Owner's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a CONTRACTOR's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.9 Court Determination of Claims/Disputes. Any claim or dispute for which the parties are unable to achieve a settlement shall be decided by the Circuit Court, 16th Judicial Circuit, Monroe County, Florida. Venue for all claims or disputes shall be in Monroe County, Florida. Mediation shall be conducted in accordance with the rules for the Sixteenth Judicial Circuit, Monroe County, Florida. This Contract shall not be subject to Arbitration.

ARTICLE 5 **SUBCONTRACTORS**

5.1 Definitions

5.1.1 A Subcontractor is a person or entity who has a direct contract with the CONTRACTOR to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other CONTRACTORS or Subcontractors of other CONTRACTORS.

5.1.2 A Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

5.2 Award of Subcontracts and Other Contracts for Portions of the Work

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the CONTRACTOR, as soon as practicable after award of the Contract, shall furnish in writing to the Owners Representative for review by the Owner and Owners Representative the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owners Representative will promptly reply to the CONTRACTOR in writing stating whether or not the Owner, Owners Representative or Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owners Representative to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The CONTRACTOR shall not contract with a proposed person or entity to whom the Owner, or Owners Representative has made reasonable and timely objection. The CONTRACTOR shall not be required to contract with anyone to whom the CONTRACTOR has made reasonable objection.

5.2.3 If the Owner or Owners Representative refuses to accept any person or entity on a list submitted by the CONTRACTOR in response to the requirements of the Contract Documents, the CONTRACTOR shall submit an acceptable substitute; however, no increase in the Contract Sum shall be allowed for any such substitution.

5.2.4 The CONTRACTOR shall not change a Subcontractor, person or entity previously selected if the Owner or Owners Representative makes reasonable objection to such change.

5.3 Sub-Contractual Relations

5.3.1 By appropriate agreement, written where legally required for validity, the CONTRACTOR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CONTRACTOR by terms of the Contract Documents, and to assume toward the CONTRACTOR all the obligations and responsibilities which the CONTRACTOR, by these Documents, assumes toward the Owner and Owners Representative. Each subcontract agreement shall preserve and protect the rights of the Owner and Owners Representative under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. When appropriate, the CONTRACTOR shall require each Subcontractor to enter into similar agreements with Subcontractors. The CONTRACTOR shall make available to each proposed Subcontractor, copies of the Contract Documents which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Subcontractors.

5.4 Contingent Assignment of Subcontracts

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the CONTRACTOR to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

ARTICLE 6 **CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS**

6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

6.1.1 The Owner reserves the right to perform construction or operations released to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Owners Representative. The Owner further reserves the right to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver or subrogation.

6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Owners Representative, the Owner shall provide for coordination of such forces with the Work of the CONTRACTOR who shall cooperate with them.

6.1.3 It shall be the responsibility of the CONTRACTOR to coordinate his work with the work of other CONTRACTORS on the site. The Owner and Owners Representative shall be held harmless of any and all costs associated with improper coordination.

6.2 Mutual Responsibility

6.2.1 The CONTRACTOR shall afford the Owner's own forces, Owners Representative and other

CONTRACTORS reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the CONTRACTOR's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the CONTRACTOR's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other CONTRACTORS, the CONTRACTOR shall, prior to proceeding with that portion of the Work, promptly report to the Owners Representative and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the CONTRACTOR so to report shall constitute an acknowledgment that the Owner's own forces or other CONTRACTORS' complete or partially completed or partial completed construction is fit and proper to receive the CONTRACTOR's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the CONTRACTOR responsible therefore.

6.2.4 The CONTRACTOR shall promptly remedy damage wrongfully caused by the CONTRACTOR to complete or partially completed construction or to property of the Owner or other CONTRACTORS as provided in Subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the CONTRACTOR and other CONTRACTORS shall be subject to the provisions of Paragraph 4.7 provided the other CONTRACTORS have reciprocal obligations.

6.2.6 The Owner and other CONTRACTORS shall have the same responsibilities for cutting and patching as are described for the CONTRACTOR in Paragraph 3.14.

6.2.7 Should the CONTRACTOR contend that he is entitled to an extension of time for completion of any portion or portions of the work, he shall, within (72) hours of the occurrence of the cause of the delay, notify the Owners Representative in writing, of his contention: setting forth (A) the cause for the delay, (B) a description of the portion or portions of work affected thereby, and (C) all details pertinent thereto. A subsequent written application for the specific number of days of extension of time requested shall be made by the CONTRACTOR to the Owners Representative within (72) hours after the delay has ceased to exist.

.1 It is a condition precedent to the consideration or prosecution of any claim for an extension of time that the foregoing provisions be strictly adhered to in each instance and, if the CONTRACTOR fails to comply, he shall be deemed to have waived the claim.

.2 The CONTRACTOR agrees that whether or not any delay, regardless of cause, shall be the basis for an extension of time he shall have no claim against the Owner or Owners Representative for an increase in the Contract price, nor a claim against the Owner or Owners Representative for a payment or allowance of any kind for damage, loss or expense resulting from delays: nor shall the CONTRACTOR have any claim for damage, loss or expense resulting from interruptions to, or suspension of, his work to enable other CONTRACTORS to perform their work. The only remedy available to the CONTRACTOR shall be an extension of time.

6.3 Owner's Right to Clean Up

6.3.1 If a dispute arises among the CONTRACTOR, other CONTRACTORS and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Owners Representative, in consultation with the Owner, determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 Changes

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Owners Representative, and CONTRACTOR; a Construction Change Directive requires agreement by the Owner, Owners Representative and may or may not be agreed to by the CONTRACTOR; an order for a minor change in the Work may be issued by the Owner alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the CONTRACTOR shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or CONTRACTOR, the applicable unit prices shall be equitably adjusted, either by increase or decrease.

7.2 Change Orders

7.2.1 A change Order is a written instrument prepared by the Owners Representative and signed by the Owner, and CONTRACTOR, stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

7.2.2 The cost or credit to the owner resulting from a change in the Work shall be determined in one or more of the following:

- .1 mutual acceptance of lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;
- .4 or by method provided in subparagraph 7.2.3.

7.2.3 If none of the methods set forth in Clauses 7.2.2.1; 7.2.2.2; or 7.2.2.3 is agreed upon, the CONTRACTOR, provided a written order signed by the Owner or Owners Representative is received, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by daily force accounts in a form acceptable to the Owner and Owners Representative and shall include only equipment and personnel hours and materials used to execute the Work. The daily force account forms shall identify CONTRACTOR and /or Subcontractor personnel by name, hours for each man, each piece of equipment and total hours for equipment and all material(s) by type for each extra Work activity claim. Each daily force account form shall be signed by the designated Owners

Representative's representative no later than the close of business on the day the Work is performed to verify the items and hours listed. Extended pricing of these forms shall be submitted to the Owners Representative with all supporting documentation required by the Owners Representative for inclusion into a change order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; works' or workmen's compensation insurance; and the rental value of equipment and machinery. Markups for overhead and profit will be in accordance with subparagraph 7.2.4. Pending final determination of cost, payments on account shall be made as determined by the Owners Representative. The amount of credit to be allowed by the CONTRACTOR for any deletion or change, which results in a net decrease in the Contract Sum, will be the amount of the actual net cost as confirmed by the Owners Representative. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any with respect to that change.

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

Allowable Equipment Rates will be established as set out below:

- a. Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 100%.
- b. Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.
- c. Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.
- d. Standby Rate = Allowable Hourly Equipment Rate x 50%.

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

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

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

7.2.4 The actual cost of Changes in the Work may include all items of labor or material, power tools, and equipment actually used, utilities, pro rata charges for foreman, and all payroll charges such as Public Liability and Workmen's Compensation Insurance. No percentage for overhead and profit shall be allowed on items of Social Security and Sales Tax. If deductions are ordered the credit shall be the net cost. Items considered as overhead shall include insurance other than that mentioned above, bond or bonds, superintendent, timekeeper, clerks, watchmen, use of small tools, miscellaneous supplies, incidental job costs, warranties, and all general home/field office expenses. The actual cost of Changes in the Work (other than those covered by unit prices set forth in the Contract Documents) shall be computed as follows:

.1 if the CONTRACTOR performs the actual Work, the maximum percentage mark-up for overhead shall be five percent (5%) and the maximum percentage for profit shall be five percent (5%);

.2 if the Subcontractor performs the actual Work, the percentage mark-up for overhead and profit shall be a maximum addition of ten percent (10%). If the CONTRACTOR does not enter into the Work, the maximum mark-up for managing this Work will be five percent (5%);

.3 if the Subcontractor performs part of the actual Work, his percentage mark-up for overhead and profit shall be a maximum addition of then percent (10%) on his direct Work only. If the CONTRACTOR performs part of the actual Work, his percentage mark-up for overhead and profit shall be a maximum addition of ten percent (10%) on his direct Work only.

7.2.5 The CONTRACTOR shall furnish to the Owner through the Owners Representative, an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered. Any additional supporting documentation requested by the Owners Representative such as certified quotations or invoices shall be provided by the CONTRACTOR to the Owners Representative at no additional cost to the Owner.

7.2.6 If the CONTRACTOR claims that any instructions given to him by the Owners Representative, by drawings or otherwise, involve extra Work not covered by the Contract, he shall give the Owners Representative written notice thereof within five (5) days after the receipt of such instructions and before proceeding to execute the work, except in emergencies endangering life or property, in which case the CONTRACTOR shall proceed in accordance with Paragraph 10.3.

.1 The written notice to the Owners Representative for the Extra Work shall include a complete description of the extra Work, the total cost and a detailed cost breakdown by labor, material and equipment for each additional activity required to be performed. Mark-ups shall be limited as specified elsewhere in this Article.

.2 Except as otherwise specifically provided, no claim for additional cost shall be allowed unless the complete notice specified by this subparagraph is given by the CONTRACTOR.

7.2.7 Unless otherwise agreed in writing, the CONTRACTOR shall carry on the Work and maintain its progress during any dispute or claim proceeding, and Owner shall continue to make payments to the CONTRACTOR in accordance with the Contract Documents. Disputes unresolved shall be settled in accordance with subparagraph

12.1.1. The CONTRACTOR shall maintain completed daily force account forms in accordance with subparagraph 7.2.3 for any dispute or claim item.

7.3 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order issued through the Owners Representative and shall be binding on the Owner and CONTRACTOR. The CONTRACTOR shall carry out such written orders promptly.

ARTICLE 8 **TIME**

8.1 Definitions

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the CONTRACTOR or of persons or entities for whom the CONTRACTOR is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Owner in accordance with Paragraph 9.8.

8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.1.5 The Owner/Owners Representative shall be the final judge as to whether substantial completion has been achieved and certifies the date to the CONTRACTOR.

8.2 Progress and Completion

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the CONTRACTOR confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The CONTRACTOR shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the CONTRACTOR. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the CONTRACTOR shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filling of mortgages, mechanic’s liens and other security interests.

8.2.3 The CONTRACTOR shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 Delays and Extensions of Time

8.3.1 If the CONTRACTOR is delayed, at any time, in the progress of the Work by any act or neglect of the Owner, Owners Representative, or by any employee of either, or by any separate CONTRACTOR employed by the Owner, or by changes ordered in the Work, or by fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the CONTRACTOR’s control, or by delay authorized by the Owner, Owners Representative, or by any other cause which the Owners Representative determines may justify the delay, then the Contract Time shall be extended by no cost Change Order for such reasonable time as the Owners Representative may determine, in accordance with subparagraph 6.2.7.

8.3.2 Any claim for extension of time shall be made in writing to the Owners Representative not more than seventy-two (72) hours after the commencement of the delay in accordance with paragraph 6.2.7; otherwise it shall be waived. Any claim for extension of time shall state the cause of the delay and the number of days of extension requested. If the cause of the delay is continuing, only one claim is necessary, but the CONTRACTOR shall report the termination of the cause for the delay within seventy-two (72) hours after such termination in accordance with paragraph 6.2.7; otherwise, any claim for extension of time based upon that cause shall be waived.

8.3.3 No claim for an increase in the Contract Sum for either acceleration or delay will be allowed for extensions of time pursuant to this Paragraph 8.3 or for other changes in the Construction Schedules.

8.3.4 If the Project is delayed as a result of the CONTRACTOR’s refusal or failure to begin the Work on the date of commencement as defined in Paragraph 8.1.2, or his refusal or failure to carry the Work forward expeditiously with adequate forces, the CONTRACTOR causing the delay shall be liable, but not limited to, delay claims from other CONTRACTORS which are affected.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 Contract Sum

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the CONTRACTOR for performance of the Work under the Contract Documents.

9.2 Schedule of Values

9.2.1 Before the first Application for Payment, the CONTRACTOR shall submit to the Owner, through the Owners Representative, a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owners Representative and Owner may require. This schedule, unless objected to by the Owners Representative or Owner shall be used as a basis for reviewing the CONTRACTOR's Applications for Payment.

9.3 Applications for Payment

9.3.1 At least fifteen days before the date established for each progress payment, the CONTRACTOR shall submit to the Owners Representative an itemized Application for Payment for Work completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the CONTRACTOR's right to payment as the Owners Representative and Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

.1 Such applications may include request for payment because of changes in the Work, which have been properly authorized by Construction Change Directives but not included in Change Orders.

.2 Such applications may not include requests for payment of amounts the CONTRACTOR does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the CONTRACTOR with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The CONTRACTOR warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The CONTRACTOR further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the CONTRACTOR's knowledge, information and belief, be free and clear of liens, claims security interests or encumbrances in favor of the CONTRACTOR, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. All Subcontractors and Subcontractors shall execute an agreement stating that title will so pass, upon their receipt of payment from the CONTRACTOR. The warrants are for the administrative convenience of the Owner only and do not create an obligation on the part of the Owner to pay directly any unpaid subcontractor, laborer or materialmen. Such persons must seek payment from the CONTRACTOR or his public construction bond surety only.

9.4 Certificate for Payment

9.4.1 The Owners Representative will assemble a Project Application for Payment by combining the CONTRACTOR's applications with similar applications for progress payments from other CONTRACTORS and, after certifying the amounts due on such applications, forward them to the Owner within seven days.

9.4.2 Within seven days after the Owner's receipt of the Project Application for Payment, the Owners Representative and Owner will either issue to the Owner a Project Certificate for Payment, with a copy to the CONTRACTOR, for such amount as the Owners Representative and Owner determine is properly due, or notify the CONTRACTOR and Owner in writing of the Owners Representative's and Owner's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1. Such notification will be forwarded to the CONTRACTOR by the Owners Representative.

9.4.3 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will constitute representations made separately by the Owners Representative and Owner to the Owner, based on their individual observations at the site and the data comprising the Application for Payment submitted by the CONTRACTOR, that the Work has progressed to the point indicated and that, to the best of the Owners Representative's and Owner's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Owners Representative or Owner. The issuance of a separate Certificate for Payment or a Project Certificate for Payment will further constitute a representation that the CONTRACTOR is entitled to payment in the amount certified. However, the issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Owners Representative or Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the CONTRACTOR's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the CONTRACTOR's right to payment or (4) made examination to ascertain how or for what purpose the CONTRACTOR has used money previously paid on account of the Contract Sum.

9.5 Decisions to Withhold Certification

9.5.1 The Owners Representative/Owner may decline to approve an Application for Payment if, in his opinion, the application is not adequately supported. If the CONTRACTOR and Owners Representative cannot agree on a revised amount, the Owners Representative shall process the Application for the amount he deems appropriate. The Owners Representative may also decline to approve any Application for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify, in whole or part, any approval previously made to such extent as may be necessary in his opinion because of: (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims; (3) failure of the CONTRACTOR to make payments properly to Subcontractors or for labor, materials, or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; (5) damage to the Owners Representative, the Owner, or another CONTRACTOR working at the project; (6) reasonable evidence that the Work will not be completed within the contract time; (7) persistent failure to carry out the Work in accordance with the Contract Documents.

.1 No payment shall be made to the CONTRACTOR until certificates of insurance or other evidence of compliance by the CONTRACTOR, within all the requirements of Article 11, have been filed with the Owner and Owners Representative.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 Progress Payments

9.6.1 After the Owners Representative and Owner have issued a Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and shall so notify the Owners Representative and Owner. From the total of the amount determined to be payable on a progress payment, five percent (5 %) of such total amount will be deducted and retained by the Owner until final payment is made. The balance ninety five percent (95 %) of the amount payable, less all previous payments, shall be certified for payment.

.1 It is understood and agreed that the CONTRACTOR shall not be entitled to demand or receive progress payment based on quantities of Work in excess of those provided in the proposal or covered by approved change orders, except when such excess quantities have been determined by the Owners Representative to be a part of the final quantity for the item of Work in question.

.2 No progress payment shall bind the Owner to the acceptance of any materials or Work in place, as to quality or quantity. All progress payments are subject to correction at the time of final payments.

9.6.2 The CONTRACTOR shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the CONTRACTOR on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the CONTRACTOR on account of such Subcontractor's portion of the Work. The CONTRACTOR shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Subcontractors in similar manner.

9.6.3 The Owners Representative will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the CONTRACTOR and action taken thereon by the Owner, Owners Representative and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner or Owners Representative shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 All material and work covered by partial payments made shall thereupon become the sole property of the Owner, and by this provision shall not be construed as relieving the CONTRACTOR from the sole responsibility for the materials and Work upon which payments have been made or the restoration for any damaged material, or as a waiver to the right of the Owner or Owners Representative to require the fulfillment of all the terms of the Contract.

9.6.8 Except in case of bona fide disputes, or where the CONTRACTOR has some other justifiable reason for delay, the CONTRACTOR shall pay for all transportation and utility services not later than the end of the calendar month following that in which services are rendered and for all materials, tools, and other expendable equipment which are delivered at the site of the Project. The CONTRACTOR shall pay to each of his Subcontractors, not later than the end of the calendar month in which each payment is made to the CONTRACTOR; the representative amount allowed the CONTRACTOR on account of the Work performed by is Subcontractor interest therein. The CONTRACTOR shall, by an appropriate agreement with each Subcontractor, also require each Subcontractor to make payments to his suppliers and Subcontractors in a similar manner.

9.7 Not Used.

9.8 Substantial Completion

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the CONTRACTOR considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the CONTRACTOR and Owners Representative shall jointly prepare and submit

to the Owner a comprehensive list of items to be completed or corrected. The CONTRACTOR shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents. Upon receipt of the list, the Owner, assisted by the Owners Representative, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract Documents, the CONTRACTOR shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. The CONTRACTOR shall then submit a request for another inspection by the Owner, assisted by the Owners Representative, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Owner will prepare a Certificate of Substantial Completion, shall establish responsibilities of the Owner and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the CONTRACTOR shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and CONTRACTOR for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the CONTRACTOR and certification by the Owners Representative and Owner, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.9 Partial Occupancy or Use

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the CONTRACTOR, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.1.3 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and CONTRACTOR have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the CONTRACTOR considers a portion substantially complete, the CONTRACTOR and Owners Representative shall jointly prepare and submit a list to the Owner as provided under Subparagraph 9.8.2. Consent of the CONTRACTOR to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and CONTRACTOR or, if no agreement is reached, by decision of the Owner after consultation with the Owners Representative.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Owners Representative, CONTRACTOR shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 Final Completion and Final Payment

9.10.1 Upon completion of the Work, the CONTRACTOR shall forward to the Owners Representative a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Owners Representative a final CONTRACTOR's Application for Payment. Upon receipt, the Owners Representative will forward the notice and Application to the Owner who will promptly make such inspection. When the Owner, based on the recommendation of the Owners Representative, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owners Representative and Owner will promptly issue a final Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the CONTRACTOR and noted in said final Certificate is due and payable. The Owners Representative's and Owner's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the CONTRACTOR's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the CONTRACTOR submits to the Owner through the Owners Representative (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payments currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the CONTRACTOR knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, if a Subcontractor refuses to furnish a release or waiver required by the Owner, the CONTRACTOR may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the CONTRACTOR or by issuance of Change Orders affecting final completion, and the Owners Representative and Owner so confirm, the Owner shall, upon application by the CONTRACTOR and certification by the Owners Representative and Owner, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bond have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the Owner through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims by the Owner as provided in Subparagraph 4.7.6.

9.10.4 Acceptance of final payment by the CONTRACTOR, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

9.11 Any requirement of this Article 9 that the CONTRACTOR furnish proof to the Owner, or Owners Representative that the subcontractors and materialmen have been paid is for the protection and convenience of the Owner only. Unpaid subcontractors and materialmen may only seek payment from the CONTRACTOR and the surety that provided the CONTRACTOR'S Public Construction Bond (Payment and Performance Bonds). The CONTRACTOR must insert this paragraph 9.11 in all its contracts with subcontractors and materialmen.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

10.1.1 The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The CONTRACTOR shall submit the CONTRACTOR's safety program to the Owners Representative for review and coordination with the safety programs of other CONTRACTORS.

10.1.2 In the event the CONTRACTOR encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the CONTRACTOR shall immediately stop Work in the area affected and report the condition to the Owner and Owners Representative in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and CONTRACTOR if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and CONTRACTOR.

10.1.3 The CONTRACTOR shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.1.4 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the CONTRACTOR, the CONTRACTOR shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Owners Representative in writing. The Owner, CONTRACTOR and Owners Representative shall then proceed in the same manner described in Subparagraph 10.1.2.

10.1.5 The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the CONTRACTOR and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the CONTRACTOR, Owners Representative and Owner the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The CONTRACTOR, the Owners Representative and the Owner will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the CONTRACTOR, Owners Representative or Owner has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the CONTRACTOR, the Owners Representative and the Owner have no reasonable objection.

10.2 Safety of Persons and Property

10.2.1 The CONTRACTOR shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the CONTRACTOR or the CONTRACTOR's Subcontractors or Subcontractors;

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

.4 construction or operations by the Owner or other CONTRACTORS.

10.2.2 The CONTRACTOR shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The CONTRACTOR shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the CONTRACTOR shall exercise utmost care and carry on such activities under supervision of property qualified personnel.

10.2.5 The CONTRACTOR shall promptly remedy damage and loss to property referred to in Clauses 10.2.1.2, 10.2.1.3, 10.2.1.4 caused in whole or in part by the CONTRACTOR, a Subcontractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the CONTRACTOR is responsible under Clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Owner or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the CONTRACTOR. The foregoing obligations of the CONTRACTOR are in addition to the CONTRACTOR's obligations under Paragraph 3.18.

10.2.6 The CONTRACTOR shall designate a responsible member of the CONTRACTOR's organization at the site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR's superintendent unless otherwise designated by the CONTRACTOR in writing to the Owner and Owners Representative.

10.2.7 The CONTRACTOR shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 Emergencies

10.3.1 In an emergency affecting safety of persons or property, the CONTRACTOR shall act, at the CONTRACTOR's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the CONTRACTOR on account of an emergency shall be determined as provided in Paragraph 4.7 and Article 7.

ARTICLE 11 **INSURANCE AND BONDS**

11.1.1 Prior to commencement of Work governed by this contract (including the pre-staging of personnel and material), the CONTRACTOR shall obtain, at their own expense, insurance as specified in the attached schedules, which are made part of this Agreement. The CONTRACTOR will ensure that the insurance obtained will extend protection to all Subcontractors engaged by the CONTRACTOR. As an alternative the CONTRACTOR may require all Subcontractors to obtain insurance consistent with the attached schedules.

11.1.2 The CONTRACTOR will not be permitted to commence Work governed by the Agreement (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to the County as specified below. Delays in the commencement of Work resulting from the failure of the CONTRACTOR to provide satisfactory evidence of the required insurance shall not extend deadlines specified in this Agreement and any penalties and failure to perform assessments shall be imposed as if the Work commenced on the specified date and time, except for the CONTRACTOR's failure to provide satisfactory evidence.

11.1.3 The CONTRACTOR shall maintain the required insurance throughout the entire term of this contract and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of all Work until the required insurance has been reinstated or replaced. Delays in the completion of Work resulting from the failure of the CONTRACTOR to maintain the required insurance shall not extend deadlines specified in this Agreement and any penalties and failure to perform assessments shall be imposed as if the Work commenced on the specified date and time, except for the CONTRACTOR's failure to provide satisfactory evidence.

