

**AGREEMENT AMENDMENT
DESOTO COUNTY
ENGINEERING SERVICES – ENGINEER OF RECORD
Solicitation # 20-17-00RFP**

THIS AGREEMENT AMENDMENT is made this _____ day of _____, 2023, between the **BOARD OF COUNTY COMMISSIONERS, DESOTO COUNTY, FLORIDA**, a Political Subdivision of the State of Florida hereinafter referred to as ("COUNTY") whose address is 201 E. Oak Street, Suite 201, Arcadia, Florida 34266; and **THE WEILER ENGINEERING CORPORATION**, a Corporation, authorized to do business in the State of Florida, hereinafter referred to as ("CONSULTANT"), whose address is 201 West Marion Avenue, Suite 1360, Punta Gorda, Florida 33950.

WHEREAS, an Agreement was entered into on the 19th day of October 2020, between COUNTY and CONSULTANT for DeSoto County's Engineering Services – Engineer of Record, and;

WHEREAS, the original Agreement entered into on the 19th day of October 2020, stated an initial period of **THREE (3)** years with an option to renew for **TWO (2)** additional years **ONE (1)** year at a time upon mutual consent of both parties, and;

WHEREAS, the COUNTY and CONSULTANT desire to amend the original Agreement entered into on the 19th day of October 2020, utilizing the first **ONE (1)** year renewal, extending this Agreement to October 19, 2024, retroactively.

WHEREAS, the Federal Emergency Management Agency, (FEMA) has recently updated their General Conditions, the attached General Conditions are now replacing the General Conditions as referenced in the original Agreement in the event of an emergency, and;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree to amend the Agreement for Engineering Services – Engineer of Record and extend it for another year.

SECTION 1. INCORPORATION BY REFERENCE. The foregoing "Whereas" clauses are hereby incorporated by reference and affirmed and ratified by the parties as true; and;

SECTION 2. TIME OF PERFORMANCE.

By the signing of this Amendment, the CONSULTANT hereby agrees to fully and completely perform the Scope of Services until October 19, 2024.

SECTION 3. The CONSULTANT shall comply with all specific completion dates and sequences indicated in the Scope of Work. In the event the Work is entirely or partly suspended, delayed, or otherwise hindered by any cause whatsoever, the CONSULTANT shall make no claims for additional compensation or damages owing to such suspensions, delays or hindrances. Such suspensions, delays or hindrances may only be compensated for by an extension of time as the COUNTY may decide. However, such extension shall not operate as a waiver of any rights of the COUNTY.

SECTION 4. All other provisions of the October 19, 2020, Agreement shall remain in force and effect.

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IN WITNESS WHEREOF, the parties have executed this Amendment to the Agreement
as of the _____ of _____ 2023.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
DESOTO COUNTY, FLORIDA**

By: _____
Mandy J. Hines
County Administrator

By: _____
Judy Schaefer
Chairman

BoCC Approved: _____

Approved as to form and
Legal sufficiency:

Donald D. Conn
County Attorney

Date: _____

WITNESSES:

THE WEILER CORPORATION

By: _____

Printed Name: _____

Title: _____

GENERAL CONDITIONS

1. Access to Records/Audits:

- (a) The Contractor agrees to provide the DeSoto County Board of County Commissioners, the FEM Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers or records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (c) The Contractor agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
- (d) Such records will be maintained for five (5) years after the completion of the Work and until claims or audit findings have been resolved which were initiated prior to the expiration of the five (5) year period. The County retains a firm, which annually audits records. Should records be required within that period, Contractor will be notified in writing.

2. Acknowledgement of Amendments: Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the Bid Form, or by letter. The acknowledgment must be received by the place specified for receipt of bids.

3. Alternate Bids: Bidders offering service delivery methods other than those permitted by the Scope of Work MAY SUBMIT A SEPARATE ENVELOPE CLEARLY MARKED "Alternate Bid". Alternate bids will be deemed non-responsive and will not be considered for award. All such responses will, however, be examined prior to award. Such examination may result in cancellation of all bids received to permit rewriting the Scope of Work to include the alternative method, or the alternative method may be considered for the future requirements of the County.

4. Applicable Law: The Contract shall be governed in all respects by the laws of the State of Florida, and any litigation with respect thereto shall be brought in the Courts of the State of Florida.

5. Assignment: The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award or any or all of its rights, title, or interest therein, without the prior written consent of the County. The Contractor and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities and staff according to the Department of Homeland Security Standard Terms and Conditions, v 3.0, ¶XXVI (2013).