11.1.4 The CONTRACTOR shall provide, to the County in care of the Owners Representative, as satisfactory evidence of the required insurance, either:

Certificate of Insurance

or

A certified copy of the actual insurance policy

11.1.5 The County, at its sole option, has the right to request a certified copy of any or all insurance policies required by this Contract.

11.1.6 All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the County by the insurer.

11.1.7 The acceptance and/or approval of the CONTRACTOR's insurance shall not be construed as relieving the CONTRACTOR from any liability or obligation assumed under this contract or imposed by law.

11.1.8 The Monroe County Board of County Commissioners, its employees and officials will be included as "Additional Insured" on all policies, except for Worker's Compensation. The Florida Department of Economic Opportunity (DEO) will also be named as "Additional Insured".

11.1.9 In addition, the County will be named as an additional insured and loss payee on all policies covering County -owned property.

11.2 Public Construction Bond (Payment and Performance bonds)

The Owner shall require the CONTRACTOR to furnish a Public Construction Bond in the form provided by the Owner in this section as a guarantee for the faithful performance of the Contract (including guarantee and maintenance provisions) and the payment of all obligations arising thereunder. The Public Construction Bond shall be in an amount at least equal to the contract price. This contract is subject to the provisions of Section 255.05, Florida Statutes, which are incorporated herein. If change orders render the contract more than ten (10%) percent higher than the bond amount, the CONTRACTOR shall increase the bond amount to cover the entire difference.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.1 Uncovering of Work

12.1.1 If a portion of the Work is covered contrary to the Owners Representative's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either, be uncovered for their observation and be replaced at the CONTRACTOR's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Owners Representative or Owner has not specifically requested to observe prior to its being covered, the Owners Representative or Owner may request to see such Work and it shall be uncovered by the CONTRACTOR, if such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner, if such Work is not in accordance with the Contract Documents, the CONTRACTOR shall pay such costs unless the condition was caused by the Owner or one of the other CONTRACTORS in which event the Owner shall be responsible for payment of such costs.

12.2 Correction of Work

12.2.1 The CONTRACTOR shall promptly correct Work rejected by the Owners Representative or Owner or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The CONTRACTOR shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Owners Representative's and Owner's services and expenses made necessary thereby.

12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the CONTRACTOR shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the CONTRACTOR a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.3 The CONTRACTOR shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the CONTRACTOR nor accepted by the Owner.

12.2.4 If the CONTRACTOR fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the CONTRACTOR does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Owner issued through the Owners Representative, the Owner may remove it and store the salvable materials or equipment at the CONTRACTOR's expense, if the CONTRACTOR does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the CONTRACTOR, including compensation for the Owners Representative's and Owner's services and expenses made necessary thereby, if such proceeds of sale do not cover costs which the CONTRACTOR should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the Owner.

12.2.5 The CONTRACTOR shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or other CONTRACTORS caused by the CONTRACTOR's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the CONTRACTOR might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2, relates only to the specific obligation of the CONTRACTOR to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CONTRACTOR's liability with respect to the CONTRACTOR's obligations other than specifically to correct the Work.

12.3 Acceptance of Nonconforming Work

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

ARTICLE 13 **MISCELLANEOUS PROVISION**

13.1 Governing Law

13.1.1 The contract shall be governed by the laws of the State of Florida. Venue for any claims or disputes arising under this contract shall be in the Circuit Court of the 16th Judicial Circuit of the State of Florida, Monroe County.

13.2 Successors and Assigns

13.2.1 The Owner and the CONTRACTOR each binds himself, his partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.

13.2.2 The CONTRACTOR shall not assign any monies due or to become due under this Contract without prior written consent of the Owner or Owners Representative.

13.3 Written Notice

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.3.2 All written correspondence to the Owner shall be serialized, dated, and signed by an authorized representative of the CONTRACTOR. The correspondence shall be directed to:

Ms. Judith Clarke, P.E.
Director of Engineering Services
Monroe County Public Works and Engineering Division
1100 Simonton Street
Key West, Florida 33040

13.4 Rights and Remedies

13.4.1 Duties and obligations imposed by the Contract Documents, rights, and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Owners Representative, or CONTRACTOR shall constitute a waiver of a right or duty afforded them under the contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 Tests and Inspections

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the CONTRACTOR shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The CONTRACTOR shall give the Owners Representative and Owner timely notice of when and where tests and inspections are to be made so the Owners Representative and Owner may observe such procedures. The Owner shall bear costs of test, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Owners Representative, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Owners Representative will, upon written authorization from the Owner, instruct the CONTRACTOR to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the CONTRACTOR shall give timely notice to the Owners Representative and Owner of when and where tests and inspections are to be made so the Owners Representative and Owner may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the CONTRACTOR shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Owners Representative's and Owner's services and expenses.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the CONTRACTOR and promptly delivered to the Owners Representative for transmittal to the Owner.

13.5.5 If the Owners Representative or Owner is to observe tests, inspections or approvals required by the Contract Documents, the Owners Representative or Owner will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Test or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 Not Used.

13.7 Commencement of Statutory Limitation Period

13.7.1 The statute of limitations applicable to this contract are as provided in Section 95.11 (3) (C), Florida Statutes.

ARTICLE 14
TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 Termination by the CONTRACTOR

14.1.1 The CONTRACTOR may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the CONTRACTOR or a Subcontractor, Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with CONTRACTOR, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of national emergency, making material unavailable;
- .3 because the Owners Representative or Owner has not issued a certificate for Payment and has not notified the CONTRACTOR of the reason for withholding certification as provided in Subparagraph 9.4.2, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
- .4 if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period whichever is less; or
- .5 the Owner has failed to furnish to the CONTRACTOR promptly, upon the CONTRACTOR's request, reasonable evidence as required by Subparagraph 2.2.

14.1.2 If one of the above reasons exists, the CONTRACTOR may, upon seven additional days' written notice to the Owner and Owners Representative, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.3 If the Work is stopped for a period of 60 days through no act or fault of the CONTRACTOR or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the CONTRACTOR because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the CONTRACTOR may, upon seven additional days' written notice to the Owner and Owners Representative, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 Termination by the Owner for Cause

14.2.1 The Owner may terminate the Contract if the CONTRACTOR:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CONTRACTOR and the Subcontractors;
 - .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- Or,

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

.5 Scrutinized business termination:

For Contracts of any amount, if the County determines that the Contractor/Consultant has submitted a false certification under Section 287.135(5), Florida Statutes or has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall have the option of (1) terminating the Agreement after it has given the Contractor/Consultant written notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

For Contracts of \$1,000,000 or more, if the County determines that the Contractor/Consultant submitted a false certification under Section 287.135(5), Florida Statutes, or if the Contractor/Consultant has been placed on the Scrutinized Companies with Activities in the Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, the County shall have the option of (1) terminating the Agreement after it has given the Contractor/Consultant written notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

14.2.2 When any of the above reasons exist, the Owner, after consultation with the Owners Representative, and upon certification by the Owner that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the CONTRACTOR and the CONTRACTOR's surety, if any, five (5) calendar days written notice, terminate employment of the CONTRACTOR and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR;

.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and

.3 finishes the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the CONTRACTOR shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction manager's and Owner's services and expenses made necessary thereby, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to the Owner. The amounts to be paid to the CONTRACTOR or Owner, as the case may be, shall, upon application, be certified by the Owner after consultation with the Owners Representative, and this obligation for payment shall survive termination of the Contract.

14.3 Suspension by the Owner for Convenience

14.3.1 The Owner may, without cause, order the CONTRACTOR in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

~~~~~  
**END OF SECTION 00750**

**SECTION 00850**  
**PUBLIC CONSTRUCTION BOND**  
**(Payment and Performance)**

BY THIS BOND, We \_\_\_\_\_, as Principal  
and \_\_\_\_\_, a corporation, as Surety, are  
bound to \_\_\_\_\_, herein called Owner, in  
the sum of \$ \_\_\_\_\_, for payment of which  
we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly  
and severally.

THE CONDITION OF THIS BOND is that if Principal:

Performs the contract dated \_\_\_\_\_, 2022, between Principal and Owner for  
construction of:

**Sands Sea Level Rise Pilot Project**

**Monroe County, Florida**

1. The contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.
5. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sec. 255.05(2) Florida Statutes.
6. Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

Dated \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Name of Principal)

By \_\_\_\_\_  
(As Attorney in Fact)

\_\_\_\_\_  
(Name of Surety)

~~~~~  
END OF SECTION 00850

**GENERAL INSURANCE REQUIREMENTS
FOR
CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS**

Prior to the commencement of work governed by this contract (including the pre-staging of personnel and material), the CONTRACTOR shall obtain, at his/her own expense, insurance as specified in the attached schedules, which are made part of this contract. The CONTRACTOR will also ensure that the insurance obtained will extend protection to all Subcontractors engaged by the CONTRACTOR. As an alternative, the CONTRACTOR may require all Subcontractors to obtain insurance consistent with the attached schedules.

The CONTRACTOR will not be permitted to commence work governed by this contract (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to the County as specified below. Delays in the commencement of work, resulting from the failure of the CONTRACTOR to provide satisfactory evidence of the required insurance, shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work commenced on the specified date and time, except for the CONTRACTOR's failure to provide satisfactory evidence.

The CONTRACTOR shall maintain the required insurance throughout the entire term of this contract and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of all work until the required insurance has been reinstated or replaced. Delays in the completion of the work resulting from the failure of the CONTRACTOR to maintain the required insurance shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for the CONTRACTOR's failure to maintain the required insurance.

The CONTRACTOR shall provide, to the County, as satisfactory evidence of the required insurance, either:

- Certificate of Insurance
- or
- A Certified copy of the actual insurance policy.

The County, at its sole option, has the right to request a certified copy of any or all insurance policies required by this contract.

All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the County by the insurer.

The acceptance and/or approval of the CONTRACTOR's insurance shall not be construed as relieving the CONTRACTOR from any liability or obligation assumed under this contract or imposed by law.

The Monroe County Board of County Commissioners, its employees and officials; and The Florida Department of Transportation, will be included as "Additional Insured" on all policies, except for Workers' Compensation.

In addition, the County will be named as an Additional Insured and Loss Payee on all policies covering County-owned property.

**Indemnification and Hold Harmless
For
Construction CONTRACTORs and Subcontractors**

Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, the CONTRACTOR covenants and agrees that he shall defend, indemnify and hold the COUNTY and the COUNTY's elected and appointed officers and employees harmless from and against (i) claims, actions or causes of action, (ii) litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) costs or expenses that may be asserted against, initiated with respect to, or sustained by the County and the COUNTY's elected and appointed officers and employees from liabilities damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the indemnifying party in the performance of the construction contract. The monetary limitation of liability under this contract shall be not less than \$1 million per occurrence pursuant to F. S. 725.06. Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this Agreement, this section will survive the expiration of the term of this Agreement or any earlier termination of this Agreement.

In the event the completion of the project (including the work of others) is delayed or suspended as a result of the CONTRACTOR's failure to purchase or maintain the required insurance, the CONTRACTOR shall indemnify the County from any and all increased expenses resulting from such delay.

In the event the completion of the project (including the work of others) is delayed or suspended as a result of the CONTRACTOR's failure to purchase or maintain the required insurance, the CONTRACTOR shall indemnify the County from any and all increased expenses resulting from such delay.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

**MONROE COUNTY, FLORIDA
INSURANCE CHECKLIST
FOR
VENDORS SUBMITTING PROPOSALS
FOR WORK**

To assist in the development of your proposal, the insurance coverages marked with an "X" will be required in the event an award is made to your firm. Please review this form with your insurance agent and have him/her sign it in the place provided. It is also required that the bidder sign the form and submit it with each proposal.

WORKER'S COMPENSATION
AND
EMPLOYERS' LIABILITY

	<u> X </u> Workers' Compensation	Statutory Limits
WC1	<u> </u> Employers' Liability	\$100,000/\$500,000/\$100,000
WC2	<u> </u> Employers' Liability	\$500,000/\$500,000/\$500,000
WC3	<u> X </u> Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
	<u> </u>	

GENERAL LIABILITY

As a minimum, the required general liability coverages will include:

- Premises Operations -
Products and Completed Operations
- Blanket Contractual -
Personal Injury
- Expanded Definition of Property Damage

Monroe County and will be named as additional insured on General Liability Policy.

Required Limits:

GL1 _____ \$ 100,000 per Person; \$300,000 per Occurrence
 \$ 50,000 Property Damage
 or
 \$ 300,000 Combined Single Limit

GL2 _____ \$ 250,000 per Person; \$500,000 per Occurrence
 \$ 50,000 Property Damage
 or
 \$ 500,000 Combined Single Limit

GL3 _____ \$1,000,000 Combined Single Limit
 \$ 500,000 per Person
 \$1,000,000 per Occurrence
 \$ 100,000 Property Damage

GL7 X Premises Operations, Products and Completed Operations, Blanket Contractual
 Liability, Personal Injury Liability
 \$ 5,000,000 Combined Single Limit

An Occurrence form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the County.

The Monroe County Board of County Commissioners and DEO will be named as Additional Insured on all policies issued to satisfy the above requirements.

Required Endorsement:

GLXCU X Underground, Explosion and Collapse (XCU)

GLLIQ _____ Liquor Liability

GLS _____ Security Services

All endorsements are required to have the same limits as the basic policy.

Rebid Sands Sea Level Rise Pilot Project

Builder's Risk Insurance Requirements

The CONTRACTOR is required to purchase and maintain, throughout the life of the contract, and until the project is accepted by the County, Builder's Risk Insurance on an All Risk of Loss form. Coverage will include:

Theft	Aircraft
Hail	Smoke
Explosion	Fire
Riot	Collapse
Civil Commotion	Vehicles

The policy limits will be no less than the amount of the Full Replacement Value of the completed structure and coverage will be provided on a Completed Value Basis.

Property, materials, or supplies located on the construction premises, which are intended to become a permanent part of the building, will be included as property insured.

The policy will be endorsed to include Monroe County Board of County Commissioners as the Loss Payee.

VEHICLE LIABILITY

As a minimum, coverage should extend to liability for:

- Owned; Non-owned; and Hired Vehicles

Required Limits:

- VL1 \$ 50,000 per Person; \$100,000 per Occurrence
 \$ 25,000 Property Damage
 or
 \$ 100,000 Combined Single Limit
- VL2 \$ 100,000 per Person; \$300,000 per Occurrence
 \$ 50,000 Property Damage
 or
 \$ 300,000 Combined Single Limit
- VL3 X \$ 500,000 per Person; \$1,000,000 per Occurrence
 \$ 100,000 Property Damage
 or
 \$1,000,000 Combined Single Limit
- VL4 \$ 5,000,000 Combined Single Limit

Rebid Sands Sea Level Rise Pilot Project

INSURANCE AGENT'S STATEMENT

I have reviewed the above requirements with the bidder named below. The following deductibles apply to the corresponding policy.

POLICY

DEDUCTIBLES

Liability policies are _____ Occurrence

_____ Claims Made

Agency

Signature

Insurance

BIDDER'S STATEMENT

I understand the insurance that will be mandatory if awarded the contract and will comply in full with all the requirements.

Bidder

Signature

SECTION 01000

SPECIAL CONDITIONS

1.1 SCOPE

- A. The Project consists of all related work as identified in Section 00300 and on the Construction Drawings and the Specifications for the Project.

1.2 STANDARD DOCUMENTS

- A. Construction shall conform to the technical portions of the most recently published edition of Florida D.O.T. Standard Specifications for Roadway Construction, the Technical Specifications included in this Manual and all appropriate portions of the Monroe County Public Works Manual, except when otherwise indicated hereinafter. The CONTRACTOR is responsible for complying with all OSHA and ADA regulations pertaining to this project.

1.3 LAYING OUT THE WORK

- A. The CONTRACTOR shall be responsible for establishing all lines and grades together with all reference points as required by the various trades for all work under this Contract.
- B. The CONTRACTOR shall provide all labor and instruments and all stakes, templates, and other materials necessary for marking and maintaining all lines and grades. The lines and grades shall be subject to any checking the Director of Engineering Services may decide necessary.
- C. No separate cost item is provided for laying out the work, the cost of which shall be included in the unit prices for items in the bid.

1.4 CONTRACTOR'S OFFICE

- A. Not Used.

1.5 CARE OF TREES, SHRUBS AND GRASS

- A. The CONTRACTOR shall be fully responsible for maintaining in good condition all vegetation inside the County right-of-way. CONTRACTOR will conduct work in a manner that minimizes the amount of vegetation that is impacted by the Work. Where vegetation must be removed or destroyed incident to the construction operation, the CONTRACTOR, after completion of the work, must replace or restore to the original condition all destroyed or damaged shrubbery, grass areas or pea rock areas. He must, however, leave the area in a clean and workmanlike condition. Care of trees, shrubs and grass shall be considered incidental & cost shall be included in the bid price of the items listed in the bid.

1.6 EXISTING STRUCTURES AND UTILITIES

- A. The CONTRACTOR shall be responsible for and make good all damage to pavement beyond the limits of this Contract, buildings, telephone or other cables, water pipes, sanitary pipes, or other structures which may be encountered, whether or not shown on the Drawings.

Rebid Sands Sea Level Rise Pilot Project

- B. Information shown on the Drawings as to the location of existing utilities has been prepared by the most reliable data available to the Engineer. This information is not guaranteed, however, and it shall be this CONTRACTOR's responsibility to determine the location, character and depth of any existing utilities. He shall assist the utility companies, by every means possible to determine said

locations. Extreme caution shall be exercised to eliminate any possibility of any damage to said locations. Extreme caution shall be exercised to eliminate any possibility of any damage to utilities resulting from his activities.

- C. Any existing utility castings, including valve boxes, junction boxes, manholes, hand holes, pull boxes, manhole rings, inlet grates, and similar utility structures located within the limits of the right-of-way and the project boundary limits are to remain in service and shall be adjusted by the CONTRACTOR or if by mutual agreement, the utility Owner. There will be no separate pay items for adjustments.

1.7 Not Used

1.8 RECORD DRAWINGS

Record Drawings will be required before final payment.

1.9 SUBSURFACE INVESTIGATION

- A. The CONTRACTOR shall be responsible for having determined to his satisfaction, prior to the submission of his bid, the nature & location of the work, the conformation of the ground, the character and quality of the substrata, the types and quantity of materials to be encountered, the nature of the ground water conditions, the character of equipment and facilities needed preliminary to and during the execution of the work, the general and local conditions and all other matters which can in any way affect the work under this contract. The prices established for the work to be done will reflect all costs pertaining to the work. Any claims for extras based on substrata or ground water table conditions will not be allowed.

1.10 MAINTENANCE OF TRAFFIC

- A. The CONTRACTOR shall be responsible for the proper maintenance control and detour of traffic in the area of construction, during the course of construction. All traffic control and maintenance procedures shall be in accordance with the requirements of the Florida D.O.T. It shall be the CONTRACTOR's responsibility, as Bidder, prior to submitting his Bid, to determine the requirements so that his Proposal reflects all costs to be incurred. No claims for additional payment will be considered for costs incurred in providing the proper maintenance, control, detour and protection of traffic. The CONTRACTOR will be required to submit a Maintenance of Traffic Plan covering all phases of the Project to the Owner for review and approval prior to the start of Work.
- B. All traffic control signs and devices, barricades, flashers, flambeaus and similar devices shall be furnished and maintained by the CONTRACTOR.
- C. Construction shall be conducted in such a manner to cause the least possible interruption to traffic. Necessary access to and from adjacent properties shall be provided at all times.

1.11 BARRICADES AND PROTECTION OF WORK

Rebid Sands Sea Level Rise Pilot Project

- A. The CONTRACTOR shall protect his work throughout its length by the erection of suitable barricades, where required. He shall further indicate his work at night by the maintenance of suitable lights or flares. He shall comply with all laws or ordinances covering the protection of such work and the safety measures to be employed therein. The CONTRACTOR shall carry out his work so as not to

deny access to private property. All utility access manholes, valves, fire hydrants, and letter boxes shall be kept accessible at all times.

- C. In the event or threat of a hurricane the CONTRACTOR shall remove all equipment and material from the roadway. He shall make the area safe to traffic and pedestrian. No object from the site should pose a threat to anyone caused by wind or water.

1.12 TURBIDITY CONTROL

- A. The CONTRACTOR shall employ adequate silt containment equipment and/or procedures during excavation and construction to control turbidity of the adjacent waters to within the limits required by Federal, State and local laws and/or permit requirements.

The CONTRACTOR shall furnish all labor and materials and perform all operations necessary for the installation and maintenance of a silt barrier around the area of construction including the removal of the barrier upon completion of the project.

1.13 PROTECTION OF WATER RESOURCES

- A. It is intended that the natural resources outside the limits of permanent work performed under the contract be preserved in their existing condition. The CONTRACTOR shall confine all activities to areas defined by the drawings and/or contract documents. The CONTRACTOR shall not discharge or permit the discharge into waters of any fuels, oils, bitumen, garbage, sewage, or other materials that may be detrimental to outdoor recreation. All work shall be performed in such a manner that objectionable conditions will not be created in waters through or adjacent to the project area. If a violation is noted during construction, all work shall cease until the condition is corrected by the CONTRACTOR.

1.14 ENVIRONMENTAL RESOURCES PERMITS

The CONTRACTOR will adhere to all applicable provisions contained in the Attachment A: South Florida Water Management District Permit, Attachment B: FDEP Wells Permit, Attachment C: Monroe County Building Permit included as attachments to this section.

**ATTACHMENT A
SFWMD permit 44-103144-P**



**South Florida Water Management District
Individual Environmental Resource Permit No. 44-103144-P
Date Issued: March 4, 2022**

Permittee: Monroe County Board Of County Commissioners
1100 Simonton Street
Key West, FL 33040

Project: The Sands Roadway Improvement Project

Application No. 211228-32568

Location: Monroe County, See Exhibit 1

Your application for an Individual Environmental Resource Permit is approved. This action is taken based on Chapter 373, Part IV, of Florida Statutes (F.S.) and the rules in Chapter 62-330, Florida Administrative Code (F.A.C.). Unless otherwise stated, this permit constitutes certification of compliance with state water quality standards under section 401 of the Clean Water Act, 33 U.S.C. 1341, and a finding of consistency with the Florida Coastal Management Program. Please read this entire agency action thoroughly and understand its contents.

This permit is subject to:

- Not receiving a filed request for a Chapter 120, F.S., administrative hearing.
- The attached General Conditions for Environmental Resource Permits.
- The attached Special Conditions.
- All referenced Exhibits.

All documents are available online through the District's ePermitting site at www.sfwmd.gov/ePermitting.

If you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights", we will assume that you concur with the District's action.

The District does not publish notices of action. If you wish to limit the time within which a person may request an administrative hearing regarding this action, you are encouraged to publish, at your own expense, a notice of agency action in the legal advertisement section of a newspaper of general circulation in the county or counties where the activity will occur. Legal requirements and instructions for publishing a notice of agency action, as well as a noticing format that can be used, are available upon request. If you publish a notice of agency action, please send a copy of the affidavit of publication provided by the newspaper to the District's West Palm Beach office for retention in this file.

If you have any questions regarding your permit or need any other information, please call us at 1-800-432-2045 or email epermits@sfwmd.gov.

A handwritten signature in blue ink that reads "Jesse Markle".

Jesse Markle, P.E.
Bureau Chief, Environmental Resource Bureau

**South Florida Water Management District
Individual Environmental Resource Permit No. 44-103144-P**

Date Issued:	March 4, 2022	Expiration Date:	March 4, 2027
Project Name:	The Sands Roadway Improvement Project		
Permittee:	Monroe County Board Of County Commissioners 1100 Simonton Street Key West, FL 33040		
Operating Entity:	Monroe County Board Of County Commissioners 1100 Simonton Street Key West, FL 33040		
Location:	Monroe County		
Permit Acres:	1.94 acres		
Project Land Use:	Residential		
Special Drainage District:	N/A		
Water Body Classification:	CLASS III		
FDEP Water Body ID:	6012A		
Conservation Easement to District:	No		
Sovereign Submerged Lands:	No		

Project Summary

This Environmental Resource Permit (ERP) authorizes Construction and Operation of a stormwater management (SWM) system serving 1.94 acres of roadway development known as The Sands Roadway Improvement Project.

The proposed project is for a roadway improvement project to include reconstruction and milling and resurfacing activities that will adjust the roadway profile. The proposed SWM system includes inlets interconnected with culverts to capture and convey runoff to the proposed roadside swales and underground hydro-dynamic separators for water quality treatment prior to overflow to new pumped discharge wells for runoff attenuation.

This permit is issued pursuant to the water quality net improvement provisions of Chapter 62-330.062, F.A.C.; therefore, state water quality certification is waived.

Site Description

The site is located within the right-of-way (ROW) of Father Tony Way between Avenue C and Avenue J on Big Pine Key in Monroe County. Please refer to Exhibit 1.0 for a location map.

For information on wetland and surface water impacts, please see the Wetlands and Other Surface Water section of this permit.

Rebid Sands Sea Level Rise Pilot Project

Ownership, Operation and Maintenance

Perpetual operation and maintenance of the SWM system will be the responsibility of Monroe County Board of County Commissioners. Upon conveyance or division of ownership or control of the property or the system, the permittee must notify the Agency in writing within 30 days, and the new owner must request transfer of the permit.

Engineering Evaluation:

Water Quality

Water quality treatment is provided by inlet baffle boxes, roadside swales and hydrodynamic separators serving as a net improvement for a contributing area of 47.73 acres that includes roadway and green areas.

The project includes implementation of a Construction Pollution Prevention Plan or Turbidity and Erosion Control Plan (Exhibit No. 2.0) as additional reasonable assurance of compliance with water quality criteria during construction.

Water Quantity

Runoff discharge is through proposed drainage wells, therefore the SWM system for this project has not been designed to limit discharge for the design event to a specified rate.

Road Design

As found in the Water Quantity Data Table, minimum road center line elevations have been set at or above the calculated design storm flood elevation.

Certification, Operation, and Maintenance

Pursuant to Chapter 62-330.310, F.A.C., Individual Permits will not be converted from the construction phase to the operation phase until construction completion certification of the project is submitted to and accepted by the District. This includes compliance with all permit conditions, except for any long term maintenance and monitoring requirements. It is suggested that the permittee retain the services of an appropriate professional registered in the State of Florida for periodic observation of construction of the project.

For projects permitted with an operating entity that is different from the permittee, it should be noted that until the construction completion certification is accepted by the District and the permit is transferred to an acceptable operating entity pursuant to Sections 12.1-12.3 of the Applicant's Handbook Volume I and Section 62-330.310, F.A.C., the permittee is liable for operation and maintenance in compliance with the terms and conditions of this permit.

In accordance with Section 373.416(2), F.S., unless revoked or abandoned, all SWM systems and works permitted under Part IV of Chapter 373, F.S., must be operated and maintained in perpetuity.

The efficiency of SWM systems, dams, impoundments, and most other project components will decrease over time without periodic maintenance. The operation and maintenance entity must perform periodic inspections to identify if there are any deficiencies in structural integrity, degradation due to insufficient maintenance, or improper operation of projects that may endanger public health, safety, or welfare, or the water resources. If deficiencies are found, the operation and maintenance entity is responsible for correcting the deficiencies in a timely manner to prevent compromises to flood protection and water quality. See Section 12.4 of the Applicant's Handbook Volume I for Minimum Operation and Maintenance Standards.

Rebid Sands Sea Level Rise Pilot Project

Engineering Evaluation Tables: Land Use

Basin	Land Type	Area (ac)	% of Total Basin
Site	Impervious	0.14	7.22
	Pervious	1.80	92.78
	Total:	1.94	100%

Water Quality

Basin	Treatment Type	Treatment System	Volume Required (ac-ft)	Volume Provided (ac-ft)
Site	Treatment	UNDERGROUND CHAMBERS	5.97	5.97

Water Quantity

Basin	Elevation Type	Storm Event (Yr/Day)	Precipitation Depth (in)	Peak Stage (ft NAVD88)	Min. EL (ft NAVD88)	Peak Discharge Rate (cfs)	Allowable Discharge Rate (cfs)
Site	Road Crown	10YR1D	7.00	0.79	1.78	N/A	N/A

Environmental Evaluation:

Wetlands and Other Surface Waters

There are no wetlands or other surface waters located within the project site or affected by this project.

Fish, Wildlife, and Listed Species

The project site does not contain significant habitat for wetland-dependent endangered or threatened wildlife species, or species of special concern. No wetland-dependent endangered or threatened species or species of special concern were observed onsite. Submitted information indicates that potential use of the site by such species is minimal.

This permit does not relieve the applicant from complying with all applicable rules and any other agencies' requirements if, in the future, endangered or threatened species or species of special concern are discovered on the site.

Related Concerns:

Water Use Permit Status

he applicant has indicated that irrigation will not be required for the proposed project.

The applicant has indicated that dewatering is required for construction of this project. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(4), F.A.C.

This permit does not release the permittee from obtaining all necessary Water Use authorization(s) prior to the commencement of activities which will require such authorization, including construction dewatering and irrigation.

Historical/ Archeological Resources

The District has received correspondence from the Florida Department of State, Division of Historical Resources indicating that no significant archaeological or historical resources are recorded on the project site; therefore, the project is unlikely to have an effect upon any such resources.

This permit does not release the permittee from complying with any other agencies requirements in the event that historical and/or archaeological resources are found on the site.

General Conditions for Individual Environmental Resource Permits, 62-330.350, F.A.C.

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.
2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the Agency staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.
3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation, June 2007), and the Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), which are both incorporated by reference in subparagraph 62-330.050(9)(b)5., F.A.C., unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.
4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the Agency a fully executed Form 62-330.350(1), "Construction Commencement Notice," (October 1, 2013), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-02505>), incorporated by reference herein, indicating the expected start and completion dates. A copy of this form may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C., and shall be submitted electronically or by mail to the Agency. However, for activities involving more than one acre of construction that also require a NPDES stormwater construction general permit, submittal of the Notice of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities, DEP Form 62-621.300(4)(b), shall also serve as notice of commencement of construction under this chapter and, in such a case, submittal of Form 62-330.350(1) is not required.
5. Unless the permit is transferred under rule 62-330.340, F.A.C., or transferred to an operating entity under rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms, and conditions of the permit for the life of the project or activity.
6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
 - a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex- "Construction Completion and Inspection Certification for Activities Associated With a Private Single-Family Dwelling Unit"[Form 62-330.310(3)]; or
 - b. For all other activities- "As-Built Certification and Request for Conversion to Operational Phase" [Form 62-330.310(1)].
 - c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.
7. If the final operation and maintenance entity is a third party:
 - a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as-built certification, whichever comes first, the permittee shall submit, as

Rebid Sands Sea Level Rise Pilot Project

applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.4 of Volume I) as filed with the Florida Department of State, Division of Corporations, and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.

b. Within 30 days of submittal of the as-built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation and Maintenance Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.

8. The permittee shall notify the Agency in writing of changes required by any other regulatory agency that require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.
9. This permit does not:
 - a. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, F.A.C.;
 - b. Convey to the permittee or create in the permittee any interest in real property;
 - c. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or
 - d. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.
10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.
11. The permittee shall hold and save the Agency harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.
12. The permittee shall notify the Agency in writing:
 - a. Immediately if any previously submitted information is discovered to be inaccurate; and
 - b. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with Rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.
13. Upon reasonable notice to the permittee, Agency staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.
14. If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, stone tools, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section (DHR), at (850)245-6333, as well as the appropriate permitting agency office. Project activities shall not resume without verbal or written authorization from

Rebid Sands Sea Level Rise Pilot Project

the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and the proper authorities notified in accordance with section 872.05, F.S. For project activities subject to prior consultation with the DHR and as an alternative to the above requirements, the permittee may follow procedures for unanticipated discoveries as set forth within a cultural resources assessment survey determined complete and sufficient by DHR and included as a specific permit condition herein.

15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.
16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.
17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the Agency will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.
18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with Rule 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.

Special Conditions for Individual Environmental Resource Permits, 62-330.350, F.A.C.

1. The construction authorization for this permit shall expire on the date shown on page 2.
2. Operation and maintenance of the SWM system shall be the responsibility of Monroe County Board of County Commissioners. The permittee shall notify the Agency in writing within 30 days of any conveyance or division of ownership or control of the property of the system, and the new owner must request transfer of the permit in accordance with Rule 62-330.340, F.A.C.
3. Prior to any future construction, the permittee shall apply for and receive an Individual ERP. As part of the permit application, the applicant for that phase shall provide documentation verifying that the proposed construction is consistent with the design of the master stormwater management system, including the land use and site grading assumptions.
4. Prior to initiating construction activities associated with this ERP, the permittee is required to hold a pre-construction meeting with field representatives, consultants, contractors, District Environmental Resource Bureau (ERB) staff, and any other local government entities as necessary. The purpose of the pre-construction meeting is to discuss construction methods, sequencing, best management practices, identify work areas, staking and roping of preserves where applicable, and to facilitate coordination and assistance amongst relevant parties. To schedule a pre-construction meeting, please contact ERB staff from the West Palm Beach Office at (561) 686-8800 or via e-mail at: pre-con@sfwmd.gov. When sending a request for a pre-construction meeting, please include the application number, permit number, and contact name and phone number.
5. This permit does not authorize the permittee to cause any adverse impact to or "take" of state listed species and other regulated species of fish and wildlife. Compliance with state laws regulating the take of fish and wildlife is the responsibility of the owner or applicant associated with this project. Please refer to Chapter 68A-27, F.A.C. for definitions of "take" and a list of fish and wildlife species. If listed species are observed onsite, FWC staff are available to provide decision support information or assist in obtaining the appropriate FWC permits. Most marine endangered and threatened species are statutorily protected and a "take" permit cannot be issued. Requests for further information or review can be sent to: FWCConservationPlanningServices@MyFWC.com.
6. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(4), F.A.C.

Rebid Sands Sea Level Rise Pilot Project

Project Work Schedule for Permit No. 44-103144-P

The following activities are requirements of this Permit and shall be completed in accordance with the Project Work Schedule below. Please refer to General Conditions, Special Conditions and/or Specific Conditions for more information. Any deviation from these time frames will require prior approval from the District's Environmental Resources Bureau and may require a minor modification to this permit. Such requests must be made in writing and shall include: (1) reason for the change, (2) proposed start/finish and/or completion dates, and (3) progress report on the status of the project.

Condition No.	Date Added	Description (Application Number)	Due Date	Date Satisfied
GC 2	04/25/2020	Certification (200213-2793)	04/25/2021	
GC 4	03/04/2022	Construction Commencement Notice	Prior to Construction	
GC 7	03/04/2022	Submit Operation Transfer Request	Within 30 days of Certification	
SC 4	03/04/2022	Pre-Construction Meeting	Prior to Construction	

GC = General Condition

SC = Special Condition

Rebid Sands Sea Level Rise Pilot Project

Distribution List

Jose Lopez, Bermello Ajamil and Partners
Department of Environment and Economic Opportunity
Div of Recreation and Park - District 5
US Army Corps of Engineers - Permit Section
Monroe County Engineer
FDEP - South District Branch Office

Exhibits

The following exhibits to this permit are incorporated by reference. The exhibits can be viewed by clicking on the links below or by visiting the District's ePermitting website at <http://my.sfwmd.gov/ePermitting> and searching under this application number 211228-32568 .

[Exhibit No. 1.0 Location Map](#)

[Exhibit No.2.0 Construction Plans](#)

[Exhibit No. 2.1 SWM Calculations](#)

NOTICE OF RIGHTS

As required by Chapter 120, Florida Statutes, the following provides notice of the opportunities which may be available for administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, or judicial review pursuant to Section 120.68, Florida Statutes, when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Some of the legal proceedings detailed below may not be applicable or appropriate for your situation. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Florida Statutes. Persons seeking a hearing on a District decision which affects or may affect their substantial interests shall file a petition for hearing in accordance with the filing instructions set forth herein within 21 days of receipt of written notice of the decision unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Florida Statutes; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Florida Statutes. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, posting, or publication that the District has taken or intends to take final agency action. Any person who receives written notice of a District decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action that materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional point of entry pursuant to Rule 28-106.111, Florida Administrative Code.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Florida Statutes, shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The District may grant the request for good cause. Requests for extension of time must be filed with the District prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and whether the District and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

FILING INSTRUCTIONS

A petition for administrative hearing must be filed with the Office of the District Clerk. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at the District's headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day.

Rebid Sands Sea Level Rise Pilot Project

Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, 3301 Gun Club Road, West Palm Beach, Florida 33406.
- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the District's security desk does not constitute filing. It will be necessary to request that the District's security officer contact the Office of the District Clerk. An employee of the District's Clerk's office will receive and process the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at clerk@sfwmd.gov. The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document.

INITIATION OF ADMINISTRATIVE HEARING

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Rules 28-106.201 and 28-106.301, Florida Administrative Code, initiation of an administrative hearing shall be made by written petition to the District in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other District identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner, petitioner's attorney or qualified representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the District's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the District's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the District's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the District to take with respect to the District's proposed action.

MEDIATION

The procedures for pursuing mediation are set forth in Section 120.573, Florida Statutes, and Rules 28-106.111 and 28-106.401–.405, Florida Administrative Code. The District is not proposing mediation for this agency action under Section 120.573, Florida Statutes, at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Section 120.68, Florida Statutes, and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final District action may seek judicial review of the District's final decision by filing a notice of appeal with the Office of the District Clerk in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the appropriate district court of appeals via the Florida Courts E-Filing Portal.



FLORIDA DEPARTMENT of STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

January 25, 2022

RE: DHR Project File No.: 2021-7857, Received by DHR: December 28, 2021
Application No.: 211228-32568
Project: *The Sands*
County: Monroe

To Whom It May Concern:

Our office reviewed the referenced project in accordance with Chapters 267.061 and 373.414, *Florida Statutes*, and implementing state regulations, for possible effects on historic properties listed, or eligible for listing, in the *National Register of Historic Places*, or otherwise of historical, architectural or archaeological value.

It is the opinion of this office that the proposed project will have no effect on historic properties. However, unexpected finds may occur during ground disturbing activities, and we request that the permit, if issued, should include the following special condition regarding inadvertent discoveries:

- If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The applicant shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section at (850)-245-6333. Project activities shall not resume without verbal and/or written authorization. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

If you have any questions, please contact Michael DuBose, Historic Sites Specialist, by email at Michael.DuBose@dos.myflorida.com or by telephone at 850.245.6342.

Sincerely,

A handwritten signature in blue ink that reads "Kelly L. Chase".

Timothy A. Parsons, Ph.D.
Director, Division of Historical Resources
& State Historic Preservation Officer

Division of Historical Resources
R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6300 • 850.245.6436 (Fax) • FLHeritage.com



ATTACHMENT B
FDEP Wells
Permit 349385



FLORIDA DEPARTMENT OF Environmental Protection

South District
PO Box 2549
Fort Myers FL 33902-2549
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

May 1, 2020

SENT VIA ELECTRONIC MAIL

In the Matter of an
Application for Permit by:

Monroe County
C/O Jose L. Lopez, P.E.
900 SE 3rd. Ave
Fort Lauderdale, FL 33316
Email: Jlopez@bermelloajamil.com

Monroe County – UIC
File Number 349385-001
WACS# 106450
Class V, Group 6, Drainage Wells
Sands Subdivision – Big Pine Key

NOTICE OF PERMIT

Enclosed is a permit, Number 349385-001, to construct twelve stormwater drainage wells for the Sands Subdivision. This system serves the project permitted by the South Florida Water Management District, Application No. 200213-2793.

This permit is issued pursuant to Section 403.087, Florida Statutes.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until a subsequent order of the Department. Because the administrative hearing process is designed to formulate final agency action, the subsequent order may modify or take a different position than this action.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;

- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. You cannot justifiably rely on the finality of this decision unless notice of this decision and the right of substantially affected persons to challenge this decision has been duly published or otherwise provided to all persons substantially affected by the decision. While you are not required to publish notice of this action, you may elect to do so pursuant Rule 62-110.106(10)(a).

The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C. If you do not publish notice of this action, this waiver may not apply to persons who have not received a clear point of entry.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.

EXECUTION AND CLERKING

Executed in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Jon M. Iglehart
Director of District Management

Attachment:

1. Permit 349385-001-UC

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document and all attachments were sent on the filing date below to the following listed persons:

Judith S. Clarke, P.E. clarke-judith@monroecounty-fl.gov

Barbara Conmy, bconmy@sfwmd.gov

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.



Clerk

May 1, 2020

Date



FLORIDA DEPARTMENT OF Environmental Protection

South District
PO Box 2549
Fort Myers FL 33902-2549
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

STATE OF FLORIDA UNDERGROUND INJECTION CONTROL PERMIT

PERMITTEE:

Monroe County

PERMIT NUMBER: 349385-001

WACS NUMBER: 106450

EFFECTIVE DATE: May 1, 2020

EXPIRATION DATE: April 30, 2025

RESPONSIBLE OFFICIAL:

Judith S. Clarke, P.E.
Director of Engineering Services
1100 Simonton Street
Room 2-216
Key West, FL 33040

This permit is issued under the provisions of Chapter 403, Florida Statutes (F.S.), and Florida Administrative Code (F.A.C.) Rules 62-4, and 62-528. The above named permittee is hereby authorized to perform the work shown on the application and approved drawing(s), plans, and other documents, attached hereto or on file with the Department and made a part hereof and specifically described as follows:

TO CONSTRUCT AND OPERATE: Twelve (12) Class V, Group 6 wells.

IN ACCORDANCE WITH: Application FDEP Form 62-528.900(3), F.A.C., received on March 16, 2020, and the conditions set forth in this permit.

FACILITY ADDRESS: Father Tony Way Ave J to C in Monroe County.

GEOGRAPHIC LOCATION OF WELLS:

Well Name	Latitude	Longitude
Well #1	24°40'16.75" N	81°20'37.60" W
Well #2	24°40'17.51" N	81°20'38.19" W
Well #3	24°40'18.94" N	81°20'37.57" W
Well #4	24°40'19.85" N	81°20'38.30" W
Well #5	24°40'20.70" N	81°20'37.54" W
Well #6	24°40'21.69" N	81°20'37.52" W
Well #7	24°40'22.80" N	81°20'37.88" W
Well #8	24°40'24.00" N	81°20'37.86" W
Well #9	24°40'25.55" N	81°20'37.86" W
Well #10	24°40'26.56" N	81°20'37.81" W
Well #11	24°40'28.17" N	81°20'37.79" W
Well #12	24°40'29.71" N	81°20'37.77" W

INJECTION WELLS DIMENSIONS:

PERMITTEE NAME: Monroe County
FACILITY NAME: Sands Subdivision – Big Pine Key

PERMIT NO.: 349385-001
WACS Facility ID: 106450

Well Name	Diameter (inches)	Material	Depth (feet)	Casing (feet)	Cement Type
Well #1	24	Steel	120	100	Neat
Well #2	24	Steel	120	100	Neat
Well #3	24	Steel	120	100	Neat
Well #4	24	Steel	120	100	Neat
Well #5	24	Steel	120	100	Neat
Well #6	24	Steel	120	100	Neat
Well #7	24	Steel	120	100	Neat
Well #8	24	Steel	120	100	Neat
Well #9	24	Steel	120	100	Neat
Well #10	24	Steel	120	100	Neat
Well #11	24	Steel	120	100	Neat
Well #12	24	Steel	120	100	Neat

PRETREATMENT:

Well Name	Treatment System
Well #1	Oil Baffle, Separation Screen, and Diversion Weir
Well #2	Oil Baffle, Separation Screen, and Diversion Weir
Well #3	Oil Baffle, Separation Screen, and Diversion Weir
Well #4	Oil Baffle, Separation Screen, and Diversion Weir
Well #5	Oil Baffle, Separation Screen, and Diversion Weir
Well #6	Oil Baffle, Separation Screen, and Diversion Weir
Well #7	Oil Baffle, Separation Screen, and Diversion Weir
Well #8	Oil Baffle, Separation Screen, and Diversion Weir
Well #9	Oil Baffle, Separation Screen, and Diversion Weir
Well #10	Oil Baffle, Separation Screen, and Diversion Weir
Well #11	Oil Baffle, Separation Screen, and Diversion Weir
Well #12	Oil Baffle, Separation Screen, and Diversion Weir

TO SERVE AS: Disposal of effluent from a stormwater treatment unit. The system treats stormwater runoff by oil baffle, separation screen, and diversion weir.

SUBJECT TO: Specific Conditions and General Conditions of this permit

SPECIFIC CONDITIONS

1. All submittals to the Department shall be made to the letterhead address above or via electronic mail at SouthDistrict@floridadep.gov.
2. Any construction, modification, repair, or abandonment of a well shall be performed by a Florida Licensed Water Well Contractor ("Contractor"), licensed in accordance with Chapter 62-531, Florida Administrative Code (F.A.C.), to engage in the business of construction, modification, repair or abandonment of a well. The permittee may use any Florida Licensed Water Well Contractor. [62-528.605(4)]
3. The Certification of Class V Well Construction Completion, DEP Form 62-528.900(4), the State of Florida Well Completion Report Form, 62-532.900(2), F.A.C. and the Engineer of Record's Certified Well Completion Report containing the information required within the Technical Specifications shall be submitted by either the Florida Licensed Water Well Contractor or the Engineer of Record within thirty days after completion of construction. [62-528.605(5), and 62-528.635(3), F.A.C.]

4. Upon receipt by the Department of the Certified Well Completion Report provided by the Engineer of Record and the fully completed and signed Certification of Class V Well Construction Completion DEP Form 62-528.900(4) the permittee is authorized to operate the wells for stormwater drainage at Sands Subdivision. This authorization shall continue until the well is plugged and abandoned, or until revoked by the Department. [62-528.640(4)]
5. The permittee shall establish a maintenance program that determines annually or another more frequent basis, the integrity of the Class V stormwater drainage injection well, pollution control components, and the pretreatment and injection well system's ability to function as designed. [62-528.635(4), F.A.C].
6. In the event a well must be plugged or abandoned, the permittee shall obtain a permit from the Department as required by Chapter 62-528, Florida Administrative Code. When no longer used for their intended purpose, these wells shall be properly plugged and abandoned. [62-528.460(1) and 62-528.435(6)]

GENERAL CONDITIONS

1. The terms, conditions, requirements, limitations and restrictions set forth in this permit are "permit conditions" and are binding and enforceable pursuant to Section 403.141, F.S.
2. This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action.
3. As provided in Section 403.087(7), F.S., the issuance of this permit does not convey any vested rights or exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor infringement of federal, state, or local laws or regulations. This permit is not a waiver of or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in this permit.
4. This permit conveys no title to land, water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.
5. This permit does not relieve the permittee from liability for harm to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefrom; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.
6. The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this permit, or are required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.
7. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to:
 - a. Have access to and copy any records that must be kept under conditions of this permit;
 - b. Inspect the facility, equipment, practices, or operations regulated or required under this

- permit; and
- c. Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules. Reasonable time will depend on the nature of the concern being investigated.
8. If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:
 - a. A description of and cause of noncompliance; and
 - b. The period of noncompliance, including dates and times; or, if not corrected the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent the recurrence of the noncompliance. The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.
 9. In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is proscribed by Sections 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules
 10. The permittee agrees to comply with changes in Department Rules and Florida Statutes after a reasonable time for compliance; provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department Rules.
 11. This permit is transferable only upon Department approval in accordance with Rules 62-4.120 and 62-528.350, F.A.C. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.
 12. This permit or a copy thereof shall be kept at the work site of the permitted activity.
 13. The permittee shall comply with the following:
 - a. Upon request, the permittee shall furnish all records and plans required under Department Rules. During enforcement actions, the retention period for all records shall be extended automatically unless the Department determines that the records are no longer required.
 - b. The permittee shall hold at the facility or other location designated by this permit records of all monitoring information (including calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by the permit, copies of all reports required by this permit, and records of all data used to complete the application for this permit. These materials shall be retained at least three years from the date of the sample, measurement, report, or application unless otherwise specified by Department Rule.
 - c. Records of monitoring information shall include:
 - i. The date, exact place, and time of sampling or measurements;The person responsible for performing the sampling or measurements;
 - ii. The dates analyses were performed;
 - iii. The person responsible for performing the analyses;
 - iv. The analytical techniques or methods used;
 - v. The results of such analyses.
 - d. The permittee shall furnish to the Department, within the time requested in writing, any information which the Department requests to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance

- with this permit.
- e. If the permittee becomes aware that relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.
14. All applications, reports, or information required by the Department shall be certified as being true, accurate, and complete.
 15. Reports of compliance or noncompliance with, or any progress reports on, requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each scheduled date.
 16. Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
 17. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 18. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.
 19. This permit may be modified, revoked and reissued, or terminated for cause, as provided in 40 C.F.R. Sections 144.39(a), 144.40(a), and 144.41 (1998). The filing of a request by the permittee for a permit modification, revocation or reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
 20. The permittee shall retain all records of all monitoring information concerning the nature and composition of injected fluid until five years after completion of any plugging and abandonment procedures specified under Rule 62-528.435, F.A.C. The permittee shall deliver the records to the Department office that issued the permit at the conclusion of the retention period unless the permittee elects to continue retention of the records.
 21. All reports and other submittals required to comply with this permit shall be signed by a person authorized under subsection 62-528.340(1) or (2), F.A.C. All reports shall contain the certification required in subsection 62-528.340(4), F.A.C.
 22. The permittee shall notify the Department as soon as possible of any planned physical alterations or additions to the permitted facility. In addition, prior approval is required for activities described in paragraph 62-528.410(1)(h), F.A.C.
 23. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or injection activity which may result in noncompliance with permit requirements.
 24. The permittee shall report any noncompliance which may endanger health or the environment including:
 - a. Any monitoring or other information which indicates that any contaminant may cause an endangerment to an underground source of drinking water; or
 - b. Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water.
 25. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is

PERMITTEE NAME: Monroe County
FACILITY NAME: Sands Subdivision – Big Pine Key

PERMIT NO.: 349385-001
WACS Facility ID: 106450

expected to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

Executed in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

A handwritten signature in blue ink, appearing to read "J. Iglehart", with a long horizontal stroke extending to the right.