6. Awards: As the best interest of DeSoto County may require, the right is reserved to make awards(s) by individual items, group of items, all or none, or a combination thereof, with one or more suppliers; to reject any and all bids or wave any informality or technicality in bids received.

7. Bid Opening: The bid opening shall be public on the date and at the time specified on the Bid Form. It is the bidder's responsibility to assure that the bid is delivered at the proper time and place of the bid opening. Bids that for any reason are not so delivered will not be returned but will be retained in the BID FILE unopened. Offers by telephone or facsimile for a sealed bid or proposal will not be accepted.

8. Bid Security: A good faith deposit or Bid Security shall be made payable to DeSoto County Board of County Commissioners, in the minimum amount of five (5%) of the proposal sum. Security shall be Certified Treasurer's Check or Bank Draft, Cashier's Check, or Bid Bond issued by a Surety licensed to conduct business in the State of Florida and meeting the minimum requirements set forth by the County. The successful Bidder's Security shall be retained until he has signed the Contract and furnished the required security or Payment and Performance Bonds. The County reserves the right to retain the Bid Security of all Bidders until the lowest responsive, responsible Bidder enters into a Contract or until ninety (90) days after bid opening, whichever is sooner. If selected Bidder fails to enter into a Contract or to furnish approved Performance and Payment Bonds, his Bid Security may be forfeited as liquidated damages.

(a). Bid Bonds shall be accompanied by a Surety's Power of Attorney.

9. Bonding and Prequalification: Upon activation, furnish to the Agency, and maintain in effect throughout the life of the event, an acceptable surety bond in a sum at least equal to the amount of the Contract. The awarded Firms must furnish a bonding capacity letter from a surety that assures the County that the Firm will deliver the required 100% bonding upon activation. Execute such bond on the form furnished by the Agency. Obtain a surety that has a resident agent in the State of Florida, meets all of the requirements of the laws of Florida and the regulations of the Agency, and has the Agency's approval. Ensure that the surety's resident agent's name, address and telephone number is clearly stated on the face of the Contract Bond.

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

11. Change Orders: Without invalidating the Contract, the County may, at any time or from time to time, order additions, deletions or revisions in the Work. These will be authorized by a Change Order. Upon receipt of a Change Order the Contractor will provide the Work involved. All such work shall be executed under the applicable conditions of the Scope of Work.

Additional Work performed by the Contractor without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time, except in the case of an Emergency.

The value of any work covered by a Change Order or of any claim for any increase or decrease in the Contract Price shall be determined in one of the following ways:

- (a) Each Change Order shall be reviewed to ensure that the cost and pricing data submitted for evaluation of the Change Orders is based on current accurate and complete data supported by their books and records.
- (b) Where the work involved is covered by unit prices contained in the Scope of Work, by application of unit prices to the quantities of items involved.
- (c) By negotiated lump sum.
- (d) The actual cost of labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work plus a fixed amount to be agreed upon to cover the cost of general overhead and profit are to be negotiated.

The County has assigned the following authority levels for Change Order dollar amounts and Contract time extensions. The County Administrator or Delegate may approve all Change Orders less than twenty-five thousand dollars (\$25,000.00). All Change Orders which exceed twenty-five thousand dollars (\$25,000.00) require approval by the Board of County Commissioners.

12. Claims, Participation in Claims: A Claim is a written demand submitted to the County by the Contractor, seeking additional monetary compensation, time, or adjustments to the Contract, the entitlement or impact of which is disputed by the County. When determining Claim entitlement, the County should address the following questions for each claim issue:

- (a) Did the Contractor provide the required Notice of Intent to Claim?
- (b) Was there a change to the original Contract requirement that led to the Claim?
- (c) Who or what caused the identified change?
- (d) What were the impacts to the Contractor due to each identified change?
- (e) Were the impacts unexpected or unreasonable?
- (f) Could the Contractor have avoided any adverse impacts through proper action?
- (g) Was it reasonable to have anticipated the identified changes at the time of bid?
- (h) Did the Contractor attempt to mitigate the Claim or its effects?
- (i) Was the complete Claim documentation provided in the timeframe outlined in the Contract?
- (j) Determine any percentage of entitlement on each Claim issue as follows:
 - a) When the items above completely support the Contractor's position, percent entitlement would be one hundred percent.
 - b) When the items above completely refute the Contractor's position, the percent entitlement would be zero percent.
 - c) When items above support only a partial entitlement based on the fact that the

Contractor was partially responsible for the Claim issue, state the partial percentage of the total cost and time impacts the Contractor is entitled to recover along with the reasons why.