Jon M. Iglehart
Director of
District Management

Attachment C

MC Permit

London-Debra

From: Lopez-Sara
Sent: Thursday, June 23, 2022 8:32 AM
To: London-Debra
Subject: Monroe County, FL- Building Permit READY Notice - 20101595
Attachments: SUB-CONTRACTOR-Authorization-formV3.pdf

Importance: High

MONROE COUNTY BUILDING DEPARTMENT

Key Largo: 305-453-8800 / Marathon: 305-289-2501 / Stock Island: 305-295-3990

PERMIT #	20101595
OWNER:	MONROE COUNTY
PROPERTY ADDRESS:	AVE C SANDS SUB ROW
CONTRACTOR:	OWNER
FEES DUE:	\$ 45,966.44

—
Dear Sir or Madam:

Please, be advised that the above-referenced permit has been approved and is ready for issuance. The following documents/information will be required at the time of permit issuance:

PRIOR TO ISSUANCE, PLEASE PROVIDE SUB- CONTRACTOR AUTHORIZATION FORM FOR ELECTRIC, PLUMBING, AND GC. ALL FORMS MUST BE ORIGINAL AND NOTARIZED.

☐ (If this box is checked, this permit has been deemed development, requiring review by the Department of Economic Opportunity, and is subject to the local 30-day and stated 45-day appeal periods. Construction may begin 75 days after the date the permit is issued. No construction may occur prior to the end of the local and state appeal periods.)

The permit may be retrieved by the property owner (owner-builder permits), contractor (contractor permits) or authorized agent (contractor permits only) at the following location:

X	Monroe County Building Department Key Largo Office Murray D. Nelson Government and Cultural Center 102050 Overseas Highway Key Largo, FL 33037
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	Monroe County Building Department Ocean Reef Office 11601 CR 905 Key Largo, FL 33037
--	---

	Monroe County Building Department Marathon Office 2798 Overseas Highway Suite 330 Marathon, FL 33050
--	--

Building Department hours of operation are Monday – Friday, 8:30 a.m. to 3:00 p.m.

All required documents, information and fees are due prior to permit issuance. Please, note that fees due may be subject to change at the time of permit issuance. Fees may be paid in the form of cash, check or money order. Checks and money orders should be made payable to Monroe County Building Department.

If you should have any questions or concerns pertaining to the above-noted information, please contact or visit the appropriate office designated above.

Sincerely,

MONROE COUNTY BUILDING DEPARTMENT

Sara Lopez
Customer Service Representative – Building Department



102050 Overseas Highway
Monroe County Florida 33037
(305) 453-8800
Lopez-Sara@MonroeCounty-FL.Gov

Monroe County provides an online portal for customers to view their permit information in real time. Instruction on how to navigate through the online portal are provided below. If you have applied for an application, the permit number will be your Ref ID number located on your Monroe County Receipt or you can enter your Parcel ID using the Online Portal in the direct web link below.

A direct weblink to the online portal home is provided below.

<https://mcesearch.monroecounty-fl.gov/search/permits>

For Instruction on how to navigate through the online portal click the link below.

<https://mcesearch.monroecounty-fl.gov/themes/egov/assets/MCeSearchReferenceV4.pdf>

Please note: Florida has a very broad public records law. Most written communications to or from the County regarding County business are public record, available to the public and media upon request. Your e-mail communication may be subject to public disclosure.

GENERAL REQUIREMENTS

SECTION 01025

MEASUREMENT AND PAYMENT

1.0 GENERAL

- A. The CONTRACTOR shall receive and accept the compensation provided in the Proposal and the Contract as full payment for furnishing all materials, labor, tools and equipment, for performing all operations necessary to complete the work under the Contract, and also in full payment for all loss or damages arising from the nature of the work, or from any discrepancy between the actual quantities of work and quantities herein estimated by the Engineer, or from the action of the elements or from any unforeseen difficulties which may be encountered during the prosecution of the work until final acceptance by the Owner.
- B. The prices stated in the proposal include all costs and expenses for taxes, labor, equipment, materials, testing, commissions, transportation charges and expenses, patent fees and royalties, labor for handling materials during inspection, together with any and all other costs and expenses for performing and completing the work as shown on the details and specified herein. The basis of payment for an item at the unit price shown in the proposal shall be in accordance with the description of that item in this Section.
- C. The CONTRACTOR's attention is again called to the fact that the quotations for the various items of work are intended to establish a total price for completing the work in its entirety. Should the CONTRACTOR feel that the cost for any item of work has not been established by the Bid Form or Payment Items, he shall include the cost for that work in some other applicable bid item, so that his proposal for the project does reflect his total price for completing the work in its entirety.

2.0 MEASUREMENT

- A. The quantities for payment under this Contract shall be determined for those completed items, in place, ready for service and accepted by the Owner, in accordance with the applicable method of measurement therefore contained herein. A representative of the CONTRACTOR shall witness any field measurements.

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**END OF SECTION 01025**

**SECTION 01027  
APPLICATION FOR PAYMENT**

**1.1 SUMMARY**

- A. This section provides procedures for preparation and submittal of Applications for Payment.

**1.2 FORMAT**

- A. The Application and Certificate for Payment including the Worksheet is the required format for submitting invoices. Copies of these forms are included in this section. In addition, the CONTRACTOR's Affidavit of Payment of Debits and Claims form used for final payment is included. The Owner reserves the right to modify the format to better suit his internal accounting system.

**1.3 PREPARATION OF APPLICATIONS**

- A. The CONTRACTOR is required to adhere to the following procedure for filling-out the Application for Payment form.
1. Present required information in typewritten form.
  2. List CONTRACTOR's schedule of values on the Application for Payment form identifying the progress, retention, and payment amounts for each item as indicated on the form.
  3. List each authorized Change Order on the form, including change order number, date, change in dollar amount, and change in time amount, etc. as required.
  4. Execute certification by notarized signature of authorized officer.
  5. Attach to the Application for Payment, a completed and properly executed Affidavit and Partial Release of Lien form also contained in this section.

**1.4 SUBMITTAL PROCEDURES**

- A. Initial Payment Application:

The following documentation must be submitted prior to processing the initial payment application:

1. Approved schedule of values
  2. Approved construction schedule
  3. Approved submittal schedule
- B. The initial Application for Payment will not be processed until the CONTRACTOR's construction schedule, the schedule of values, and the initial submittal schedule have been received, reviewed, and approved by the Owner's Representative.

**Rebid Sands Sea Level Rise Pilot Project**

- C. Submit an updated construction and submittal schedule and a partial release of lien with each Application for Payment.
- D. Payment Period: Submit once per month, during the last week of the month. Payment will be made by the Owner approximately 30 days after receipt of completed documentation.
- E. Submit one (1) copy of each Application for Payment.

**1.5 SUBSTANTIATING DATA**

- A. When the Owner's Representative requires substantiating information, submit data justifying dollar amounts in question.
- B. Provide one copy of data with cover letter for each copy of submittal. Indicate Application number and date, and line item by number and description.

**1.6 FINAL PAY REQUEST**

- A. When the work has been completed, the CONTRACTOR shall; submit a final application for payment, execute a Final Release of Lien and CONTRACTOR's Affidavit of Release of Liens, Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, submit Consent of Surety to Final Payment form and submit the CONTRACTOR's Affidavit of Payment of Debts And Claims form as contained in this Section.
- B. These documents will be furnished to the Owner on a form similar to those supplied.

**Balance of Page Deliberately Left Blank**

**CONTRACTOR'S  
APPLICATION AND CERTIFICATE FOR PAYMENT**

TO: (Owner) \_\_\_\_\_ FROM: (CONTRACTOR) \_\_\_\_\_ APPLICATION NO.: \_\_\_\_\_  
 PROJECT: \_\_\_\_\_ CONTRACT DATE: \_\_\_\_\_ PERIOD ENDING: \_\_\_\_\_  
 NOTICE TO PROCEED EFFECTIVE DATE: \_\_\_\_\_ CONTRACT DURATION: \_\_\_\_\_ CONTRACT EXPIRATION: \_\_\_\_\_

**Change Order Summary**

| Number                            | Date | +/- Amount | +/- Time |
|-----------------------------------|------|------------|----------|
|                                   |      |            |          |
|                                   |      |            |          |
| TOTAL C.O. AMOUNT:                |      |            |          |
| REVISED CONTRACT EXPIRATION DATE: |      |            |          |

The undersigned CONTRACTOR certifies that to the best of the CONTRACTOR's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Owner for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment is now due.

CONTRACTOR: BY: \_\_\_\_\_  
 DATE: \_\_\_\_\_

Application is made for Payment, as shown below, in connection with the Application Worksheet which must be submitted with this application.

1. Original Contract Amount: \$ \_\_\_\_\_
2. Total Change Order Amount: \$ \_\_\_\_\_
3. Contract sum to date: \$ \_\_\_\_\_
4. Total Work Completed to date: (see l. on worksheet) \$ \_\_\_\_\_
5. Retainage: (10% of line 4) \$ \_\_\_\_\_
6. Total Earned minus Retainage: (line 4 less line 5) \$ \_\_\_\_\_
7. Previous Payments: (line 6, from previous application) \$ \_\_\_\_\_
8. Current Payment Due: (line 6 less line 7) \$
9. Balance to finish, incl. Retainage: (line 3 minus line 6) \$ \_\_\_\_\_

State of: \_\_\_\_\_ County of: \_\_\_\_\_  
 Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_,  
 Notary Public: \_\_\_\_\_  
 \_\_\_\_\_ My Commission expires: \_\_\_\_\_

**MONROE COUNTY'S CERTIFICATE OF PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data in the above application, the Director of Engineering Services certifies that to the best of the Director's knowledge, information and belief, the Work has progressed as indicated, the quality of Work is in accordance with the Contract Documents, and the CONTRACTOR is entitled to payment of the AMOUNT CERTIFIED. This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the CONTRACTOR named here. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or CONTRACTOR under this Contract.

AMOUNT CERTIFIED FOR PAYMENT: \$    
 (See Attached Explanation if Amount Certified differs from Application Amount)

ENGINEERING SERVICES DIRECTOR: \_\_\_\_\_ DATE: \_\_\_\_\_  
 (Judith S. Clarke, PE)

COUNTY APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
 (Roman Gastesi, County Administrator)

APPLICATION FOR PAYMENT

01027-3

## 01027-4

11/7/22

## APPLICATION FOR PAYMENT

01027-4

**MONROE COUNTY**  
**AFFIDAVIT AND PARTIAL RELEASE OF LIEN**

APPLICATION NO.: \_\_\_\_\_ PERIOD ENDING DATE: \_\_\_\_\_ APPLICATION DATE: \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS**, that the undersigned, for and in consideration of the payment of the sum \$ \_\_\_\_\_, to be paid to the undersigned, hereby releases, acquits, satisfies and forever discharges, **MONROE COUNTY, OWNER**, their successors and assigns from all suits, causes of action, liens, lien rights, claims or demands of any kind whatsoever, to the extent of the payment to date on account of the furnishing of labor, material or services for the improvement of the following described property:

**Sands Sea Level Rise Pilot Project**

As part of this **PARTIAL RELEASE, THAT UNDERSIGNED HEREBY CERTIFIES** the following:

THAT the contract of the undersigned, as adjusted by all increases and decreases, is in the amount of \$ \_\_\_\_\_,  
as of the date of the Partial Release and the undersigned has received \$ \_\_\_\_\_ as payment on the adjusted contract amount as of the date of this Partial Release.

THAT all supplies of labor, material or services furnished to, or for the benefit of the undersigned for improvement to the subject property has been paid in full. Any and all suppliers of labor, material or services for improvement to the subject property, who have not been paid in full are listed below with the amount owing each, claimed by each and the reason for non-payment: (If none, write "NONE")

|                        |                          |                              |                                     |
|------------------------|--------------------------|------------------------------|-------------------------------------|
| <b><u>CLAIMANT</u></b> | <b><u>AMOUNT DUE</u></b> | <b><u>AMOUNT CLAIMED</u></b> | <b><u>REASON FOR NONPAYMENT</u></b> |
|------------------------|--------------------------|------------------------------|-------------------------------------|

\_\_\_\_\_  
THAT all taxes imposed by all government agencies have been paid and discharged.

THAT all funds have been collected for FICA and withholding taxes have been properly deposited with appropriate agencies or paid to the government as required by law.

THAT the undersigned has no other claims for money against the OWNER other than those Subcontractors'/Suppliers' amounts remaining due and owing on the adjusted contract balance as reflected above.

THAT the undersigned further certifies that if there is a Guarantee, Warranty or Maintenance Agreement in connection with the labor and material furnished by it, that this payment and PARTIAL RELEASE shall not release the undersigned from any obligations under such Guarantee, Warranty, or Maintenance Agreement.

WITNESS MY HAND THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Company

Witness  
Signature, Title

**MONROE COUNTY**  
**FINAL RELEASE OF LIEN**

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

for and consideration of the sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

paid to \_\_\_\_\_

by Monroe County, Florida receipt of which is hereby acknowledged, do(es) hereby release and quit claim to Monroe County, Florida, the Owner, its successors or assigns, all liens, lien rights, claims or demands of any kind whatsoever which \_\_\_\_\_

\_\_\_\_\_ has (have) or might have against the property, building, and/or improvements, on account of labor performed, material furnished, and/or for any incidental expense for the construction of:

**Rebid Sands Sea Level Rise Pilot Project**

\_\_\_\_\_  
\_\_\_\_\_

thereon or in otherwise improving said property situated as above described.

IN WITNESS WHEREOF THIS \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature, Title

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**CONTRACTOR'S AFFIDAVIT OF  
RELEASE OF LIENS**

**TO OWNER:**

*(Name and address)*

**CONTRACT FOR:**

**CONTRACT DATED:**

**PROJECT:**

*(Name and address)*

**Rebid Sands Sea Level Rise Pilot Project**

State of \_\_\_\_\_:

County of \_\_\_\_\_:

The undersigned hereby certifies that to the best of the undersigned's knowledge, information and belief, except as listed below, the Releases or Waivers of Lien attached hereto include the CONTRACTOR, all Subcontractors, all suppliers of materials and equipment, and all performers of Work, labor or services who have or may have liens or encumbrances or the right to assert liens or encumbrances against any property of the Owner arising in any manner out of the performance of the Contract referenced above.

**EXCEPTIONS:**

**SUPPORTING DOCUMENTS ATTACHED  
HERE TO:**

1. CONTRACTOR's Release or Waiver of Liens, conditional upon receipt of final payment.
2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.

**CONTRACTOR:**

*(Name and address)*

**By:**

\_\_\_\_\_  
*(Signature of authorized representative)*

\_\_\_\_\_  
*(Printed Name and Title)*

**Subscribed and sworn to before me this  
Date:**

**Notary Public:**

\_\_\_\_\_  
(SEAL)

**My Commission Expires:** \_\_\_\_\_

**CONSENT OF SURETY COMPANY**  
**TO FINAL PAYMENT**

PROJECT: **Sands Sea Level Rise Pilot Project**

(Address) \_\_\_\_\_

TO: (Owner) \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

In accordance with the provisions of the Contract between the Owner and the CONTRACTOR as indicated above, the (here insert name and address of Surety Company)

\_\_\_\_\_, SURETY COMPANY, on bond of

(Here insert name and address of CONTRACTOR) \_\_\_\_\_,

CONTRACTOR, hereby approves of the final payment to the CONTRACTOR, and agrees that final payment to the CONTRACTOR shall not relieve the Surety Company of any of its obligation to

(Here insert name and address of Owner) \_\_\_\_\_,

OWNER, as set forth in the said Surety Company's bond.

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_20\_\_\_\_\_.

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title

**CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS**

TO OWNER:  
(Name and address)

CONTRACT FOR:  
CONTRACT DATE:

PROJECT:  
(Name and address)

State of:  
County of:

The undersigned, pursuant to Article 9 of the General Conditions of the Contract for Construction, hereby certifies that, except as listed below, he has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or his property might in any way be held responsible.

EXCEPTIONS: (If none, write "None". If required by the Owner, the Contractor shall furnish bond satisfactory to the Owner for each exception).

**SUPPORTING DOCUMENTS ATTACHED HERETO:**

1. Consent of Surety to Final Payment. Whenever Surety is involved, Consent of Surety is required. AIA DOCUMENT G707, CONSENT OF SURETY, may be used for this purpose.  
Indicate attachment:      yes (   )    no (   )

**CONTRACTOR:**

Address:

The following supporting documents should be attached hereto:

1. Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.
3. Contractor's Affidavit or Release of Liens.

By:

Subscribed and sworn to before me this  
day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public:

My Commission Expires:

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

PROJECT:

(Name and address)

CONTRACT FOR:

CONTRACT DATE:

TO OWNER:

(Name and address)

TO CONTRACTOR:

(Name and address)

DATE OF ISSUANCE:

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion thereof designated above is hereby established as \_\_\_\_\_

\_\_\_\_\_

which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

\_\_\_\_\_

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

\_\_\_\_\_  
ARCHITECT

\_\_\_\_\_  
BY

\_\_\_\_\_  
DATE

The Contractor will complete or correct the Work on the list of items attached hereto within the above date of Substantial Completion.

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
BY

\_\_\_\_\_  
DATE

The Owner accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof at \_\_\_\_\_ (time), on \_\_\_\_\_ (date).

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
BY

\_\_\_\_\_  
DATE

\_\_\_\_\_

The responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be

as follows: \_\_\_\_\_

*Note - Owners and Contractors legal and insurance counsel should determine and review insurance requirements and coverage.*

~~~~~**END OF SECTION 01027**

**SECTION 01153
CHANGE ORDER PROCEDURE**

PART 1 - GENERAL

1.1 DESCRIPTION

- A. Work included: Make such changes in the Work, in the Contract Sum, in the Contract Time of Completion, or any combination thereof, as are described in written Change Orders signed by the Owner and the Engineer and issued after execution of the Contract, in accordance with the provisions of this Section.
- B. Related Work: Documents affecting work of this Section include, but are not necessarily limited to Supplementary Conditions, and Sections in the Technical Specifications.

1.2 QUALITY ASSURANCE

- A. Include within the CONTRACTOR's quality assurance program such measures as are needed to assure familiarity of the CONTRACTOR's staff and employees with these procedures for processing Change Order data.

1.3 SUBMITTALS

- A. Make submittals directly to the Owner's Representative with a copy to the Director of Engineering Services; the address for submittal delivery is:

Director of Engineering Services
Monroe County Engineering Department
1100 Simonton Street
Key West, Florida 33040

- B. Submit the number of copies called for under the various items listed in this Section.

1.4 PROJECT HANDLING

- A. Maintain a "Register of Bulletins and Change Orders" at the job site, accurately reflecting current status of all pertinent data.
- B. Make the Register available to the Director of Engineering Services for review at his request.

1.5 PROCESSING CHANGES INITIATED BY THE OWNER

- A. Should the Owner contemplate making a change in the Work or a change in the Contract Time of Completion, the Director of Engineering Services will issue a "Bulletin" to the CONTRACTOR.
 - 1. Bulletins will be dated and will be numbered in sequence.
 - 2. The Bulletin will describe the contemplated change and will carry one of the following instructions to the CONTRACTOR:
 - a. Make the described change in the Work at no change in the Contract Sum and no change in the Contract Time of Completion.

- b. Promptly advise the County Director of Engineering Services as to credit or cost proposed for the described change. This is not an authorization to proceed with the change.
- B. If the CONTRACTOR has been directed by the County Director of Engineering Services to make the described change in the Work at no change in the Contract Sum and no change in the Contract Time of Completion, but the CONTRACTOR wishes to make a claim for one or both of such changes, the CONTRACTOR shall proceed with the change and shall notify the Director of Engineering Services of the change.
- C. If the CONTRACTOR has been directed by the County Director of Engineering Services to make the described change subject to later determination of cost or credit, the CONTRACTOR shall:
 - 1. Take such measures as needed to make the change.
 - 2. Consult with the County Director of Engineering Services and reach agreement on the most appropriate method for determining credit or cost for the change.
- D. If the CONTRACTOR has been directed by the County Director of Engineering Services to promptly advise him as to credit or cost proposed for the described change, the CONTRACTOR shall:
 - 1. Analyze the described change and its impact on costs and time.
 - 2. Secure the required information and forward it to the County Director of Engineering Services for review.
 - 3. Meet with the County Director of Engineering Services as required to explain costs and when appropriate, determine other acceptable ways to achieve the desired objective.
 - 4. Alert pertinent personnel and subcontractors as to the impending change and, to the maximum extent possible, avoid such work as would increase the Owner's cost for making the change, advising the County Director of Engineering Services in writing when such avoidance no longer is practicable.

1.6 PROCESSING CHANGES INITIATED BY THE CONTRACTOR

- A. Should the CONTRACTOR discover a discrepancy among the Contract Documents, a concealed condition, or other cause for suggesting a change in the Work, a change in the Contract Sum, or a change in the Contract Time of Completion, he shall notify the County Director of Engineering Services as required by pertinent provisions of the Contract Documents.
- B. Upon agreement by the County Director of Engineering Services that there is reasonable cause to consider the CONTRACTOR's proposed change, the Director of Engineering Services will issue a Bulletin in accordance with the provisions described in Article 1.5 above.

C. PROCESSING BULLETINS

Make written reply to the County Director of Engineering Services in response to each

Rebid Sands Sea Level Rise Pilot Project

Bulletin.

1. State proposed change in the Contract Sum, if any.
 2. State proposed change in the Contract Time of Completion, if any.
 3. Clearly describe other changes in the Work required by the proposed change, or desirable therewith, if any.
 4. Include full backup data such as subcontractor's letter of proposal or similar information.
 5. Submit this response in single copy.
- D. When cost or credit for the change has been agreed upon by the Owner and the CONTRACTOR, or the Owner has directed that cost or credit be determined, then the County Director of Engineering Services will issue a "Change Order" to the CONTRACTOR.

1.7 PROCESSING CHANGE ORDERS

- A. Change Orders will be dated and will be numbered in sequence.
- B. The Change Order will describe the change or changes, will refer to the Bulletin or Bulletins involved, and will be signed by the Owner and the County Director of Engineering Services.
- C. The County Director of Engineering Services or designee will issue three copies of each Change Order to the CONTRACTOR.
1. The CONTRACTOR promptly shall sign all three copies and return to the County Director of Engineering Services or designee.
 2. The County Director of Engineering Services or designee will retain one signed copy in his file and will forward one signed copy to the Owner and one signed copy to DEO.
- D. Should the CONTRACTOR disagree with the stipulated change in Contract Sum or change in Contract Time of Completion, or both:
1. The CONTRACTOR promptly shall return three copies of the Change Order, unsigned by him, to the County Director of Engineering Services with a letter signed by the CONTRACTOR and stating the reason or reasons for the CONTRACTOR's disagreement.
 2. The CONTRACTOR's disagreement with the Change Order shall not in any way relieve the CONTRACTOR of his responsibility to proceed with the change as ordered and to seek settlement for the dispute under pertinent provisions of the Contract Documents.

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**END OF SECTION 01153**

**SECTION 01200  
PRE-CONSTRUCTION MEETING**

**PART 1 - GENERAL**

**1.1 SUMMARY**

**A. Section includes:**

1. Pre-Construction Meeting

**1.2 LOCATION**

**A. A central site designated by the Director of Engineering Services.**

**B. Attendance:**

1. Monroe County Director of Engineering Services.
2. The CONTRACTOR's Superintendent.
3. Major subcontractors.
4. Major suppliers.
5. Utility Companies
6. Florida Department of Transportation and others if applicable.

**C. Suggested Agenda:**

1. Distribution and discussion of:
  - a. List of major subcontractors and suppliers.
  - b. Projected Construction Schedules, including critical working sequencing.
  - c. DEO reporting requirements.
2. Major equipment deliveries and priorities.
3. Project Coordination.
4. Channels and procedures for communication.
  - a. Designation of responsible personnel.
5. Procedures and processing of:
  - a. Field decisions.

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- b. Proposal requests.
  - c. Submittals and shop drawings.
  - d. Change Orders.
  - e. Applications for Payment.
  - f. Bulletins
- 6. Distribution of the Contract Documents.
  - 7. Rules and regulations governing performance of work.
  - 8. Procedures for maintaining Record Documents.
  - 9. Use of Premises:
    - a. Office, work, staging, and storage areas.
  - 10. Construction facilities, controls and construction aids.
  - 11. Temporary Utilities.
  - 12. Safety and First-Aid procedures.
  - 13. Housekeeping procedures.
  - 14. Distribute meeting minutes within three (3) days by Owner.

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END OF SECTION 01200

**SECTION 01301
SUBMITTALS**

PART 1 - GENERAL

1.1 SUMMARY

- A. Section includes: Submit to the Owner's Representative, submittal schedule, shop drawings, product data, certifications and samples required by the Technical Specifications.
- B. Related Sections:
 - 1. Individual submittals required: refer to each specific section, for certifications, shop drawings, product data and sample requirements.
- C. The CONTRACTOR shall allow a minimum of seven (7) calendar days excluding holidays for review of submittal by the Owner's Representative.

1.2 SUBMITTAL SCHEDULE

- A. The CONTRACTOR shall submit within seven (7) days of award of the Contract a preliminary "Submittal Schedule" to the Owners Representative for review, modification and response. No payment applications will be processed prior to finalizing the submittal schedule. The "Submittal Schedule" shall contain the following information:
 - 1. Specification Section number and name.
 - 2. Specification Section paragraph identification which describes submittal requirement.
 - 3. Submittal information required, (i.e., sample, test data, shop drawing, etc.).
- B. The CONTRACTOR shall also supply the following dates in order to meet the project schedule.
 - 1. Date submittal is scheduled to be submitted and received by the Owner's Representative.
 - 2. Date CONTRACTOR has scheduled to order material or other equipment or the submittal item.
 - 3. Date CONTRACTOR has scheduled delivery to job-site of material or equipment or the submittal item.
 - 4. Add any remarks or unique items that the Owner's Representative should be aware of.
- C. The CONTRACTOR shall allow a minimum of one (1) week for review of submittal by the Owner's Representative. (in calendar days).
- D. The submittal master record will then be used to track submittals within the process.

1.3 SHOP DRAWINGS

- A. CONTRACTOR shall submit legible shop drawings, suitable for reproduction. Prints that cannot be reproduced will be returned to the CONTRACTOR for re-submittal.
- B. Provide shop drawings as complete submittals (no partial sets) on original drawings or information prepared solely by the fabricator or supplier. Deviation from complete submittals will only be allowed by pre-arranged method.
- C. Do not reproduce the Contract Drawings for shop drawing submittals.
- D. Sheet sizes shall not exceed the size of the Contract Drawings.
- E. Each print shall have blank spaces large enough to accept 4" x 4" review stamps of the CEI and the CONTRACTOR.
- F. Each print shall carry the following information:
 - 1. Project name and contract number.
 - 2. Date.
 - 3. Names of:
 - a. Owner
 - b. The CONTRACTOR
 - c. Supplier
 - d. Manufacturer
 - 4. Identification of product or material.
 - 5. Relation to adjacent structure or materials.
 - 6. Field dimensions, clearly stated as such.
 - 7. Specification Section number.
 - 8. Applicable standards such as ASTM or Federal Specification.
 - 9. Identification of deviations from Contract Documents.
 - 10. Reference to construction drawings by drawing number and/or detail number.
- G. Submit prints without folds either as flat sheets if size permits, or rolled in tubes.
- H. The CONTRACTOR shall submit (1) reproducible and (1) copy to the Owner's Representative. The Owner's Representative will return (1) copy to the CONTRACTOR.

1.4 PRODUCT DATA

- A. Modify product data sheets to delete information which is not applicable to the Project. Provide additional information if necessary to supplement standard information.
- B. Product data sheets that are submitted with extraneous information not deleted and/or modified will be returned without review to the CONTRACTOR for re-submittal.
- C. The CONTRACTOR shall submit at a minimum, (1) original and (1) copy to the Owner's Representative. The Owner's Representative will return (1) copy to the CONTRACTOR after review.

1.5 SAMPLES

- A. Provide samples to illustrate materials, equipment or workmanship, and to establish standards by which completed work may be judged.
- B. The CONTRACTOR shall submit (2) samples to the Owner's Representative and (1) will be returned to the CONTRACTOR after review.

1.6 CERTIFICATIONS

- A. Provide certifications as required by various technical sections on the CONTRACTOR's letterhead stationery. Certifications shall be identified to this Project, dated and bear CONTRACTOR's signature in the same format used for the Owner/CONTRACTOR agreement.
- B. Clearly identify the materials referenced and state that the material and the intended installation methods, where applicable, are in compliance with the Contract Documents. Attach manufacturer's affidavits where applicable.
- C. The CONTRACTOR shall submit (1) original and (1) copies to the CEI. The CEI will return (1) sets to the CONTRACTOR after review.

1.7 THE CONTRACTOR'S RESPONSIBILITIES

- A. Before making submittals to the Owner's Representative, review each submittal, make changes or notations as necessary to conform to the Contract Documents, identify such review with review stamp and forward reviewed submittal with comments to the Owner's Representative for review. Return submittals not meeting Contract requirements to subcontractors and do not forward such submittals to the Owner's Representative.
- B. Submit catalog sheets, product data, shop drawings and where specified, submit calculations, material samples, color chips or charts, test data, warranties and guarantees all at the same time for each submittal item.
- C. Verify field measurements and product catalog numbers or similar data.
- D. Clearly identify on the submittal and transmittal to the Owner's Representative in writing of deviations in submittals from the requirements of the Contract Documents.
- E. After the Owner's Representative's review, distribute copies with one copy to be maintained at the Project Site for reference use and other copies distributed to suppliers and fabricators.

- F. Do not begin the Work which requires submittals until return of submittals with the Owner's Representative's stamp and initials indicating review.
- G. The CONTRACTOR's responsibility for errors and omissions in submittals is not relieved by the Owner's Representative's review of submittals.
- H. The CONTRACTOR's responsibility for deviations in submittals from requirements of the Contract Documents is not relieved by the Owner's Representative's review of submittals unless the Owner's Representative gives written acceptance of specific deviations.

1.8 THE ENGINEER'S RESPONSIBILITIES

- A. The Owner's Representative will review submittals with reasonable promptness, checking only for conformance with the design compliance of the Project and compliance with information given in the Contract Documents.
- B. The Owner's Representative will make changes or notations directly on the submittal, identify such review with his review stamp, and return the submittal to the CONTRACTOR.
- C. The Owner's Representative will return to the CONTRACTOR, without review, all submittals not bearing the CONTRACTOR's review stamp or not showing it has been reviewed by the CONTRACTOR.
- D. The Owner's Representative will forward submittals to the CONTRACTOR and retain one copy for the Owner. The CONTRACTOR shall distribute copies including other copies distributed to suppliers and fabricators. The CONTRACTOR shall supply copies of reviewed submittals to the County's Inspector in sufficient quantity to allow proper coordination of the Contract.

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**END OF SECTION 01301**

**SECTION 01385  
DAILY CONSTRUCTION REPORTS**

**PART 1 - GENERAL**

**1.1 SUMMARY**

**A. Section includes:**

1. Requirement for Daily Construction Reports by each CONTRACTOR.
2. Scheduled submission times for Daily Construction Reports.
3. Copy of State of Florida Department of Transportation Daily Report of Construction Form 700-010-13.

**1.2 FORM AND CONTENT OF DAILY CONSTRUCTION REPORTS**

**A. Daily Construction Reports shall be submitted by each and every CONTRACTOR performing work on the project. The FDOT form 700-010-13 is attached. Items to be addressed on the Report are:**

1. Title of Project
2. Name of CONTRACTOR
3. Date and day of Report information. For example, you performed work on Thursday, April 18, 1991, so you would therefore use "Thursday, 4/18/91." This holds true even if you did not complete filling out the Report until Friday, 4/19/91.
4. Contract designation.
5. Note any major Shipments received on that particular day.
6. Note major equipment used that day.
7. Note manpower used and designate what trades. For example, if you were the mechanical CONTRACTOR, you would also list how many insulators, pipefitters, etc., that you were also managing, even if they were subcontractors. In addition, list the names of the subcontractors that were on-site that day.
8. Note any deficiencies in your work, and corrective actions taken to resolve the deficiencies.
9. Note any safety violations discovered, whether or not caused by your forces.
10. Provide a full description of work performed that day, and any problems or unusual conditions discovered.
11. Report is to be signed by the authorized representative of the CONTRACTOR, and should the signature not be legible, print the name of the signer next to the signature.

**1.3 SCHEDULE OF SUBMITTING DAILY REPORTS**

- A. Daily Reports are to be submitted at the designated location described in the pre-construction meeting. CONTRACTORS are to submit the original of their report, and should keep a copy for their records. The Project Engineer photocopying facilities are not to be used in the reproduction for submission of the reports.
- B. Submit Daily Reports no later than 9:00am the day following the day of the work described in that particular report. No exceptions to this rule will be accepted. Should CONTRACTOR fail to comply with these instructions, the CONTRACTOR's payment application for the following month will be held in abeyance until such time the CONTRACTOR properly submits the delinquent reports.

**Rebid Sands Sea Level Rise Pilot Project**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DAILY REPORT OF CONSTRUCTION**700-010-13  
CONSTRUCTION  
06/09  
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Date:	Contract ID:	Financial Project ID:	Inspector:
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High Temp:	AM Conditions:	PM Conditions:
Low Temp:		

Remarks			
General:			
Accidents: <input type="checkbox"/> No <input type="checkbox"/> Yes See Accident Report Dated:		Day of Week:	Contract Day:
Visitors:		Total Days:	

Contractor(s) and Personnel										
#	Name	Type	#	Hrs	Type	#	Hrs	Type	#	Hrs
1.	Prime	Supt			Foreman			Skilled		
		Semi skilled			Common			Trainee		
2.	Sub/Utility	Supt			Foreman			Skilled		
		Semi skilled			Common			Trainee		
3.	Sub/Utility	Supt			Foreman			Skilled		
		Semi skilled			Common			Trainee		
4.	Sub/Utility	Supt			Foreman			Skilled		
		Semi skilled			Common			Trainee		

Contractor(s) Equipment (Active or Idle)					
Contr/Sub #	Equipment ID	Description	# Pieces	# Used	Total Hours Used

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CONSTRUCTION  
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Date:	Contract ID:
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Estimated Work Performed							
Contr/ Sub #	Line Item #	Pay Item Code	Location	Time (AM/PM)		Installed	
				Beginning	Ending	Qty.	Units

**EFFECTS OF WEATHER ON MAJOR WORK ITEMS (CHECK CONTROLLING ITEMS):**

Major and/or Controlling Work Items	No Effect All Day	Affected Less Than 50% of Work Day	Affected More Than 50% Of Work Day	No Work All Day
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>CONTRACTOR PAST PERFORMANCE</b>	
PURSUIT OF THE WORK: <input type="checkbox"/> YES <input type="checkbox"/> NO	
CONFORMANCE WITH CONTRACT DOCUMENTS: <input type="checkbox"/> YES <input type="checkbox"/> NO	

TECHNICIAN'S SIGNATURE AND RATING:	HOURS AT JOB SITE		TOTAL HOURS
	FROM:	TO:	

ENGINEER IN CHARGE (NAME, RANK AND INITIALS):	
	DATE:

DISTRIBUTION: Original – Project Engineer  
Copy – Contractor (as requested)

700-010-13  
CONSTRUCTION  
06/09  
Page 3 of 3

Date:	Contract ID:	Financial Project ID:	Inspector:
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[illegible]

01385-5

**SECTION 01395  
REQUEST FOR INFORMATION**

**1.1 SUMMARY**

- A. Notification to the Owner's Representative and Director of Engineering Services in the event of field conflicts or if errors or omissions are found in the Contract Documents.
- B. Utilization of Request for Information form.

**1.2 FORM AND CONTENT OF REQUEST FOR INFORMATION REPORTS**

- A. All field conflicts, and errors or omissions in the Contract Documents shall be brought to the attention of the Owner's Representative and Director of Engineering Services immediately. If clarifications are necessary, a completed Request for Information form is to be conveyed to the Owner's Representative and the Director of Engineering Services. The RFI is a tool established to provide expedient clarifications of contract drawings, specifications or field conflicts. It is not meant to be a substitute for direct verbal communication.
- B. In completing the RFI form, the CONTRACTOR should propose a solution to the field conflict and enter same on the form in sufficient detail necessary for the Owner's Representative and Director of Engineering Services to confirm the CONTRACTOR's proposed solution. The CONTRACTOR should also include any proposed change in contract price, if necessary, with the solution he proposes.
- C. If omissions or errors are noted in the Contract Documents, a completed RFI form should be submitted to the Owner's Representative and Director of Engineering Services identifying the omission or error.
- D. The CONTRACTOR is also required to identify all other trade work which is affected by the conflict, omission or error, and all trade work which will be affected by the proposed solution.

**1.3 REQUESTS FOR INFORMATION PROCEDURE**

- A. The RFI form is included in this Section for the CONTRACTOR's use before and during the project. The form may submitted to the Owner's Representative before a response can be given.

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From:		To: Monroe County Engineering 1100 Simonton Street Key West, Florida 33040	
Phone:	Fax:	Phone: (305) 295-4329	Fax: (305) 295-4321
Project Name:		Receipt Logged:	
Submitted By:	Date:	Dwg/Spec No./Revision/Detail/Sect. No. Drawing No.	
Subject:			
Problem & suggested solution:			
<b>Engineering Dept. Review</b>			
Solution:			

~~~~~  
END OF SECTION 01395

SECTION 01400 ENVIRONMENTAL PROTECTION

PART 1 - GENERAL

1.1 SCOPE

The scope of this Section consist of providing and maintaining environmental protection during all phases of the construction and the compliance of operations with all Federal, State, and local regulations and permit requirements pertaining to the prevention and control of pollution.

1.2 ENVIRONMENTAL PROTECTIONPLAN

The CONTRACTOR shall be responsible for the preparation and submission of an environmental protection plan. After the contract is awarded and prior to commencement of any work, the CONTRACTOR shall document proposed actions to comply with required environmental protection in an environmental protection plan. The plan will include the CONTRACTOR's plan for turbidity and erosion control, storage and disposal of material, water quality protection requirements and adherence to conditions of this section and of permits issued for the Work. The CONTRACTOR shall submit for approval the proposed environmental protection plan no later than the pre- construction meeting. In case of repeated failures on the part of the CONTRACTOR to comply with the environmental protection plan or control pollution, the right is reserved to the Director of Engineering Services to employ outside assistance to provide the necessary corrective measures. Such incurred cost, plus engineering costs, will be charged to the CONTRACTOR and appropriate deductions made from the CONTRACTOR's Final Payment.

1.3 APPLICABLEPUBLICATIONS

In order to prevent and to provide control of any environmental pollution arising from the construction activities in the performance of this contract, the CONTRACTOR shall comply with all applicable Federal, State, and local laws and regulations concerning environmental pollution control and all applicable provisions of the Corps of Engineers Manual, EM 385-1-1, entitled "General Safety Requirements", in effect on the date of solicitation, as well as the specification, including the permit requirements of all regulatory agencies.

1.4 PROTECTION of WATERRESOURCES

Seagrass beds and other benthic communities (eg. Corals) may be present in the Work area. Contact with the seabed and any disturbance of bottom sediments should be avoided. Benthic communities should not be shaded from direct sunlight (by equipment, barges, etc) for more than two weeks. If a barge is used, anchoring locations must be approved in advance by the project engineer.

It is intended that the natural resources outside the limits of permanent work performed under the contract be preserved in their existing condition. The CONTRACTOR shall confine all activities to areas defined by the drawings and/or contract documents. The CONTRACTOR shall not discharge or permit the discharge into waters of any fuels, oils, bitumen, garbage, sewage, or other materials that may be detrimental to outdoor recreation. All work shall be performed in such a manner that objectionable conditions will not be created in waters through or adjacent to the project area. If a violation is noted during construction, all work shall cease until the condition is corrected by the CONTRACTOR.

The CONTRACTOR shall exercise extreme care to minimize degradation of the water quality at the site. All necessary provisions shall be taken to ensure compliance with the water quality standards of the State of

Florida. Attention is called to Chapter 62-302, Florida Administrative Code and in particular, the requirements that turbidity shall not exceed 0 Nephelometric Turbidity Unit's (NTU's) above background

level and also shall not degrade existing ambient water quality. Adequate silt containment procedures and equipment shall be used as necessary to control turbidity within State standards.

When required by any government agency, the CONTRACTOR shall make water quality measurements and submit results to the Agency and Director of Engineering Services to assure construction operations are in compliance with the standards of 62-302, F.A.C. All water quality measurements shall confirm to the test methods specified in Chapter 40, Part 136 of the Code of Federal Regulations.

1.5 TURBIDITY CONTROL

The CONTRACTOR shall employ adequate silt containment equipment and/or procedures during bridge construction and rehabilitation activities to control turbidity of the adjacent waters to within the limits required by Federal, State and local laws and/or permit requirements.

The CONTRACTOR shall furnish all labor and materials and perform all operations necessary for the installation and maintenance of a turbidity curtain around the bridge structure or portion of the structure being worked on. The CONTRACTOR shall relocate the turbidity curtain as needed so that all work is performed within the turbidity control curtain. The CONTRACTOR shall furnish all labor and materials for the removal of the curtain upon completion of the project.

The fabric forming the turbidity curtain shall be maintained in a vertical position by flotation material at the top and a ballast chain along the bottom. Use minimum depths at the lowest low tide to determine the necessary skirt depth. Allow for 1 to 2 feet of clearance between the lower edge of the skirt and the existing bottom. In moving water or when depths are excessive, it is not necessary to extend the curtain depth below 10 to 12 feet below the surface.

The curtain shall remain in place following completion of construction until the quality of the water within the confined area conforms to that of the adjacent water.

1.6 EROSION CONTROL

The CONTRACTOR shall furnish all labor and materials to erect and maintain silt fences at all work areas and all equipment/materials staging areas that are adjacent to wetlands. No staging activities shall occur within wetland areas. The CONTRACTOR shall remove silt fences upon completion of Work.

1.7 MANGROVE TRIMMING

Should mangrove trimming be required during the project, the CONTRACTOR shall be responsible for all labor, materials, equipment, personnel and permit fees for obtaining an Individual Permit to Alter or Trim Mangroves from the Florida Department of Environmental Protection (FDEP). The CONTRACTOR shall provide for a Certified Arborist to be present on site to direct all mangrove trimming activities.

1.8 FISH & WILDLIFE RESOURCES

The CONTRACTOR shall at all times perform all work and take such steps required to prevent any interference or disturbance to fish and wildlife. The CONTRACTOR shall not be permitted to significantly disturb native habitat adjacent to the project area that are critical to fish and wildlife except as may be indicated or specified.

Various species including the American Crocodile, the Small Toothed Sawfish and Sea Turtle species may inhabit waters adjacent to the Work area. The CONTRACTOR is required to adhere to all Federal and State requirements regarding endangered and threatened species and State listed species of special concern if these species are encountered during construction activities.

1.9 PROTECTION OF LANDRESOURCES

It is intended that the natural resources outside the limits of permanent work be performed be preserved in their existing condition or be restored to an equivalent or approved condition upon completion of the work. The CONTRACTOR shall confine his construction activities to areas defined by the drawings and contract documents.

Except in areas indicated to be cleared, the CONTRACTOR shall not remove, cut, deface, injure, or destroy trees, shrubs, or other plant life without special permission. No ropes, cables or guys shall be fastened or attached to existing trees or shrubs.

All landscape features scarred or damaged by the CONTRACTOR's equipment or operations shall be restored to their original condition of the CONTRACTOR's expense. The Director of Engineering Services shall approve the proposed restoration plan prior to its initiation.

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**END OF SECTION 01400**

**SECTION 01630  
POST-BID SUBSTITUTIONS**

**PART 1 - GENERAL**

**1.1 SUMMARY**

- A. Section includes: Post-bid substitutions

**1.2 SUBSTITUTIONS**

- A. Base Bid shall be in accordance with the Contract Documents.
- B. After the end of the bidding period, substitution requests will be considered only in the case of:
1. Product unavailability
  2. Other conditions beyond the control of the CONTRACTOR.
- C. Submit a separate request for each substitution. Support each request with the following information:
1. Complete data substantiating compliance of proposed substitution with requirements stated in Contract Documents:
    - a. Product identification, including manufacturer's name and address.
    - b. Manufacturer's literature, identifying:
      1. Product description.
      2. Reference standards.
      3. Performance and test data.
    - c. Samples, as applicable.
    - d. Name and address of similar projects on which product has been used and date of each installation.
  2. Itemized comparison of the proposed substitution with product specified, listing significant variations.
  3. Data relating to changes in construction schedule.
  4. Effects of substitution on separate contracts.
  5. List of changes required in other work or products.
  6. Accurate cost data comparing proposed substitution with product specified.
    - a. Amount of net change to Contract Sum.
  7. Designation of required license fees or royalties.
  8. Designation of availability of maintenance services, sources of replacement materials.
- D. Substitutions will not be considered for acceptance when:
1. A substitution is indicated or implied on shop drawings or product data submittals without a formal request from Bidder.

**Rebid Sands Sea Level Rise Pilot Project**

2. Acceptance will require substantial revision of Contract Documents.
  3. In judgment of the Director of Engineering Services the substitution request does not include adequate information necessary for a complete evaluation.
  4. Requested directly by a subcontractor or supplier.
- E. Do not order or install substitute products without written acceptance of the Director of Engineering Services.
- F. Director of Engineering Services will determine acceptability of proposed substitutions.
- G. No verbal or written approvals other than by Change Order will be valid.

**1.3 CONTRACTOR'S REPRESENTATION**

- A. In making formal request for substitution the CONTRACTOR represents that:
1. The proposed product has been investigated and it has been determined that it is equivalent to or superior in all respects to the product specified.
  2. The same warranties or bonds will be provided for the substitute product as for the product specified.
  3. Coordination and installation of the accepted substitution into the Work will be accomplished and changes as may be required for the Work to be complete will be accomplished.
  4. Claims for additional costs caused by substitution which may subsequently become apparent will be waived by the CONTRACTOR.
  5. Complete cost data is attached and includes related costs under the Contract, but not:
    - a. Costs under separate contracts.

**1.4 POST-BID SUBSTITUTION FORM**

- A. The form is attached to this section.
- B. Substitutions will be considered only when the attached form is completed and included with the submittal with back-up data.

## **POST-BID SUBSTITUTIONS FORM**

To: Director of Engineering Services  
Monroe County Engineering Dept.  
1100 Simonton Street  
Key West, FL 33040

We hereby submit for your consideration the following product instead of the specified item for the above project:

DRAWING NO.	DRAWING NAME		
_____	_____		
SPEC. SEC.	SPEC. NAME	PARAGRAPH	SPECIFIED ITEM
_____	_____	_____	_____

Proposed Substitution: \_\_\_\_\_

Attach complete information on changes to Drawing and/or Specifications, which proposed substitution will require for its proper installation.