The Contractor is responsible for providing a Claim Package, which includes a detailed breakdown of the costs incurred. These costs should relate to the impacts on the project.

13. Clean Air Act: For Contract in excess of \$150,000 the following applies:

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7404 st seq.
- (b) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notifications to Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 finances in whole or in part with Federal assistance provided by FEMA.

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

15. Conflict of Interest: The Award hereunder is subject to Chapter 112, Florida Statutes. All bidders must disclose with their bid the name of any officer, director, or agent who is also an employee of DeSoto County. Further, all bidders must disclose the name of any DeSoto County employee who owns, directly or indirectly, an interest of five percent (5%) or more of the bidder's firm or any of its branches.

16. Contract Time Extensions: The County may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The County may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the County to fulfill an obligation under the Contract results in delays to the controlling items of Work, the County will consider such delays as a basis for granting a time extension to the Contract.

Whenever the County suspends the Contractor's operations for reasons other than the fault of the Contractor, the County will grant a time extension for any delay to a controlling item of work due to such suspension. The County will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

The County does not include an allowance for delays caused by the effects of inclement weather or suspension of Contractor's operations due to holidays in establishing Contract Time. The County will continually monitor the effects of weather and, when found justified, grant time extensions on either a bimonthly or monthly basis. The County will not require the Contractor to submit a request for additional time due to the effects of weather.

The County will grant time extensions, on a day to day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations due to holidays that prevent the Contractor from productively performing controlling items of work resulting in:

- (a) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items due to adverse weather conditions, holiday, suspension; or
- (b) The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items.

No additional compensation will be made for delays caused by the effects of inclement weather.

The County will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, and industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment.

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

The County will consider the effect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:

- (a) Delays are the result of either utility work that was not detailed in the plans, or utility work that was detailed in the plans but was not accomplished in reasonably close accordance with the schedule included in the Scope of Work
- (b) Utility work actually affected progress toward completion of controlling work items.
- (c) The Contractor took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Contractor's operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Contractor's operations to avoid delays.

As a condition precedent to an extension of Contract Time, the Contractor must submit to the County a preliminary request for an extension of Contract Time which must be made in writing to the County within ten calendar days after the commencement of a delay to a controlling item

of work. If the Contractor fails to submit this required preliminary request for an extension of Contract Time, the Contractor fully, completely, absolutely and irrevocably waives an entitlement to an extension of Contract Time for that delay. In the case of a continuing delay only a single preliminary request for an extension of Contract Time will be required. Each such preliminary request for an extension of Contract Time shall include at a minimum the commencement date of the delay, the cause of the delay, and the controlling item of work affected by the delay; and

Further, the Contractor must submit to the County a request for a Contract Time extension in writing with an initial 10 day notice and a 30 day final notice after the elimination of the delay to controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Contractor wishes the County to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Contractor contends that the delay is compensable, then the Contractor shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If the Contractor fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the County of the timely opportunity to verify the delay and the costs of the delay, the Contractor waives any entitlement to an extension of Contract Time or additional compensation for the delay.

Upon timely receipt of the preliminary request of Contract Time from the Contractor, the County will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Contractor the County will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the County will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

The existence of an accepted schedule, including any required update(s), is a condition precedent to the Contractor having any right to the granting of an extension of Contract Time or any monetary compensation arising out of any delay. Contractor's failure to have an accepted schedule, including any required updates(s), for the period of potential impact, or in the event the currently accepted schedule and applicable updates do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to the County's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, the County's determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the County's determination was without any reasonable factual basis.

The Contract Time may only be changed by a Contract Amendment. Any claim for an extension in the Contract Time shall be based on written notice delivered to the County within (10) days of the occurrence unless the County allows an additional period of the event-giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless the County allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by the County, if the County and the Contractor cannot otherwise agree. Any change in the Contract

Time resulting from any such claim shall be incorporated in a Contract

17. Contract Work Hours and Safety Standards Act:

- (a) Overtime requirements. No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic received compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (c) Withholding for unpaid wages and liquidated damages. The DeSoto County Board of County Commissioners shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (d) Subcontracts. The Contractor or Subcontractor shall insert in any sub-contacts the clauses set forth in paragraph (a) through (d) for this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

18. Contractor Purchased Equipment: Contractor purchased equipment for County ownership will not be allowed in this Contract.

19. Davis-Bacon Act and Copeland Anti-Kickback Act:

- (a) Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the 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.**

- (b) 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 the Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.
- (c) 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.
- (d) The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation hereby incorporated by reference which can be located at <https://www.wdol.gov>. 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.
- (e) In contracts subject to the Davis-Bacon Act, 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 at 29 C.F.R. 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 Copeland Anti-Kickback Act provides that each Contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completions, 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 FEMA.
- (f) The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and sub-recipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act."** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

(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 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."