Submit with request necessary samples and substantiation data to prove equal quality and performance to that which is specified. Clearly mark manufacturer's literature to indicate equality in performance.

The undersigned certifies that the function, appearance and quality are of equal performance and assumes liability for equal performance, equal design and compatibility with adjacent materials.

Submitted By: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

Signature shall be by person having authority to legally bind his firm to the above terms. Failure to provide legally binding signature will result in retraction of approval.

**Rebid Sands Sea Level Rise Pilot Project**

For use by the Director of Engineering Services:

\_\_\_\_\_Approved\_\_\_\_\_Not Approved\_\_\_\_\_Approved as noted \_\_\_\_\_Insufficient data received

By\_\_\_\_\_

Date\_\_\_\_\_

Fill in Blanks Below:

A. Does the substitution affect dimensions shown on Drawings?

Yes\_\_\_\_\_No\_\_\_\_\_If yes, clearly indicate changes.

\_\_\_\_\_

B. Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution?

Yes\_\_\_\_\_No\_\_\_\_\_If no, fully explain:\_\_\_\_\_

\_\_\_\_\_

C. What effect does substitution have on other Contracts or other trades?

\_\_\_\_\_

D. What effect does substitution have on construction schedule?

\_\_\_\_\_

E. Manufacturer's warranties of the proposed and specified items are:

\_\_\_\_\_Same\_\_\_\_\_Different. Explain:\_\_\_\_\_

\_\_\_\_\_

F. Reason for Request: \_\_\_\_\_

\_\_\_\_\_

G. Itemized comparison of specified item(s) with the proposed substitution; list significant variations:

\_\_\_\_\_

H. This substitution will amount to a credit or extra cost to the Owner of:

\_\_\_\_\_Dollars (\$\_\_\_\_\_).

I. Designation of maintenance services and sources:

\_\_\_\_\_

(Attach additional sheets if required.)

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END OF SECTION 01630

TECHNICAL SPECIFICATIONS

November 30, 2022



SPECIFICATIONS PACKAGE
SEA LEVEL RISE ROADWAY AND DRAINAGE PILOT PROJECT

SANDS SUBDIVISION – BIG PINE KEY

MONROE COUNTY

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SECTION 16000

STORMWATER PUMPS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. FDOT Section 430 Pipe Culverts

1.2 SUMMARY

- A. Work Description:

1. Furnish labor, materials, equipment and incidentals required to install nonclog pumping units complete with motors, shafting, couplings, bases, pump controls, and accessories, as shown on Drawings and as specified herein.

This Article is intended to generally describe what is required, but does not cover all details which will vary in accordance with the requirements of the equipment furnished. They are, however, intended to cover the furnishing, shop testing, delivery, complete installation, and field testing of all materials, equipment and appurtenances for the complete pumping system herein specified.

- B. Description of System:

1. The pumps and accessories specified hereinafter will comprise complete installation of four pumps in the Sands Subdivisions, Big Pine Key Pump Station.
2. The pumps will be started, stopped and alternated utilizing the new pump controls in the enclosed reduced voltage controllers interlocked with a sequence of float switches.

1.3 ACTION SUBMITTALS

- A. Shop Drawing and Product Data for each type of product indicated include the following:

1. Certified dimensional drawings of each item of equipment and auxiliary apparatus to be furnished.
2. Certified foundation, pump support, and anchor bolt plans and details.
3. Schematic electrical wiring diagram and other data as required for complete pump installation.
4. Literature and drawings describing the equipment in sufficient detail, including parts list and materials of construction, to indicate full conformance with the detail specifications.
5. Total weight of pumping unit.

- B. Test Reports:

1. Tabulated data for the drive motors including rated HP, full load RPM, power factor and efficiency curves at half, three-quarter, and full load; service factor and KW input, including when the pump is at its design point.
2. Description of pump equipment, factory test procedures, and a copy of final report when available.

1.4 CLOSEOUT SUBMITTALS

- A. Operation and Maintenance Data:

1. Complete operating and maintenance instructions shall be furnished for all equipment included under these specifications. The maintenance instructions shall include trouble shooting data and full preventative maintenance schedules and complete spare parts lists with ordering information.

1.5 QUALITY ASSURANCE

A. Qualifications:

1. The equipment covered by these specifications is intended to be standard pumping equipment of proven ability as manufactured by concerns having extensive experience in the production of such equipment. A single manufacturer shall furnish units specified herein. The equipment furnished shall be designed, constructed, and installed to operate satisfactorily when installed as shown on the Drawings.

B. Warranty:

1. Refer to Monroe County Contract General Conditions.

1.6 DELIVERY, STORAGE, AND HANDLING

- C. All parts shall be properly protected so that no damage or deterioration will occur during a prolonged delay from the time of shipment until installation is completed and the unit and equipment are ready for operation.
- D. All equipment and parts must be properly protected against any damage during shipment. Store equipment in accordance with the manufacturer's instruction.
- E. Factory assembled parts and components shall not be dismantled for shipment unless permission is received in writing from the Engineer.
- F. The finished surfaces of all exposed flanges shall be protected by wooden or equivalent blank flanges, strongly built, and securely bolted thereto.
- G. Finished iron or steel surfaces not painted shall be properly protected to prevent rust and corrosion.
- H. No shipment shall be made until approved by the Engineer or Owner in writing.
- I. For protection of bearings during shipment and installation, the bearing shall be properly processed. Anti-friction bearings, if prelubricated, shall be protected in accordance with the bearing manufacturer's recommendations against formation of rust during a long period of storage while awaiting completion of installation and start-up of the machine in which they are used. Anti-friction bearings, which are not prelubricated, shall be properly treated in accordance with the bearing manufacturer's recommendation against formation of rust during a long period of storage while waiting completion of installation and start-up by the application of Exxon Rust-Ban No. 392, or equal treatment.

1.6 COORDINATION AND RESPONSIBILITY

- A. To assure unity of responsibility, the pumps, motors and sole plates, shall be furnished and coordinated by the pump manufacturer. The Contractor and manufacturer shall assume responsibility for the satisfactory installation and operation of the entire pumping system including pumps, motors, and sole plates, and controls.
- B. The pump manufacturer shall be fully responsible for the design, arrangement, and operation of all connected rotating components, including soleplate(s), if any, of the assembled pumping unit mounted on a fabricated steel base plate, to ensure that neither harmful nor damaging vibrations occur at any speed within the specified operating range., however, shall retain overall responsibility for equipment coordination, installation, testing and operation.
- C. Contractor coordinates sizes and locations of concrete bases with actual equipment provided.

1.7 MAINTENANCE

- A. Furnish all special tools and test equipment required for the proper servicing of all equipment as specified in the Specifications. All such tools and test equipment shall be furnished in a suitable steel tool chest complete with lock and duplicate keys.
- B. All spare parts shall be properly protected for long periods of storage and packed in containers that are clearly identified with indelible markings as to contents.
- C. The manufacturer shall also provide a list of all recommended spare parts which shall include gaskets, packing, etc. for the entire pumping system (pumps, motors, and pump control system). Each item shall list the manufacturer's current price. Bearings shall be listed by the bearing manufacturer's park number.

PART 2 - PRODUCTS

2.1 General:

- A. The pumping unit consists of a pump and a driving motor, a common support base and all necessary accessories such as, but not limited to, couplings, guards, base, and gauges specified or required for satisfactory operation. The pumping units shall be capable of delivering rated capacity at rated head and speed, and capable of operating satisfactorily within the specified pumping range. Pumping units shall have as high efficiency as possible at rated conditions. Each bidder shall submit with his bid a written statement guaranteeing the overall efficiency of the pumping unit furnished, at rated head and rated capacity. The pump, motor, and common support base shall be furnished as a package from one supplier for unit responsibility. All motors shall have horsepower which shall be not less than the maximum horsepower requirement of the pumping unit over the entire range of operation. Wherever the phrase "overall efficiency" appears in the specifications, it shall mean "wire to water efficiency."
- B. Each pump shall be driven by a vertical solid shaft motor.
- C. The pumps and accessory equipment covered by these Specifications shall be new and unused. The pumps furnished shall be manufactured in accordance with the Hydraulic Institute Standards except where otherwise specified herein.
- D. The pump shall be designed and built for 24-hour continuous service at all points within the required range of operation, without overheating, without cavitation, and without excessive vibration or strain. All parts shall be so designed and proportioned as to have liberal strength, stability, and stiffness and to be especially constructed to meet the Specifications. Ample room

and facilities shall be provided for inspection, repairs, and adjustment.

- E. All necessary foundation bolts, nuts, and washers shall be furnished and shall be Type 316 stainless steel.
- F. Each major piece of equipment shall be furnished with a stainless steel nameplate (with embossed data) securely mounted to the body of the equipment. As a minimum, the nameplate for the pumps shall include the manufacturer's name and model number, serial number, rated flow capacity, head, speed, and all other pertinent data.

- G. The pumps shall be manufactured by Flygt/ Xylem or approved equal
- H. The sizes and layouts of the proposed pump suction and discharge piping that include pipes, fittings and valves as shown in the design Drawings are based on the suction and discharge nozzle sizes of Xylem/Flygt LL 3400/706 pumps. Any piping changes by the Contractor for the furnished pumps shall be approved by the Engineer without additional costs to the Owner.

2.2 PUMPS

A. Description:

Furnish all labors, equipment and incidentals required and install the following pumping units:

1. Install four (4) 11,924 gpm @ 29.6 TDH flow pumps, and motors in the wet well.

B. Pump Construction:

1. Pump and Motor Assembly: Hermetically sealed, replaceable-cartridge type with motor and impeller connected on double shaft and designed for installation with pump and motor shaft vertical.
2. Volute/Casing:
 - a. The volute shall be made of high grade, strong close-grain cast iron (equal to or better than ASTM-A48, Class 30), with companion-flange connections. Flanges shall be 125 lbs. flat-faced flanges per ANSI drilling.
 - b. The volute shall be side flanged tangential discharge and capable of rotation in 45° increments to accommodate piping orientation.
 - c. The volute shall be furnished with large cleanout openings located at the impeller centerline, to allow access to the impeller.
 - d. Each casing shall be provided with all necessary vent, drain and gauge connections.
 - e. The pump casing shall be hydrostatically tested to 1.5 times the design head or 1.25 times the shutoff head or 75 psi whichever is greater.
3. Impeller:
 - a. The impeller shall be balanced non-clogging type and shall be statically and dynamically balanced. The impeller shall be cast stainless, ASTM A743-CA6NM, 285 BHN, 12% chrome, and 4% NI, of current manufacture.
 - b. The impeller shall be of one piece, single suction, enclosed; 3-vane mixed flow design with well-rounded leading vanes and then tapered toward the trailing edge for a circular flow pattern.
 - c. The waterways through the impeller will have extremely smooth contours, devoid of sharp corners so as to prevent rags or stringy, fibrous material from catching or clogging. The impeller shall be capable of passing a minimum 3.0" sphere solid size.
 - d. The impeller is to be balanced and secured to the shaft by means of a stainless steel bolt, washer, and key. The arrangement shall be such that the impeller cannot be loosened from torque in either forward or reverse rotation. Wiper vanes on the back impeller shroud are not allowed.
4. Backhead:
 - a. A separately cast close-grained cast iron back head with large access openings and integral sealing box conforming to ASTM A48 Class 30 shall be provided. The sealing box shall be designed for use with a Chesterton 442 split seal with SC/SC faces,

stainless steel hardware and a Spiral Trax bushing. A SS braided vent line shall be provided by the contractor, running from the seal box to the pump suction.

b. A ¾" minimum back head drain tap shall be provided. Sealing box leakage will be collected by the backhead drain through a piped directly to drain.

5. Front Head:

- a. Pump shall be provided with axial style impeller and volute axial type wear rings. Impeller wear ring shall be 300-350 BHN 400 series stainless.
- b. Front head casing shall be protected from grit erosion by a 'Grit Shield' combination 600 Brinell high chrome iron wear ring and angular cast plate. The "Grit Shield" shall utilize "speed bumps" on the circumference to break up the half speed grit and sand rotation occurring in the front head area.

6. Bearing Frame:

- a. The bearing frame shall be close-grained cast iron conforming to ASTM A48 Class 30 and of heavy, rugged design for carrying the bearings and machined for accurate and permanent bearing alignment completely enclosing the shaft between the bearings.
- b. The bearing housing shall be of dust proof design incorporating lip type grease seals in contact with the shaft to prevent the entrance of contaminants. Provisions for external impeller adjustment are required. Zerk type grease fittings for bearing lubrication shall be supplied at the bearing housings.
- c. The bearing frame shall be designed such that the bearing span between bearings shall be equal to or greater than the cantilever overhand between the lower bearing and the impeller centerline

7. Shaft and Accessories:

- a. The pump shaft shall be high-strength alloy steel, A668 AISI 4140 HT; with a minimum 100,000 PSI tensile strength and 75,000 PSI yield strength of sufficient diameter to carry the maximum loads imposed and to prevent vibration and fatigue. The shaft shall be accurately machined along its entire length and precision ground at bearing locations. Keyways shall be provided at both ends.
- b. Radial (inboard) bearings shall be grease lubricated double row spherical roller bearings designed to carry the hydraulic radial loads encountered in the service conditions. Thrust (outboard) bearings shall be an angular contact ball bearings designed to carry the pump hydraulic axial and dead load thrust. Bearing shall be designed for a nominal L10 life of 100,000 hrs. Per AFBMA at best efficiency point.
- c. At the pump end of the line shafting, there shall be one floating shaft coupling of the self-aligning universal joint vertical type as manufactured by the H.S. Watson Company or equal.
- d. The pump manufacturer shall provide adequate protective screening around the rotating shaft and couplings to meet OSHA standards.
- e. The coupling connecting with the motor shall be arranged to transmit the weight of the vertical shafting and couplings to the motor thrust bearing.

8. Pump Support and Gages:

- a. Each pump shall be mounted on a fabricated steel pump support base of sufficient size and strength to support all loads to which it may be subjected. Each frame shall be designed to mount on the concrete supports as shown on the Drawings or designed by the Contractor and approved by the Engineer.

- b. Each motor shall be provided with a fabricated steel high ring base support. Motor support shall be suitable for carry the entire weight of the supplied motor and drive shafting.
- c. Each pump shall be provided with glycerin-filled suction and discharge pressure gauges with a 1/4-in NPT inlet and 4.5-in dials. A 316 stainless steel, oil filled, diaphragm with a 1/2-in NPT inlet, and 1/4-in flushing tap, with T-cock, shall be installed on each gauge. The suction gauges shall be of the compound type to indicate both vacuum and pressure and be graduated to read 15-psi positive pressures and 30in mercury negative pressures. The discharge gauges shall be graduated from 0 to 60 psi. The pressure gauges shall be equal to Figure 1980 Solfrunt standard gauges, Model 150000-4 series, manufactured by Amtek, U.S. Gauge Division. The diaphragm seals shall be equal to Model MSG0103102 seals manufactured by Amtek, Mansfield & Green Division. The gauges shall be connected to the pump suction and discharge. All fittings, bolting, and cocks shall be 316 stainless steel.

9. Fits and Hardware:

- a. The volute casing, front head, back head, and frame shall be manufactured with concentric shoulder fits to assure accurate alignment. All machine bolts, nuts, and cap screws shall be of the hex head type and will not require the use of any special tools.

C. Spare Parts:

Furnish the following spare parts for each size pump

| <u>Quantity</u> | <u>Item</u> |
|-----------------|----------------------------------|
| 1 set per pump | Impeller wear ring |
| 1 set per pump | Radial and thrust bearings |
| 1 set per pump | Mechanical Seal with Spiral Trax |
| 1 set per pump | Pump casing gaskets |

2.3 PUMP MOTORS

A. General:

1. The motors shall be compatible with the furnished pumps in Sections 2.1 and 2.2 of this Specification.
2. All motors shall be built in accordance with latest NEMA, IEEE, ANDI and AFBMA standards where applicable.
3. The motors for the pumps shall be squirrel cage induction type. Motor frames shall be of the VSS, high thrust TEFC, coro-duty design, premium efficiency, 3P/60Hz/460V. Motors shall incorporate a non-reverse ratchet, 120V space heaters, refined balance, and stainless steel hardware. Motors shall be designed for a 50 degree C ambient.
4. Motor frames and end shields shall be cast iron of such design and proportions to hold all motor components rigidly in proper position and provide adequate protection for the type of enclosed employed.
5. Squirrel-cage rotors shall be made from high-grade steel laminations adequately fastened together and to the shaft, or shall be cast aluminum or copper bar-type construction with brazed end rings.

6. The shaft shall be made of high-grade machine steel or steel forging of size and design adequate to withstand the load stresses normally encountered in motors of the particular rating. The output shaft shall be suitable for direct connection to the driven equipment.
7. Motors shall conform to the NEMA Premium Efficiency Electric Motor Program. All motors shall have a minimum guaranteed efficiency of ninety-three percent (93) at full load.
8. Motors shall be totally enclosed fan-cooled construction as called for on the Drawings or elsewhere in these Specifications, with 1.15 service factor.
9. Motors must be designed to accept all up thrust loads imposed by pump during starting and running.
10. Windings shall be adequately insulated and securely braced to resist failure due to electrical stresses and vibrations. Motor shall have a Class F nonhygroscopic insulation system with Class B temperature rise.
11. Bearings of high thrust motors will be locked for momentary upthrust of thirty percent (30%) of the maximum downthrust. All bearings shall have an average S-10 life rating of 100,000 hours in accordance with AFMA lift and thrust values.
12. Conduit boxes shall be gasketed. Lead wires between motor frame and conduit box shall be gasketed.
13. Nameplates shall be stainless steel. Lifting lugs or "O" type bolts shall be supplied on all frames and 254T and larger. Enclosures will have stainless steel screen and motors shall be protected for corrosion, fungus and insects

2.4 CONTROLS

A. Float Switch: Narrow-angle float switch, for installation at designated elevations in wet pit of storm water pumping station.

1. Physical: Polypropylene construction with solid polyurethane foam interior.
2. Durability: Leak-proof, shock proof, and impact resistant; listed for storm water and wastewater applications.
3. Float Material:
4. Electrical Rating: 10 Ampere, 120 Volts.
5. Switch Configuration: Normally-open in the hanging position.
6. Actuation Point: 1" above/below horizontal.
7. Operating Temperature Range: 32 – 170 degrees F
8. Power Cord: 18 AWG, Type SJOOW
9. Suitable for use with intrinsically-safe circuits.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Contractor needs to field examine and measured existing piping system to verify actual locations of connections before pump installation.

3.2 PUMP INSTALLATION

A. Installation shall be in strict accordance with the manufacturer's instructions and recommendations in the locations shown on the Drawings.

- B. The Contractor shall furnish and install an epoxy painted steel pump support sole plate fabricated to approximate dimensions as shown on the Drawings. Pump motor supports sole plate shall be securely anchored to the floor, using approved expansion anchors, leveled and grouted into proper position
- C. The support dimensions and erection procedure shall be adjusted as required, and as reviewed by the Engineer, to match manufacturer's pump base.
- D. Anchor bolts shall be installed in the pump foundation using a bolt layout template supplied by the pump manufacturer.
- E. Installation shall include furnishing and applying an initial supply of all lubricants recommended by the pump manufacturer.

3.3 CONNECTIONS

- A. Comply with requirements for piping specified in Section FDOT Section 430 Pipe Culverts. Drawings indicate general arrangement of piping, fittings, and specialties.
- B. Install piping adjacent to pumps to allow service and maintenance.
- C. Connect stormwater piping to pumps. Install suction and discharge piping equal to or greater than size of pump nozzles.
- D. Install shutoff valve and check valve on discharge side of each centrifugal pump. Install valves same size as connected piping.

3.4 TESTING

A. Certified Factory Tests:

- 1. Witnessed factory testing in accordance with the Latest Standards of the Hydraulic Institute.
- 2. A complete test report for each pump, including certified characteristic curves of the pump, including head, capacity, brake horse power, and pump efficiency, except for NPSH testing, and certified copies of the hydrostatic test report, shall be submitted and approved by the Engineer before the pumps are shipped.
- 3. All gauges and other test instruments shall be calibrated within 60 days of the scheduled test and certified calibration data shall be provided. All Venturi flow meters shall be calibrated within three years of the scheduled test and certified calibration data shall be provided
- 4. The tests shall be performed with pump in vertical position for the centrifugal pumps.

B. Final Acceptance Test:

- 1. After all pumps have been completely installed and working under the directions of the manufacturer, conduct in the presence of the Engineer tests necessary to indicate that pump operation confirms to these Specifications. Filed tests shall include all pumps under this Section. Supply all electric power, water or stormwater, labor, equipment and incidentals required to complete the field tests.
- 2. The Final Acceptance Test shall demonstrate that all items of these Specifications have been met by the equipment installed and shall include, but not be limited to the following tests:

- a. That all units have been properly installed and are in correct alignment.
 - b. That the units operate without overheating or overloading any parts and without objectionable vibration.
 - c. That there are no mechanical defects in any of the parts.
 - d. That the pumps can deliver the specified pressure and quantity.
 - e. That the pumps shall be capable of pumping necessary storm water.
 - f. That the pump sensors and controls perform satisfactorily as to sequence control, correct start and stop elevations, pump alternation and proper high level alarm functions.
3. If the pump performance does not meet these Specifications, corrective measures shall be taken or pumps shall be removed and replaced with pumps which satisfy the conditions specified. A 24-hour operating period of the pumps will be required before acceptance.

3.5 VIBRATION ANALYSIS

- A. The pump manufacturer shall perform a frequency vibration analysis of the pump and pump and pump drive-train rotating assemblies after installation and shall determine and implement at no cost to the Owner, any pump system modifications or corrections required to prevent the occurrence of any potential destructive critical vibrations. No destructive frequency related vibration shall occur over the entire adjustable pumping speed operating range. The pump manufacturer shall submit to the Engineer copies of all vibration analysis performed. If foundation modifications are required to prevent destructive vibrations in the drive-train system, the pump manufacturer shall submit his recommendations to the Engineer for review and approval. Foundation modification shall be implemented at no additional cost to the Owner.

3.6 STARTUP SERVICE

- A. The pump manufacturer authorized service representative shall perform startup service.
1. Complete installation and startup checks according to manufacturer's written instructions.
 2. Check piping connections for tightness.
 3. Clean strainers on suction piping.
 4. Set required pump control equipment for automatic starting and stopping operation of pumps.
 5. Perform the following startup checks for each pump before starting:
 - a. Verify bearing lubrication.
 - b. Verify that pump is free to rotate by hand and that pump for handling hot liquid is free to rotate with pump hot and cold. If pump is bound or drags, do not operate until cause of trouble is determined and corrected.
 - c. Verify that pump is rotating in the correct direction
 6. Prime pump by opening suction valves and closing drains, and prepare pump for operation.
 7. Start motor and pump.

3.7 SHOP PAINTING

- A. All pumping units shall be shop painted.

- B. All unfinished surface shall be trimmed, thoroughly cleaned, and given a coat of first class iron filler, which shall be rubbed down after drying. The filled and rubbed surfaces shall then be given a coat of sealer which will harden and which will not permit oil to damage the filler'
- C. The exterior of the entire pumping unit and accessories, which are normally painted, shall receive two coats of rust inhibitive primer. The primer shall be comparable to the top coats to be used. Two finish coats of high grade paint, 5 dry mil per coat, as recommended by the equipment manufacturers shall be applied for proper protection and to give the equipment a neat finished appearance. The color shall be selected by the Owner.

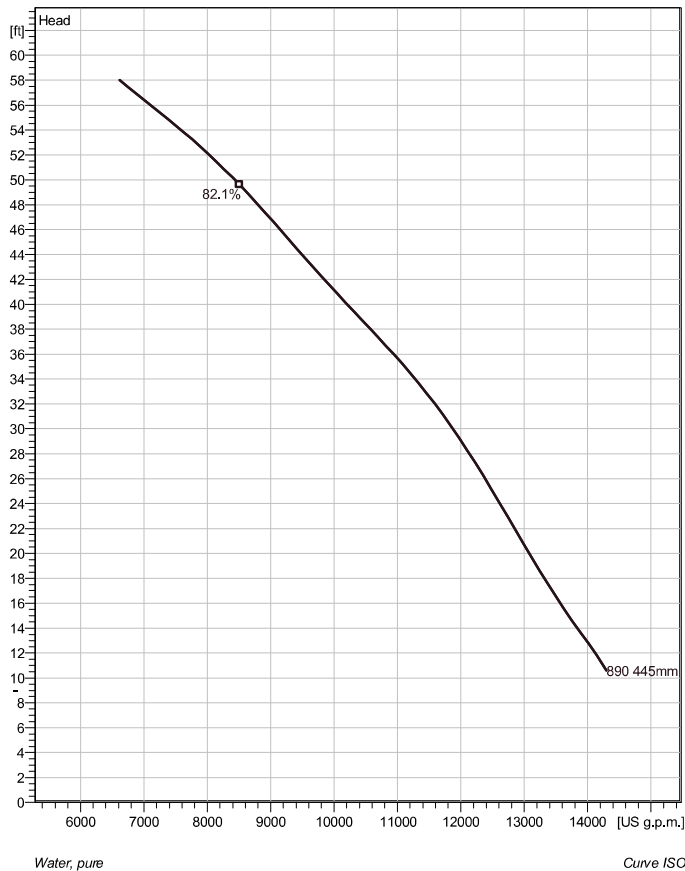
Payment Items: Supply and Installation of pump, motors and appurtenances.

END OF SECTION

PUMP TECHNICAL SPECIFICATION

LL 3400/706 3~ 890

Technical specification



Note: Picture might not correspond to the current configuration.

General

Shrouded single or multi-channel mixed flow impellers with bowl type diffuser pump casing for fibre-free liquids.

Impeller

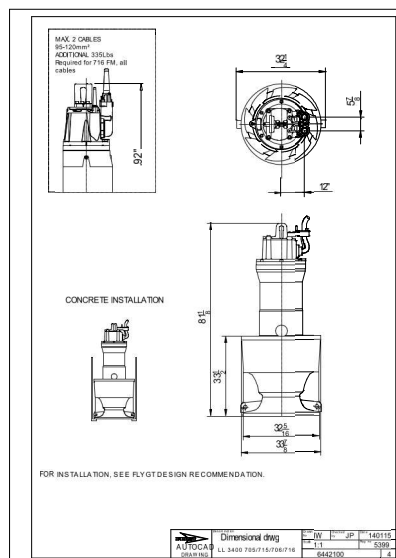
| | |
|-------------------------|----------------|
| Impeller material | Grey cast iron |
| ColDia | 35 7/16 inch |
| Suction Flange Diameter | |
| Impeller diameter | 445 mm |
| Number of blades | 3 |
| Throughlet diameter | 4 1/8 inch |

Motor

| | |
|------------------|--------------------------------------|
| Motor # | L0706.000 43-30-8ID-W 135hp Standard |
| Stator variant | 1 |
| Frequency | 60 Hz |
| Rated voltage | 460 V |
| Number of poles | 8 |
| Phases | 3~ |
| Rated power | 135 hp |
| Rated current | 172 A |
| Starting current | 710 A |
| Rated speed | 880 rpm |
| Power factor | |
| 1/1 Load | 0.79 |
| 3/4 Load | 0.75 |
| 1/2 Load | 0.66 |
| Motor efficiency | |
| 1/1 Load | 92.9 % |
| 3/4 Load | 93.6 % |
| 1/2 Load | 93.6 % |

Configuration

Installation: L - Column pipe Semi permanent, Wet



| | | | | |
|---------|------------|------------|------------|-------------|
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| | | | 3/18/2019 | |

LL 3400/706 3~ 890

Performance curve



Pump

ColDia
Suction Flange Diameter
Impeller diameter
Number of blades
Throughlet diameter

35 7/16 inch
17 1/2"
3
4 1/8 inch

Motor

Motor #

Stator variant
Frequency
Rated voltage
Number of poles
Phases
Rated power
Rated current
Starting current
Rated speed

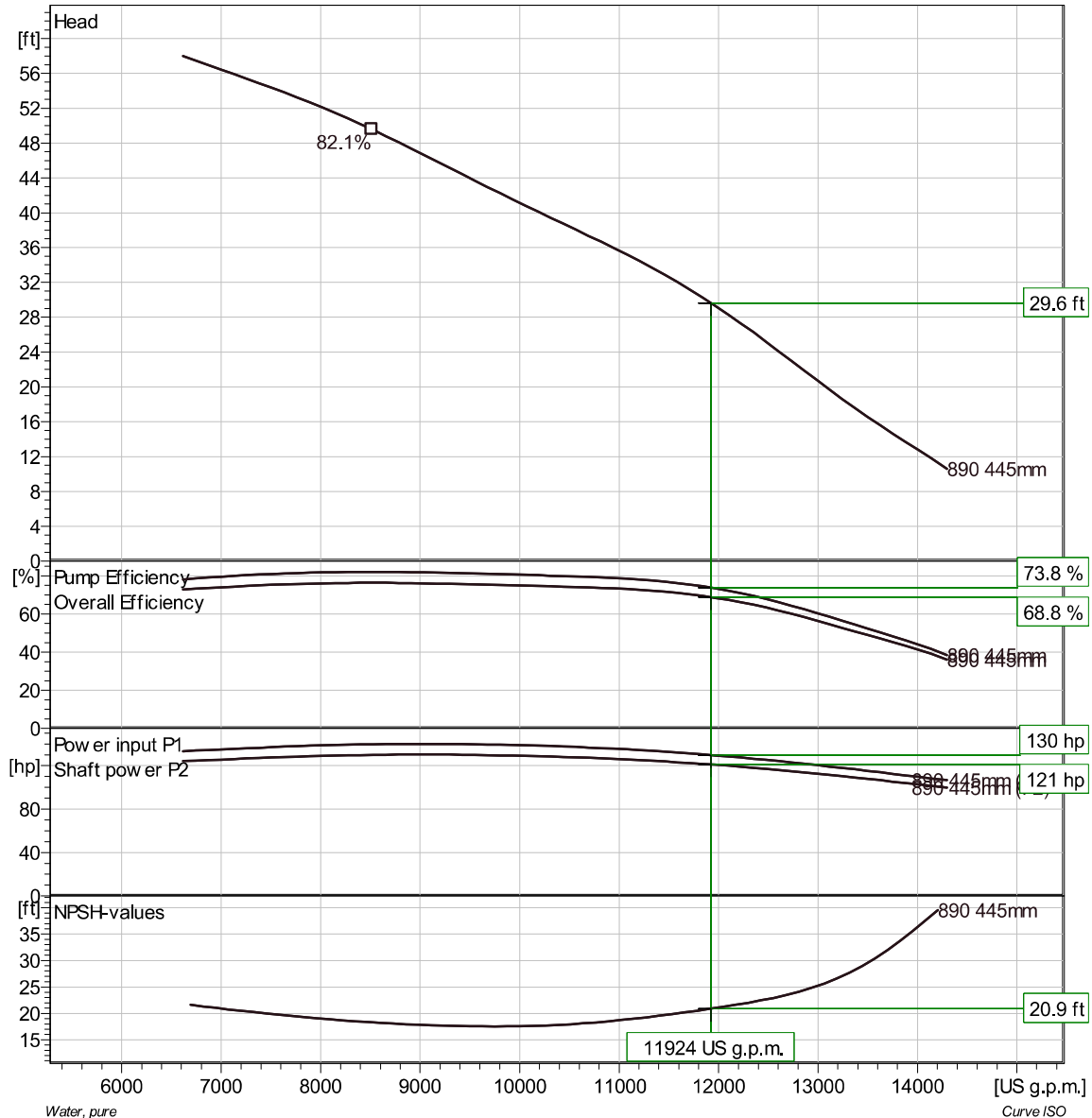
L0706.000 43-30-8ID-W 135hp
1
60 Hz
460 V
8
3~
135 hp
172 A
710 A
880 rpm

Power factor

1/1 Load 0.79
3/4 Load 0.75
1/2 Load 0.66

Motor efficiency

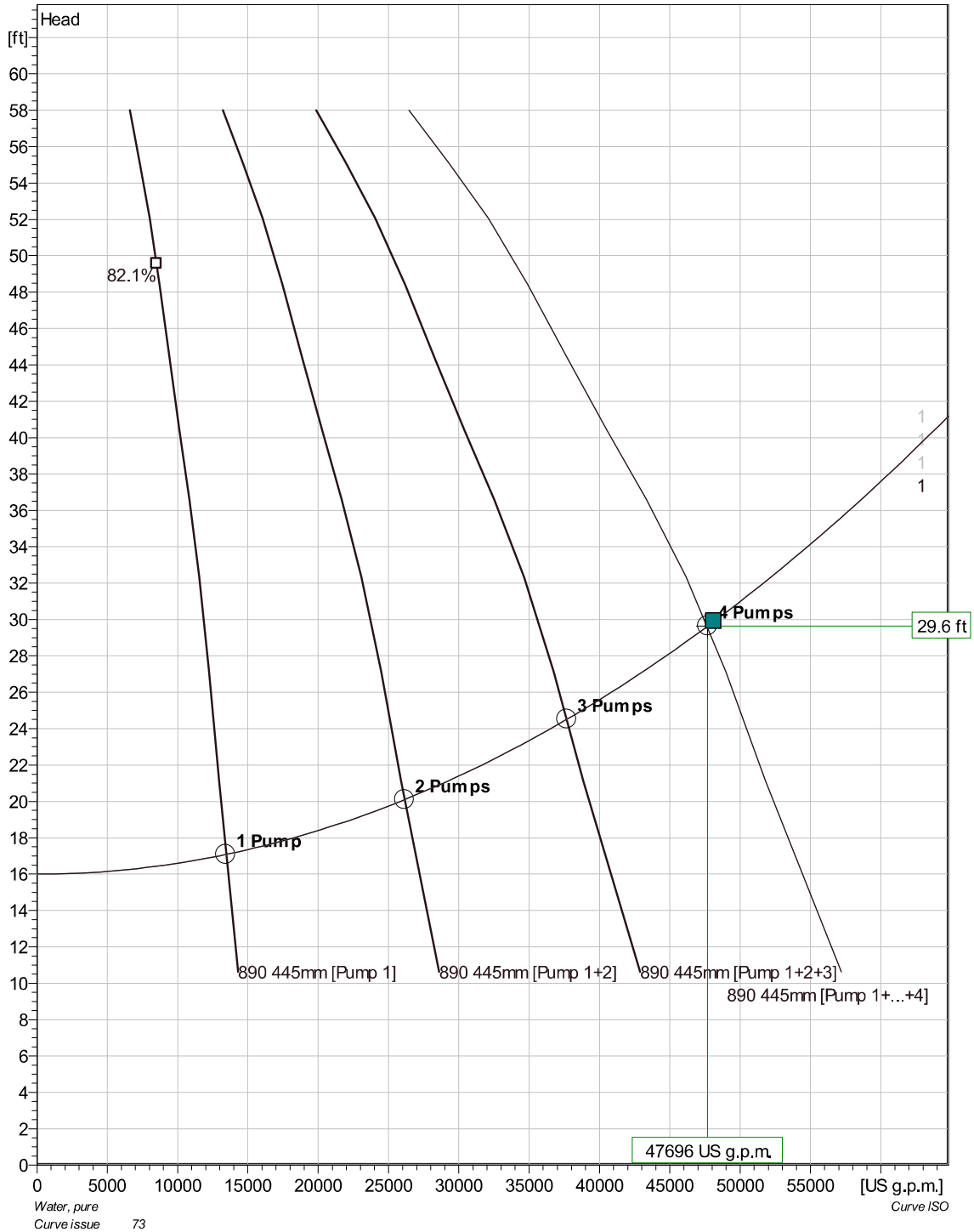
1/1 Load 92.9 %
3/4 Load 93.6 %
1/2 Load 93.6 %



| Duty point | Guarantee |
|-----------------|-----------|
| Flow | Head |
| 12000 US g.p.m. | 29.9 ft |
| | No |

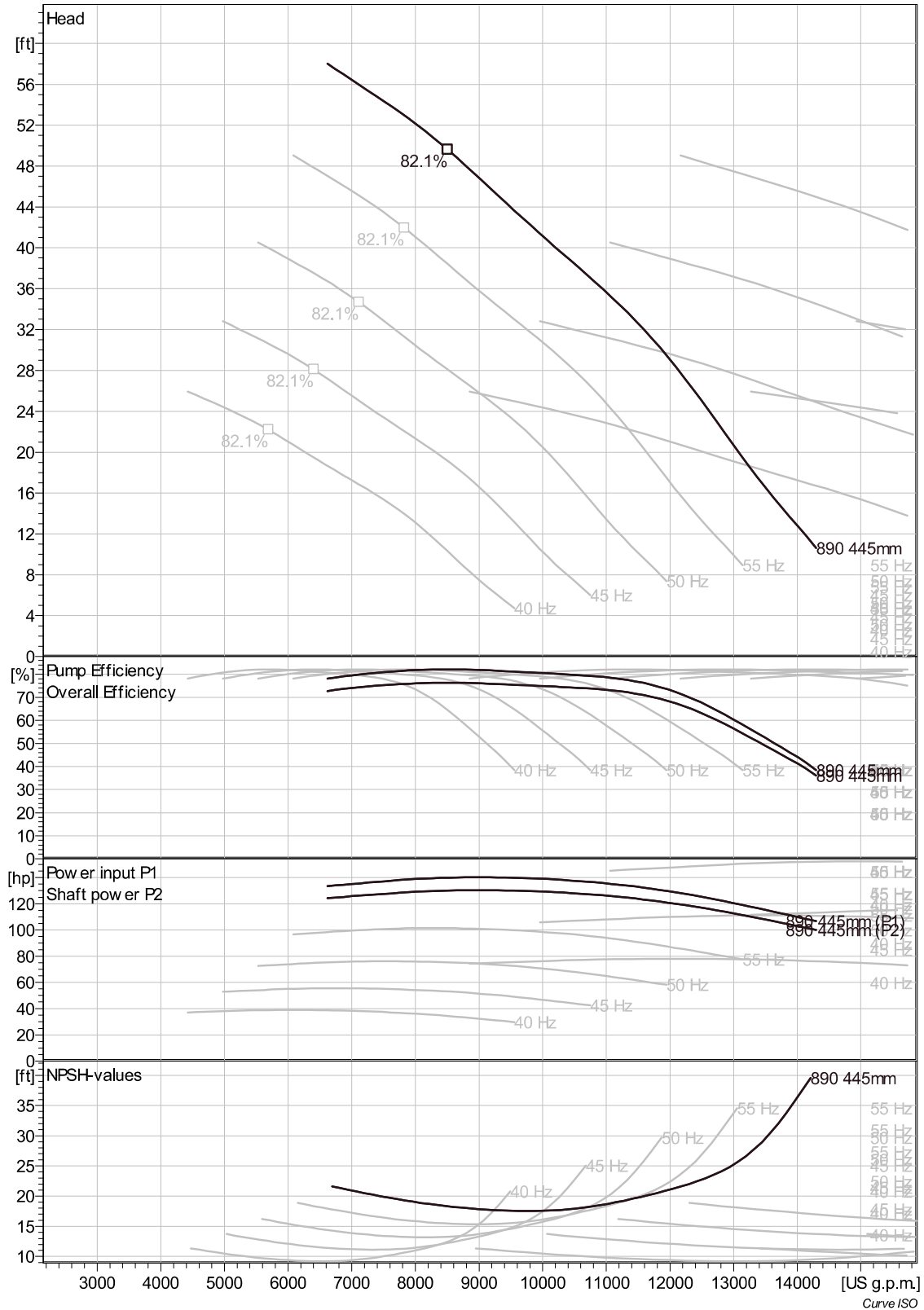
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LL 3400/706 3~ 890 Duty Analysis



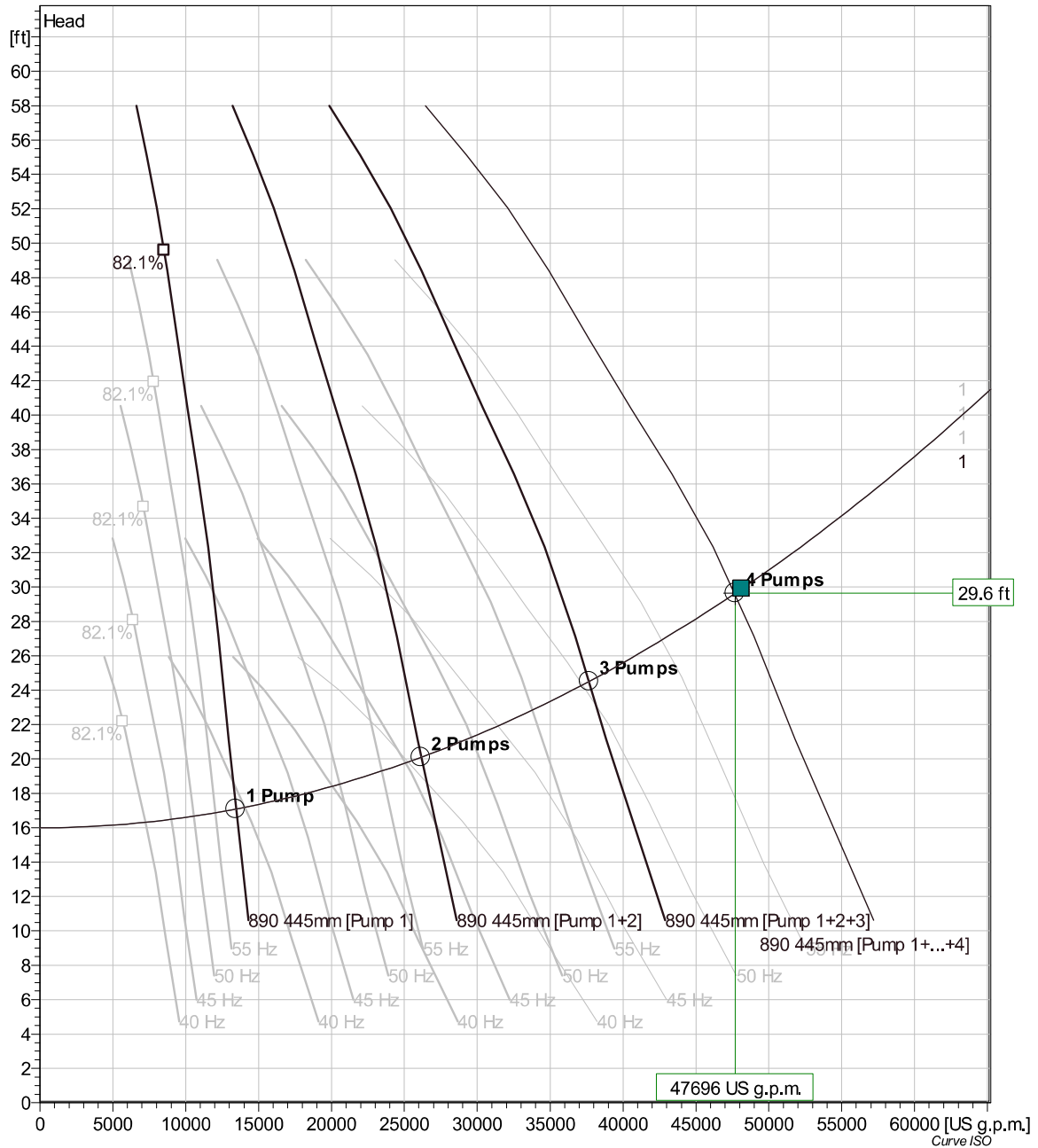
| Pumps
running
/System | Individual pump | | | Total | | | | | | |
|-----------------------------|-----------------|-----------------|-------------|--------|-----------------|-------------|-----------|-----------------|--------------------|---------|
| | Flow | Head | Shaft power | Flow | Head | Shaft power | Pump eff. | Specific energy | NPSH _{re} | |
| | 4 / 1 | 11900 US g.p.m. | 29.6 ft | 121 hp | 47700 US g.p.m. | 29.6 ft | 485 hp | 73.8 %25 | 135 kWh/US MG | 20.9 ft |
| | 3 / 1 | 12600 US g.p.m. | 24.5 ft | 117 hp | 37700 US g.p.m. | 24.5 ft | 350 hp | 66.8 %25 | 123 kWh/US MG | 23 ft |
| | 2 / 1 | 13100 US g.p.m. | 20.1 ft | 112 hp | 26100 US g.p.m. | 20.1 ft | 224 hp | 59.3 %25 | 114 kWh/US MG | 25.7 ft |
| | 1 / 1 | 13400 US a.b.m. | 17.1 ft | 109 hp | 13400 US a.b.m. | 17.1 ft | 109 hp | 53.5 %25 | 107 kWh/US MG | 28.8 ft |
| Project | | | Project ID | | | Created by | | Created on | Last update | |
| | | | | | | | | 3/18/2019 | | |

LL 3400/706 3~ 890 VFD Curve



| | | | | |
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LL 3400/706 3~ 890 VFD Analysis