20. Debarment and Suspension:

- (a) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (b) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (c) This certification is a material representation of fact relied upon by the Contractor. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the DeSoto County Board of County Commissioners and Contractor, the Federal Government may pursuant available remedies, including but not limited to suspension and/or debarment.
- (d) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

22. Disputes: All controversies between the County and the Contractor which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by the County Administrator in writing, within 30 days after a written request by the Contractor for a final decision concerning the controversy.

The County shall immediately furnish a copy of the decision to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless the Contractor brings an action seeking judicial review of the decision.

The Contractor shall comply with any decision of the County Administrator and proceed diligently with performance of this Contract until final resolution by a Court of Law, if a judicial remedy is pursued.

In case of any doubt or differences of opinion as to the items to be furnished hereunder, the decision of the DeSoto County Board of County Commissioners shall be final and binding on both parties.

23. Domestic Preferences for Procurements:

- (a) As appropriate, and to the extent consistent with law, 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. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.
- (b) For purposes of this clause:
 - (i) *Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.
 - (ii) *Manufactured products* means items and construction materials composed in whole or in part of non-ferrous materials such as aluminum; plastic and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete, glass, including optical fiber; and lumber.

24. E-Verify: Vendors/Contractor:

- (a) 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 Vendor/Contractor during the term on the contract; and
- (b) Shall expressly require any subcontractors performing work or providing services pursuant to the State 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.

25. Equal Employment Opportunity:

During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants

will receive considerations for employment without regard to race, color, religion, sex or national origin.

- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said 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 or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor or as otherwise provided by law.
- (7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

26. Equipment Rental Rates: 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 County 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 = $\text{Monthly Rate} / 176 \times \text{Adjustment Factors} \times 100\%$.
- (b) Allowable Hourly Operating Cost = $\text{Hourly Operating Cost} \times 100\%$.
- (c) Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.
- (d) Standby Rate = Allowable Hourly Equipment Rate $\times 50\%$.

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 County 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 workdays on the project.

The County 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 County 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.

27. Error in Extension: If the unit price and the extension price are at variance, the unit price shall prevail.

28. Evaluation of Bid Awards: The County reserves the right to award the bid to the lowest, most responsive and responsible bidder who submits a bid meeting specifications most advantageous to the County.

29. Execution of Bid: Bid must contain a manual signature of an authorized representative in the space provided.

30. Federal Water Pollution Control Act:

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C 1251 et seq.
- (b) The Contractor agrees to report each violation to the DeSoto County Board of

County Commissioners and understands and agrees that the DeSoto County Board of County Commissioners will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency and the appropriate Environmental Protection Agency Regional Office.

- (c) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

31. FHWA FORM 1273: The FHWA 1273 Electronic Version, dated May 1, 2012, is posted on the Department's website at the following URL address:

<http://www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/files/FHWA1273.pdf>

Take responsibility to obtain this information and comply with all requirements posted on this website up through five calendar days before the opening of bids. Comply with provisions contained in FHWA 1273. In addition to the requirements of Section IV, No 3(a), include gender and race in the weekly annotated payroll records. If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101

32. Incentive/Disincentive Clauses: Not applicable to this contract.

33. Indemnification: Contractor shall defend, indemnify and hold harmless the County and all of County's officers, agents, and employees from and against all claims, liability, loss and expense, including reasonable costs, collection expenses, attorney's fees, and court costs which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of Contractor, its officers, agents or employees in performance or non-performance of its obligations under the Contract. Contractor recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the County when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the County in support of these indemnifications, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of this Contract. Compliance with any insurance requirements required elsewhere within this Contract shall not relive Contractor of its liability and obligation to defend, hold harmless and indemnify the County as set forth in this article of the Contract.

Nothing herein shall be construed to extend the County's liability beyond that provided in Section 768.28, Florida Statutes.

34. Indian Preference: Indian Preference on Federal Aid-Projects will not be utilized on this project.

35. Informalities and Irregularities: The County has the right to waive minor defects or violations of a bid from exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by a bidder with the bid for the County to properly evaluate the bid, the County has the right to require such additional information as it may deem necessary after the time set for receipt of bids, provided that the price, quality, quantity, delivery, or performance time of the services being procured does not change.

36. Legal Requirements: Federal, State, County and local laws, ordinances, rules and

regulations that in any manner affect the item(s) covered herein apply. Lack of knowledge by the bidder will in no way be cause for relief from responsibility.