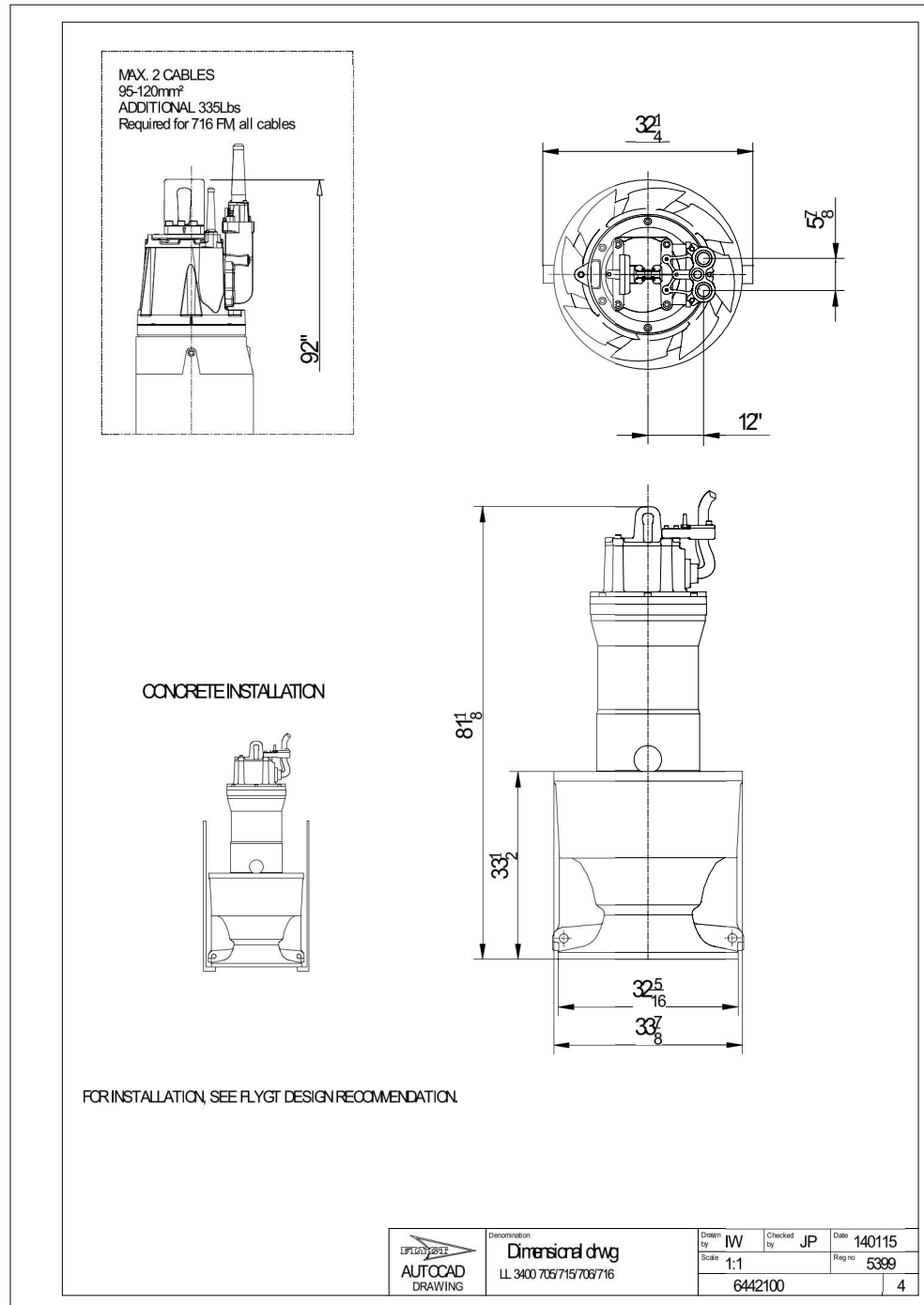


| Pumps running /System | Frequency | Flow | Head | Shaft power | Flow | Head | Shaft power | Hyd eff. | Specific energy | NPSHre |
|-----------------------|------------|-----------------|------------|-------------|-----------------|---------|-------------|----------|-----------------|----------|
| 4 / 1 | 60 Hz | 11900 US g.p.m. | 29.6 ft | 121 hp | 47700 US g.p.m. | 29.6 ft | 485 hp | 73.8 %25 | 135 kWh/US MG | 20.9 ft |
| 4 / 1 | 55 Hz | 10700 US g.p.m. | 26.9 ft | 95.7 hp | 42700 US g.p.m. | 26.9 ft | 383 hp | 76 %25 | 119 kWh/US MG | 17.5 ft |
| 4 / 1 | 50 Hz | 9320 US g.p.m. | 24.3 ft | 73.3 hp | 37300 US g.p.m. | 24.3 ft | 293 hp | 78.2 %25 | 104 kWh/US MG | 14.2 ft |
| 4 / 1 | 45 Hz | 7860 US g.p.m. | 21.9 ft | 54.6 hp | 31400 US g.p.m. | 21.9 ft | 218 hp | 79.8 %25 | 92.8 kWh/US MG | 11.3 ft |
| 4 / 1 | 40 Hz | 6310 US g.p.m. | 19.8 ft | 39 hp | 25300 US g.p.m. | 19.8 ft | 156 hp | 81.3 %25 | 83.6 kWh/US MG | 9.24 ft |
| 3 / 1 | 60 Hz | 12600 US g.p.m. | 24.5 ft | 117 hp | 37700 US g.p.m. | 24.5 ft | 350 hp | 66.8 %25 | 123 kWh/US MG | 23 ft |
| 3 / 1 | 55 Hz | 11300 US g.p.m. | 22.9 ft | 92.4 hp | 33800 US g.p.m. | 22.9 ft | 277 hp | 70.5 %25 | 109 kWh/US MG | 19.1 ft |
| 3 / 1 | 50 Hz | 9880 US g.p.m. | 21.3 ft | 71.2 hp | 29600 US g.p.m. | 21.3 ft | 214 hp | 74.6 %25 | 95.7 kWh/US MG | 15.4 ft |
| 3 / 1 | 45 Hz | 8370 US g.p.m. | 19.8 ft | 53.5 hp | 25100 US g.p.m. | 19.8 ft | 160 hp | 78.3 %25 | 85.4 kWh/US MG | 12 ft |
| 3 / 1 | 40 Hz | 6990 US g.p.m. | 18.4 ft | 38.7 hp | 20100 US g.p.m. | 18.4 ft | 116 hp | 80.5 %25 | 78.4 kWh/US MG | 9.23 ft |
| 2 / 1 | 60 Hz | 13100 US g.p.m. | 20.1 ft | 112 hp | 26100 US g.p.m. | 20.1 ft | 224 hp | 59.3 %25 | 114 kWh/US MG | 25.7 ft |
| 2 / 1 | 55 Hz | 11700 US g.p.m. | 19.3 ft | 89.2 hp | 23400 US g.p.m. | 19.3 ft | 178 hp | 64.1 %25 | 101 kWh/US MG | 20.8 ft |
| 2 / 1 | 50 Hz | 10300 US g.p.m. | 18.5 ft | 69.1 hp | 20600 US g.p.m. | 18.5 ft | 138 hp | 69.8 %25 | 89.2 kWh/US MG | 16.6 ft |
| 2 / 1 | 45 Hz | 8770 US g.p.m. | 17.8 ft | 52.3 hp | 17500 US g.p.m. | 17.8 ft | 105 hp | 75.7 %25 | 79.7 kWh/US MG | 12.8 ft |
| 2 / 1 | 40 Hz | 7020 US g.p.m. | 17.2 ft | 38.3 hp | 14000 US g.p.m. | 17.2 ft | 76.6 hp | 79.7 %25 | 73.9 kWh/US MG | 9.41 ft |
| Project | Project ID | Created by | Created on | Last update | | | | | | |
| 1 / 1 | 40 Hz | 7260 US g.p.m. | 16.3 ft | 37.9 hp | 7260 US g.p.m. | 16.3 ft | 37.9 hp | 79 %25 | 70.9 kWh/US MG | 9.6 / ft |

PUMP
DIMENSION
SHEET

LL 3400/706 3~ 890

Dimensional drawing

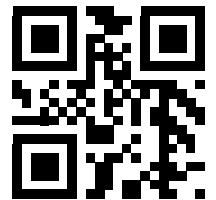


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| Project | Project ID | Created by | Created on | Last update |
| | | | 3/18/2019 | |

PUMP SPECIFICATIONS

Technical Specification

884322_5.0



L3356, L3400, L3602

LARGE SUBMERSIBLE PUMPS

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1 Product Description

1.1 Product overview

Submersible pump for pumping water and wastewater containing solids or long-fibred material.

Installation

L-installation

Accessories

Mechanical accessories which are available include the following:

- Cable handling systems
- Lifting equipment

Electrical accessories which are available include the following:

- Pump controller
- Control panels
- Starters
- MAS and other monitoring relays

See your local sales and service representative for further information.

Options

The following options are available:

- Zinc anodes for corrosion protection
- Special coating system (with epoxy base coat) for demanding environments
- Power monitoring
- Monitoring options for temperature, vibration and water in the oil housing

1.2 Materials

Impeller

Table 1: L3356, L3400

| Material | Internal material number | Standard | |
|------------------------|--------------------------|------------------------|------------------------|
| | | Europe | USA |
| Cast iron | M0314.0125.00 | EN 1561
No. JL 1040 | ASTM-A 48
– No 35 B |
| Duplex stainless steel | M0344.2324.12 | EN 10283
No. 1.4474 | ASTM (CD-4MCuN) |

Table 2: L3602

| Material | Internal material number | Standard | |
|------------------------|--------------------------|------------------------|------------------------|
| | | Europe | USA |
| Cast iron | M0314.0125.00 | EN 1561
No. JL 1040 | ASTM-A 48
– No 35 B |
| Duplex stainless steel | M0344.2324.12 | EN 10283
No. 1.4474 | ASTM (CD-4MCuN) |

Pump housing

Table 3: L3356, L3400, L3602

| Material | Internal material number | Standard | |
|-----------|--------------------------|------------------------|------------------------|
| | | Europe | USA |
| Cast iron | M0314.0125.00 | EN 1561
No. JL 1040 | ASTM-A 48
– No 35 B |

Mechanical face seals

The inner seal is always corrosion resistant cemented tungsten carbide (WCCR). The outer seal can be either corrosion resistant cemented tungsten carbide (WCCR), or corrosion resistant silicon carbide (RSiC).

| Seal | Material, rotating ring | Material, stationary ring |
|-------|--|---------------------------|
| Inner | Corrosion resistant cemented tungsten carbide (WCCR) | WCCR |
| Outer | WCCR | WCCR |
| | Corrosion resistant silicon carbide (RSiC) | RSiC |

Drive unit shaft

| Material | Internal material number | Standard | |
|-----------------------------|--------------------------|--------------------------|---------------|
| | | Europe | USA |
| Martensitic stainless steel | M0344.2321.03 | EN 10088-3
No. 1.4057 | ASTM/AISI 431 |
| Duplex stainless steel | M0344.2324.02 | EN 10088-3
No. 1.4460 | ASTM/AISI 329 |

O-rings

| Material | Internal material number | Standard | |
|------------------------|--------------------------|----------|-----|
| | | Europe | USA |
| Nitrile rubber 70° IRH | M0516.2637.04 | – | – |

Coating system

The following table describes the two variants of paint systems available for the pump, Standard and Special. The choice of coating system depends upon the service environment.

| Coating system | Basecoat | Topcoat | Total dry film thickness |
|------------------|--|--------------------------------|--------------------------|
| Standard | Acrylic (waterborne)
or
alkyd (solventborne) | Oxirane ester, 2-pack | 120–350 µm |
| Special (option) | Epoxy, 2 layers | Oxirane ester, 2-pack, 1 layer | 350–700 µm |

Other coating systems are available for special requirements such as drinking water, high temperature, or erosion applications. See the Xylem internal standard M0700.00.0001 (Coating Selection Guidelines).

1.3 Mounting-related data

Depth of immersion

The maximum depth of immersion is 20 m (65 ft).

Weight

See the dimensional drawing for pump weights.

Cables**Table 4: L3356**

| | |
|---------|--|
| SUBCAB™ | Maximum voltage 600–1000 V, intended for drive units up to 1 kV. Consult Xylem for the cable dimensions. |
|---------|--|

Table 5: L3400, L3602

| | |
|--------------|--|
| SUBCAB™ | Maximum voltage 600–1000 V, intended for drive units up to 1 kV. Consult Xylem for the cable dimensions. |
| NTSCGEWTOEUS | For use with medium voltage (1.2–6.6 kV) drive units. Consult Xylem for the cable dimensions. |

Engineering data

Performance curves, motor data, and dimensional drawings are available from the local sales and service representative.

Impeller throughlet

| Pump | Throughlet | |
|-------|------------|------|
| | mm | Inch |
| L3356 | 102 | 4.02 |
| L3400 | 105 | 4.13 |
| L3602 | 126 | 4.96 |

1.4 Drive units**L3356**

| Voltage range | Standard drive units | Ex-proof drive units | Maximum number of starts per hour |
|---------------|----------------------|----------------------|-----------------------------------|
| Up to 1 kV | 605 | 615 | 15 |
| | 665 | 675 | 15 |
| Up to 1 kV | 705 | 715 | 15 |
| | 735 | 745 | 15 |
| | 765 | 775 | 15 |
| Up to 1 kV | 706 | 716 | 10 |
| | 736 | 746 | 10 |
| | 766 | 776 | 10 |

L3400

| Voltage range | Standard drive units | Ex-proof drive units | Maximum number of starts per hour |
|---------------|----------------------|----------------------|-----------------------------------|
| Up to 1 kV | 705 | 715 | 15 |
| | 735 | 745 | 15 |
| | 765 | 775 | 15 |
| Up to 1 kV | 706 | 716 | 10 |
| | 736 | 746 | 10 |
| | 766 | 776 | 10 |

| Voltage range | Standard drive units | Ex-proof drive units | Maximum number of starts per hour |
|---------------|----------------------|----------------------|-----------------------------------|
| Up to 1 kV | 805 | 815 | 15 |
| | 835 | 845 | 15 |
| | 865 | 875 | 15 |
| Up to 1 kV | 806 | 816 | 10 |
| | 836 | 846 | 10 |
| | 866 | 876 | 10 |
| 1.2–6.6 kV | 862 | 872 | 15 |
| | 882 | 892 | 10 |
| 1.2–6.6 kV | 863 | 873 | 10 |
| | 883 | 893 | 10 |

L3602

| Voltage range | Standard drive units | Ex-proof drive units | Maximum number of starts per hour |
|---------------|----------------------|----------------------|-----------------------------------|
| Up to 1 kV | 735 | 745 | 15 |
| | 765 | 775 | 15 |
| Up to 1 kV | 736 | 746 | 10 |
| | 766 | 776 | 10 |
| Up to 1 kV | 805 | 815 | 15 |
| | 835 | 845 | 15 |
| | 865 | 875 | 15 |
| Up to 1 kV | 806 | 816 | 10 |
| | 836 | 846 | 10 |
| | 866 | 876 | 10 |
| Up to 1 kV | 905 | 915 | 10 |
| | 935 | 945 | 10 |
| Up to 1 kV | 906 | 916 | 10 |
| | 936 | 946 | 10 |
| 1.2–6.6 kV | 862 | 872 | 15 |
| | 882 | 892 | 10 |
| 1.2–6.6 kV | 863 | 873 | 10 |
| | 883 | 893 | 10 |

2 Operational Data

2.1 Application limits

Table 6: Process data

| Parameter | Value |
|---------------------|--|
| Liquid temperature | Max. +40°C (+105°F) |
| Depth of immersion | Max. 20 m (65 ft) |
| pH of pumped liquid | pH 5.5–14 |
| Liquid density | Max. 1100 kg/m ³ (9.17 lb per gal.) |

2.2 Motor data

Motor characteristics

| Feature | Description |
|--------------------------------------|-------------------|
| Frequency | 50 Hz or 60 Hz |
| Stator insulation class | H (180°C [356°F]) |
| Voltage variation | Max. +/- 10% |
| Voltage imbalance between the phases | 2% |

Motor encapsulation

Motor encapsulation is in accordance with IP68.

2.3 Monitoring systems

The pump is designed to be used with the following monitoring systems:

- MAS 801
- MAS 711

2.3.1 Comparison of MAS 801 and MAS 711

Drive units up to 1 kV

| Description | | MAS 801 | MAS 711 |
|-------------------------------|---|---|--|
| Signal cable | | Built into the motor cable. | Separate signal cable ⁽¹⁾ , with 12 or 24 leads, is needed. |
| PEM | | Standard | N/A |
| Pump current, 1 phase | | Standard | A current transformer in the control cabinet is needed. |
| Pump current, 3 phase | | A current transformer in the control cabinet is needed. | A current transformer in the control cabinet is needed. |
| Power monitoring | PAN 312 | Optional. Separate electronic instrument with three current transformers. | |
| Vibration in three directions | Micro electro mechanical sensor (MEMS) built into PEM | Standard | N/A |
| Vibration in one direction | VIS 10 | N/A | Optional ⁽²⁾ |

| Description | | MAS 801 | MAS 711 |
|--|--|-----------------|-------------------------|
| Leakage in the junction box | Float switch leakage sensor, FLS | Standard | Standard |
| Stator winding temperature in one phase | Pt100 analog temperature sensor in one stator winding | Standard | Standard |
| Stator winding temperature | Thermal contacts (3) | Standard | Standard |
| Thermal contacts or PTC thermistors | PTC thermistors (3) | Optional | Optional |
| Stator winding temperature in phases 2 and 3 | Pt100 analog temperature sensors in two more stator windings | Optional | Optional ⁽²⁾ |
| Main bearing temperature | Pt100 analog temperature sensor | Standard | Standard |
| Leakage in the stator housing or inspection chamber | Float switch leakage sensor (FLS) | Standard | Standard |
| Water in oil: Not applicable for EX drive units, or drive units with internal closed-loop cooling. | Capacitive leakage sensor (CLS) | Optional | Optional ⁽²⁾ |
| Support bearing temperature | Pt100 analog temperature sensor | Optional | Optional ⁽²⁾ |
| Pump memory | | Included in PEM | Standard |
| ⁽¹⁾ Also known as auxiliary, control, or pilot cable. | | | |
| ⁽²⁾ The signal cable must have 24 leads. | | | |

Drive units 1.2–6.6 kV

| Description | | MAS 801 | MAS 711 |
|---|---|---|--|
| Signal cable | | Built into the motor cable. | Separate signal cable ⁽¹⁾ , with 24 leads, is needed. |
| PEM | | Standard | N/A |
| Pump current, 1 phase | | Standard | A current transformer in the control cabinet is needed. |
| Pump current, 3 phase | | A current transformer in the control cabinet is needed. | A current transformer in the control cabinet is needed. |
| Power monitoring | PAN 312 | Optional. Separate electronic instrument with three current transformers. | |
| Vibration in three directions | Built into PEM | Standard | N/A |
| Vibration in one direction | VIS 10 | N/A | Optional |
| Leakage in the junction box | Float switch leakage sensor (FLS) | Standard | Standard |
| Stator winding temperature | PTC thermistors: 3+3 ⁽³⁾ | Standard | Standard |
| Stator winding temperature in phases 1, 2 and 3 | Pt100 analog temperature sensors in each stator winding: 3+3 ⁽³⁾ | Standard | Standard |
| Main bearing temperature | Pt100 analog temperature sensor | Standard | Standard |
| Leakage in the stator housing | Float switch leakage sensor (FLS) | Standard | Standard |

| Description | | MAS 801 | MAS 711 |
|--|---------------------------------|-----------------|----------|
| Water in oil: Not applicable for EX drive units, or drive units with internal closed-loop cooling. | Capacitive leakage sensor (CLS) | Optional | Optional |
| Support bearing temperature | Pt100 analog temperature sensor | Optional | Optional |
| Pump memory | | Included in PEM | Standard |
| (1) Also known as auxiliary, control, or pilot cable. | | | |
| (3) 6 total: 3 sensors are connected and 3 are built-in spares. | | | |

Stator winding temperature

MAS 801 and MAS 711 offer the same monitoring configurations for stator winding temperature. They are shown in the following table.

Table 7: Stator winding temperature, monitoring configurations

| Drive units | Sensors in coil ends of stator windings | Additional sensors, which are incorporated in the stator windings: | |
|-------------|---|--|--|
| | | Always present | Extra option |
| Up to 1 kV | One of the following choices: <ul style="list-style-type: none"> Standard: 3 thermal contacts Optional: 3 PTC thermistors | Standard: Pt100 analogue temperature sensor in 1 stator winding | Optional: Pt100 analogue temperature sensors in 2 more stator windings |
| 1.2–6.6 kV | PTC thermistors (3+3)
3 sensors are connected in series, and 3 are built-in reserves. | Pt100 analogue temperature sensors in all 3 stator windings (3+3)

Each winding has 1 sensor that is connected, and one sensor that is a built-in reserve. | |

2.4 Monitoring with MAS 801

Pumps with the standard MAS 801 equipment are mounted with the following items:

- Thermal contacts or PTC thermistors for stator winding temperature monitoring (3 in series)
- Leakage sensor in the stator housing
- Leakage sensor in the junction box
- Pt100 sensor for main bearing temperature monitoring
- Pt100 sensor for stator winding temperature in one phase
- Vibration in three directions
- Current transformer for pump current and frequency measurement

The following options are possible with MAS 801:

- Pt100 sensors for stator winding temperature measurement in phases 2 and 3
- Pt100 sensor for support bearing temperature measurement
- Leakage sensor in the oil housing (CLS)

Optional monitoring channels by using power analyzer PAN 312

- Three-phase power
- Power factor
- System voltage
- Voltage imbalance
- Pump current
- Current imbalance

2.4.1 System overview

The MAS 801 is a monitoring system that protects the pumps, by using measurements from pump sensors and measurement modules. The system offers considerable functionality for the benefit of different user categories:

- A graphical user interface, the configuration and analysis tool, for computer and HMI
- Local and remote presentation of pump status, key data, and alarms
- Analysis and troubleshooting that is based on graph functions, alarm lists, and black boxes
- Service reminders and reporting
- Configuration of the system and monitoring channels
- Protocols for communication with external automation electronics, SCADA, and cloud applications

The system consists of a central unit a base unit, a pump electronic module, and an HMI.

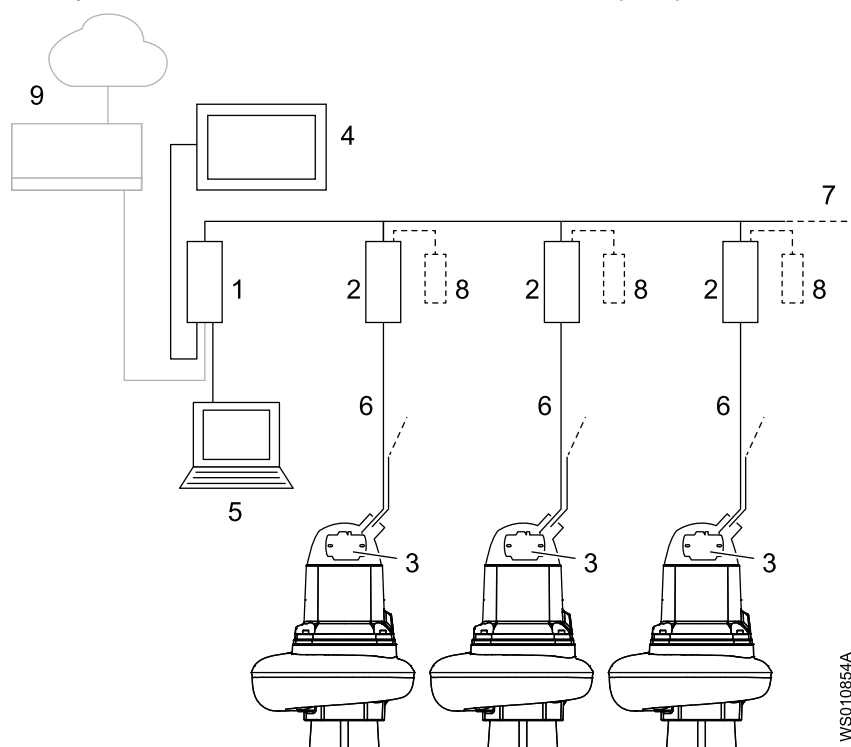


Table 8: Parts

| Number | Part | Product name | Description |
|--------|------------------------------|--------------|--|
| 1 | Central unit (CU) | MAS CU 801 | The central unit communicates with all base units in the system, up to the maximum ten base units. The central unit includes the configuration and analysis tool, embedded webpages, that is used to interact in the system. The central unit is typically installed in an electrical cabinet. |
| 2 | Base unit (BU) | MAS BU 811 | The base unit communicates data between the pump electronic module and the central unit. If needed, for pump protection, the base unit stops the pump. The base unit is typically installed in an electrical cabinet. |
| 3 | Pump electronic module (PEM) | MAS PEM 811 | The pump electronic module communicates with the base unit and contains factory settings, specific to the individual pump. It is connected to the pump sensors and stores measured data. The pump electronic module is mounted in the pump junction box. |

| Number | Part | Product name | Description |
|--------|-------------------------------|--------------|--|
| 4 | Human-machine interface (HMI) | FOP 402 | The HMI is connected to the central unit and displays the configuration and analysis tool, for user interaction. The HMI is typically front-mounted in an electrical cabinet door. |
| 5 | Computer | - | A computer can be connected to the central unit locally or remotely, and displays the configuration and analysis tool, for user interaction. |
| 6 | Two-wire communication | - | Bus communication between the pump electronic module and the base unit in a SUBCAB® cable. The bus communication is tolerant to electromagnetic interference. |
| 7 | DeviceNet | - | Communication bus connecting the central unit with base units. |
| 8 | Power analyzer, optional | PAN 312 | Measures power, power factor, current in three phases, voltage in three phases, voltage imbalance, energy |
| 9 | Controller SCADA system | - | Not part of the MAS 801 system. MAS 801 uses open protocol for communication with external controller or SCADA systems. |

Communication

Measurements and pump information are transmitted over the two wires from each pump electronic module. The data goes through the base unit and further on to the central unit over the DeviceNet bus. This way two equal databases (CU and PEM) of pump information are continually updated securing redundancy and providing different access possibilities.

2.5 Monitoring with MAS 711

With the Flygt MAS 711 monitoring system, the parameters that are tracked can include the following:

- Temperature: main and support bearings, stator windings
- Vibration
- Leakage: in stator housing, junction box, and water into oil chamber
- Power monitoring

Table 9: Parameters monitored

| Description | Sensor | Standard or optional |
|-------------------------------|---|----------------------|
| Pump memory | Printed circuit board for pump memory includes a temperature sensor. | Standard |
| Leakage in the junction box | Float switch leakage sensor, FLS | Standard |
| Main bearing temperature | Pt100 analogue temperature sensor | Standard |
| Leakage in the stator housing | Float switch leakage sensor, FLS | Standard |
| Stator winding temperature | See the following table. | Standard |
| Support bearing temperature | Pt100 analogue temperature sensor | Optional |
| Water in oil | Capacitive leakage sensor (CLS) | Optional |
| Vibration | VIS 10 | Optional |
| Power monitoring | Separate electronic instrument which uses three current transformers. | Optional |
| Pump current | A current transformer in the control cabinet is required. | |

Xylem |'zīləm|

- 1) The tissue in plants that brings water upward from the roots;
- 2) a leading global water technology company.

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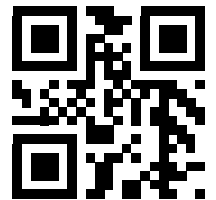
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PUMP O&M



L3356, L3400, L3602

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