37. Liability: The Contractor shall hold and save DeSoto County, its officers, agents, and employees harmless from liability of any kind in the performance of or fulfilling the requirements prior to and during the term of this Contract.

38. Liens: Before the final draw is payable, Contractor must furnish a sworn statement that all sums due for services, material or labor on the project have been paid in full. If the County receives any Notice to Owner on this Project, then in addition to the requirements set forth above, Contractor shall at the time of each draw furnish a partial waiver of lien from all Subcontractors, material or labor providers, and at the time of the final draw shall furnish a final waiver of lien for each such Subcontractor, material or labor provider; as a condition precedent to receiving any payment from the County. Contractor shall indemnify the County and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of Contractor under this Contract; or the negligence of the Contractor in the performance of its duties under this Contract, or any act or omission on part of the Contractor, his agents, employees, or servants.

The Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Purchasing Officer, to indemnify the County against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the County all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

39. Liquidated Damages: Applicable Liquidated Damages are the amounts established in the following schedule:

| <u>Original Contract Amount</u> | <u>Daily Charge Per Calendar Day</u> |
|--|--------------------------------------|
| \$50,000 and under..... | \$836.00 |
| Over \$50,000 but less than \$250,000..... | \$884.00 |
| \$250,000 but less than \$500,000..... | \$1,074.00 |
| \$500,000 but less than \$2,500,000..... | \$1,742.00 |
| \$2,500,000 but less than \$5,000,000..... | \$2,876.00 |
| 5,000,000 but less than \$10,000,000..... | \$3,770.00 |

For all Contracts, regardless of whether the contract time is stipulated in calendar days or working days, the County will count default days in calendar days. If the Contractor or, in case of his default, the surety, fails to complete the work within the time stipulated in the Contract, or within such extra time that the County may have granted the Contractor or, in case of his default, the surety shall pay to the County, not as a penalty, but as Liquidated Damages, the amount determined by the table listed above per calendar day in which work is not completed.

The County has the right to apply, as payment on such Liquidated Damages, any money the County owes the Contractor.

The County does not waive its right to Liquidated Damages due under the Contract by allowing the Contractor to continue and finish the work, or any part of it, after the expiration of the Contract Time including granted time extension.

In case of default of the Contract and completion of the work by the County, the Contractor and his surety are liable for the Liquidated Damages under the Contract, but the County will not charge Liquidated Damages for any delay in the final completion of the County's performance of the work due to any unreasonable action or delay on the part of the County.

The County considers the Contract complete when the Contractor has completed all work and the County has accepted the work. The County will then release the Contractor from further obligation except as set forth in his bond.

40. Non-conforming Terms and Conditions: A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid documents is subject to rejection as non-responsive. The County reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to determination by the County of non-responsiveness based on the submission of nonconforming terms and conditions.

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

42. Owner Force Account/Cost Effective Justification: Not applicable to this Contract the County will be utilizing an independent Contractor to perform the Scope of Work.

43. Patented/Proprietary Materials: The County certifies that neither patented nor proprietary materials are required or specifically named in the specifications to be used for this project.

44. Performance and Payment Bonds: Performance and Payment Bonds will be required. Contractor shall comply fully with the bonding requirements of Section 255.05, Florida Statutes, as part of the total price for the work set forth in the Scope of Work.

45. Period of Offer Validity: Prices quoted must remain firm for a period of ninety (90) days from the bid opening date.

46. Prevailing Minimum Wage: For this Contract, payment of predetermined minimum wages applies. The U.S. Department of Labor Wage Rates applicable to this Contract are listed in Wage Rate Decision Number(s) **FL184**, 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 County's office when needed.

For guidance on 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.

Contact the Department's Wage Rate Coordinator at (850) 414-4492 if the Department's website cannot be accessed or there are questions.

47. Prices and Terms: All prices must be firm for the delivery schedule quoted herein. Bids

stipulating price in effect at time of shipment or other similar conditions will be considered non-responsive to the bid invitation and will not be accepted. All prices shall be quoted F.O.B. delivered to any County Department unless otherwise stipulated in the bid invitation.

- (a) **Taxes:** DeSoto County does not pay Federal excise and State sales taxes.
- (b) **Mistakes:** Bidders are expected to examine the specifications, delivery schedules, bid prices, and all instructions pertaining to supplies and services. Failure to do so will be at bidder's risk.
- (c) **Condition:** It is understood and agreed that any item offered or shipped as a result of this bid shall be new (current production model at time of this bid).
- (d) **Safety Standards:** Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupational Safety and Health Act and any standards hereunder.

48. Procurement of Recovered Materials:

- (a) 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.
- (b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

49. Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

50. Progress Payments:

Partial Payments

General: The County will make partial payments on monthly estimates based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The County will make approximate monthly payments, and the County will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment.

The County will base the amount of such payments on the total value of the Work that the Contractor has performed to the date of the estimate, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld.

Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%.

From that time forward, the County will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%.

Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements. Contract time is defined as the original Contract time adjusted by approved Contract time extensions.

Retainage will be determined for each job on multiple job Contracts. The County will not accept Securities, Certificates of Deposit or Letters of Credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.

Unsatisfactory Payment Record: In accordance with Section 255.05 and 337.16 of the Florida Statutes, and the rules of the County, the County may disqualify the Contractor from bidding on future County Contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory. The County may also disqualify the Surety from issuing bonds for future County Contracts if they similarly fail to perform under the terms of their bond.

Withholding Payment for Defective Work: If the County discovers any defective work or material prior to the final acceptance, or if the County has a reasonable doubt as to the integrity of any part of the completed work prior to final acceptance, then the County will not allow payment for such defective or questionable work until the Contractor has remedied the defect and removed any causes of doubt.

Withholding Payment for Failure to Comply: The County will withhold progress payments from the Contractor if he fails to comply with any or all of the following within 60 days after beginning work:

- (a) Comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity and Affirmative Action;
- (b) Comply with the requirement to all necessary information, including actual payments to all other subcontractors and major supplies;
- (c) Comply with or make a good faith effort to ensure employment opportunity for minorities and females in accordance with the required contract provisions.

The County will withhold progress payments until the Contractor has satisfied the above conditions.

Release of Retainage After Acceptance: When the Contractor has furnished the County with all submittals required by the Contract, such as invoices, materials certifications, certification of materials procured, etc., (excluding Contractor's letter of acceptance of final amount due) and the County has determined that the measurement and computation of pay quantities is correct, the County may reduce the retainage to \$1,000 plus any amount that the County elects to deduct for defective work.

The County will not allow a semifinal estimate under the provisions of the above paragraphs unless the time elapsing between (1) acceptance of the project and receipt of all test reports, invoices, etc., and (2) submission of the final estimate to the Contractor for acceptance, exceeds or is expected to exceed ten days.

The County may deduct from payment estimates any sums that the Contractor owes to the County on any account. Where more than one project or job (separate job number) is included in the Contract, the County will distribute the reduced retainage as provided in the first paragraph of this Sub-article to each separate project or job in the ratio that the Contract value of the work for the particular job bears to the total Contract amount.

Partial Payments for Delivery of Certain Materials:

General: The County will allow partial payments for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used.

The following conditions apply to all payments for stockpiled material:

- (1) There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.
- (2) The stockpiled material must be approved as meeting applicable specifications.
- (3) The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.
- (4) The Contractor shall furnish the Engineer with copies of certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material up to the unit price in the Contract.
- (5) Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.
- (6) Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.

Partial Payment Amounts: The following partial payment restrictions apply:

- (1) Partial payments less than \$5,000 for any one month will not be processed.
- (2) Partial payments for structural steel and precast pre-stressed items will not exceed 85% of the bid price for the item. Partial payments for all other items will not exceed 75% of the bid prices of the item in which the material is to be used.
- (3) Partial payment will not be made for aggregate and base course material received after paving or base construction operations being excepted when a construction sequence designated by the County requires suspension of paving and base construction after the initial paving operations, partial payments will be reinstated until the paving and base construction resumes.

Off Site Storage: If the conditions of the General section above are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations. Additionally, partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions above and the following conditions are met:

- (1) Furnish the County a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and County. Under this bond, the Obligor shall be the material supplier and the Obligee shall be the Contractor and the County. The Bond shall be in the full dollar amount of the bid price for the materials described in the Contract.
- (2) The following clauses must be added to the construction contract between the "Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the County should <supplier> default in the performance of this Contract." "Notwithstanding anything to the contrary, the Contract, and the Performance Bond issued pursuant to this Contract, does not alter, modify, or otherwise change the Contractor's obligation to furnish the materials described in this Contract to the County."
- (3) The Contract between the Contractor and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Contractor.

Certification of Payment to Subcontractors: The term "Subcontractor," as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the County has made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all Subcontractors for satisfactory performance of their Contracts before the County will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the Subcontractors within 30 days after the Subcontractor's work is satisfactorily completed, as determined by the County. Prior to receipt of any progress (partial) payment, the prime Contractor shall certify that all Subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to Subcontractors within 30 days after satisfactory completion of the Subcontractor's work. Provide this certification in the form designated by the County.

Within 30 days of the Contractor's receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all Subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The County will honor an exception to the above when the written notification of any, show good cause to both the County and the affected Subcontractors or suppliers within said 30 day period.

Acceptance and Final Payment Documents: Whenever the Contractor has completely performed the work provided for under the Contract and the County has performed a final inspection and made final acceptance, the County will prepare a final estimate showing the value of the work as soon as the County Engineer makes the necessary measurements and computations. The Engineer will correct all prior estimates and payments in the final estimate and payment. The County will pay the estimate, less any sums that the County may have deducted or retained under the provisions of the Contract, as soon as practicable after final acceptance of the work, along with all executed supplemental agreements received after final

acceptance.

Prohibition On Contracting For Covered Telecommunications Equipment Or Services

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

(b) *Prohibitions.*

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

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

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

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

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

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

(c) *Exceptions.*

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

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

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

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

(i) Covered telecommunications equipment or services that:

- i. Are not used as a substantial or essential component of any system; and
- ii. Are not used as critical technology of any system.

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

(d) *Reporting requirement.*

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

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

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

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

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

51. Public Agencies in Competition with the Private Sector: The County does not allow other Public Agencies to compete with or bid on construction projects against the private sector.

52. Publicly-Owned Equipment: The County does not allow Contractors the use of publicly owned equipment.

53. Responsible Vendor Determination: Respondents are hereby notified that Section 287.05701, Florida Statutes, requires that the County may not request documentation of or

consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor.

54. Rights to Inventions Made Under a Contract or Agreement.

- (a) Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance,** Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definitions of “funding agreement.”
- (b) If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-Federal entity must comply with the requirements of 37 C.F.R. 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 FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.
- (c) the regulation at 37 C.F.E. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any Contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

55. Salvage Credits: This County does not allow the Contractor to get credits for salvageable materials.

56. Sealed Bids / Sealed Proposals: All bids must be submitted in a sealed envelope. The face of the envelope shall contain the date and time of the bid opening and the bid number if applicable.

57. Standardized Changes Conditions Contract Clauses:
Differing site conditions.

- (a) During the process of the Work if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
- (b) Upon written notification, the County will investigate the conditions, and if it is

determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding anticipated profits, will be made and the Contract modified in writing accordingly. The County will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.

- (c) No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.
- (d) No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

Suspension of Work ordered by the County.

- (a) If the performance of all or any portion of the Work is suspended or delayed by the County 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 County 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.
- (b) Upon receipt, the County will evaluate the Contractor's request. If the County agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspensions 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 County will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Contractor will be notified on the County's determination whether or not an adjustment of the Contract is warranted.
- (c) No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.
- (d) 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.

Significant Changes in the Character of Work.

- (a) The County reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the Surety, and the Contractor agrees to perform the Work as altered.
- (b) If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the Work or by affecting other work cause such other work to become significantly different in character, and adjustment,

excluding anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made whether for or against the Contractor in such amount as the County may determine to be fair and equitable.

- (c) If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract.
- (d) The term "significant change" shall be construed to apply only to the following circumstances:
 - (1) When the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - (2) When a major item of work, as defined elsewhere in the Contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original Contract item quantity, or in case of a decrease below 7 percent, to the actual amount of work performed.

58. State/Local Hiring Preference: The County certifies that this Contract does not include State or Local hiring preferences

59. State Preference: The County certifies that preference is not given to Contractors who purchases materials from any specifically designated States.

60. State/Local Owned/Furnished/Designated Materials: All materials required for this project shall be furnished by the Contractor.

60. State Produced Materials (Florida or other): The County certifies that preference is not given to Contractors who purchase materials from any specifically designated state.

62. Statement Relative to Public Entity Crimes: The bidder is directed to the Florida Public Entity Crime Act 287.133, Florida Statutes, and the County's requirement that the successful bidder comply with it in all respects prior to and during the term of the Contract.

63. Stockpiled Materials: When the Contract provisions provide for payment for stockpiled materials, the amount of the reimbursement request upon which participation is based may include the appropriate value of approved specification materials delivered by the Contractor at the project site or at another designated location in the vicinity of such construction, provided that:

- (a) The materials conform with the requirements of the plans and specifications.
- (b) The material is supported by a paid invoice or a receipt for delivery of materials. If supported by a receipt of delivery of materials, the Contractor must furnish the paid invoice within a reasonable time after receiving payment from the County;

and

- (c) The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the Work. The value of the stockpiled material shall not exceed the appropriate portion of the value of the Contract item or items in which such materials are to be incorporated.

The materials may be stockpiled by the Contractor at a location not in the vicinity of the project, if the County determines that because of required fabrication at an off-site location, it is not feasible or practicable to stockpile the materials in the vicinity of the project

64. Subcontracting: Do not sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the County. If the Contractor chooses to sublet any portion of the Contract, the Contractor must provide a written request to sublet work on the Certification of Sublet Work Form developed by the County for this purpose. With the County's acceptance of the request, the Contractor may sublet a portion of the work, but shall perform with his own organization work amounting to not less than 30% of the total Contract amount. The Certification of Sublet Work request will be deemed acceptable by the County, for purposes of the County's consent, unless the County notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that the County is not consenting to the requested subletting.

Include in the total Contract amount the cost of materials and manufactured component products, and their transportation to the project site. For the purpose of meeting this requirement the County will not consider off-site commercial production of materials and manufactured component products that the Contractor purchases, or their transportation to the project, as subcontracted work.

If the Contractor sublets a part of a Contract item, the County will use only the sublet proportional cost in determining the percentage of subcontracted normal work.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. Upon request, furnish the County with a copy of the subcontract. The subletting of work does not relieve the County or the Surety of their respective liabilities under the Contract.

The County recognizes a Subcontractor only in the capacity of an employee or agent of the Contractor and the County may require the Contractor to remove the Subcontractor as in the case of an employee.

65. Termination for Convenience: The County reserves the right to cancel this Contract by written notice to the Contractor effective the date specified in the notice, for any of the following reasons:

- The County has determined that such cancellation will be in the best interest of the County to cancel the Contract for its own convenience.
- Funds are not available to cover the cost of the services. The County's obligation is contingent upon the availability of appropriate funds.

The Purchasing Manager shall give written notice of the termination to the Contractor specifying the reason for the Contract termination and when termination becomes effective.

The Contractor shall incur no further obligations in connection with the terminated Work and on the date set in the Notice of Termination the Contractor will stop Work to the extent specified.

The County shall pay the Contractor under following conditions:

- All costs and expenses incurred by the Contractor for work accepted by the County prior to the Contractor's receipt of the Notice of Termination.

Anticipatory profit for work and services not performed by the Contractor shall not be allowed.

66. Termination for Default: The County shall be the sole judge of nonperformance, which shall include any failure on the part of the Contractor to accept the award, to furnish required documents, and/or to fulfill any portion of this Contract within the time stipulated. Upon default by the Contractor to meet any term of this Contract related Exhibit, the County will notify the Contractor to advise the County of its plan for corrective action to remedy the default within three (3) days (weekends and holidays excluded). The corrective action plan must be accepted by the County. Failure on the Contractor's part to correct the default within the approved time period shall result in the Contract being terminated and the County, notifying in writing to the Contractor, of the effective date of the termination. The following shall constitute an act of default:

- Failure to perform the Work required under the Contract and/or within the time required or failing to use the sub-consultants, entities, and personnel as identified and set forth, and to the degree specified in the Contract.
- Failure to begin the Work under this Contract within the time specified.
- Failure to perform the Work with sufficient workers to ensure timely completion.
- Neglecting or refusing to correct Work where prior work has been rejected as nonconforming with the terms of the Contract.
- Becoming insolvent, being declared bankrupt by a US Bankruptcy Court, renders the successful firm incapable of performing the Work in accordance with and as required by the Contract.
- Failure to comply with any of the terms of the Contract.
- Failure to pay Subcontractors or others pursuant to Work done under this Contract.

In the event of default, the Contractor shall pay any damages sustained by the County including attorney's fees and court costs incurred in collecting any damages. Title to all materials, work-in-progress, and completed but undelivered goods will pass to the County after costs are claimed and allowed. All documents prepared by the Contractor in connection with this Contract will be the property of the County.

The County shall authorize payment to the Contractor, the costs and expenses for Work performed by the Contractor prior to receipt of the Notice of Termination; however, the County may withhold from amounts due the Contractor such sums as the Administrative Services Director deems to be necessary to protect the County against loss caused by the Contractor because of the default.

67. Warranty Clause: A warranty is a guarantee of the integrity of a product and of the manufacturers' responsibility for the repair or placement. All manufacturer warranties are to be transferred to the County before final acceptance.

NOTE: ANY AND ALL SPECIAL CONDITIONS ATTACHED HERETO WHICH MAY VARY FROM THE GENERAL CONDITIONS SHALL HAVE PRECEDENCE.