

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: February 15, 2012

Division: Public Works

Bulk Item: Yes x No    

Department: Facility Maintenance/Corrections

Staff Contact Person/Phone #: Bob Stone  
797-1458

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**AGENDA ITEM WORDING:** Approval of Change Order No. 2 to the Agreement with Electronic System Services, Inc. for the "Energy Retrofit – Jackson Square" project. Final approval and implementation of this change order is subject to the approval of the Department of Agriculture & Consumer Services.

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**ITEM BACKGROUND:** This would be an extension of the new proprietary dashboard and "Periscope" system that is included within the current project of which is funded through Grant Agreement #ARS010 between MCBOCC and the Department of Agriculture and Consumer Services. The Grant Manager has identified additional funds and this effort would be a positive step in achieving the County's sustainability goals.

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**PREVIOUS RELEVANT BOCC ACTION:** On September 21, 2011, MCBOCC approved execution and awarded contract to Electronic System Services, Inc. for the "Energy Retrofit – Jackson Square" project (Item C31). On June 15, 2011, the MCBOCC approved advertising for construction bids. January 19, 2011, the MCBOCC approved Task Order PW-HDR-001 with HDR Engineering for energy audit and design services. On November 9, 2010 Grant Agreement No. ARS010 was executed by and between the MCBOCC and the Florida Energy and Climate Commission of which was absorbed by the Department of Agriculture and Consumer Services.

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**CONTRACT/AGREEMENT CHANGES:** N/A

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**STAFF RECOMMENDATIONS:** Approval

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**TOTAL COST:** \$88,700.00

**BUDGETED:** Yes X No    

**DIFFERENTIAL OF LOCAL PREFERENCE:** N/A

**COST TO COUNTY:** N/A

**SOURCE OF FUNDS:** Grant No. ARS010

**REVENUE PRODUCING:** Yes     No X **AMOUNT PER MONTH**

**APPROVED BY:** County Atty *MUC* **AMOUNT PER YEAR**  
OMB/Purchasing *RH* Risk Management *MS*

**DOCUMENTATION:** Included x Not Required    

**DISPOSITION:** \_\_\_\_\_

**AGENDA ITEM #** \_\_\_\_\_



# MONROE COUNTY PUBLIC WORKS

## Change Order

**PROJECT:**  
Energy Retrofit – Jackson Square  
Monroe County

**CHANGE ORDER NUMBER:** 002

**DATE:** February 15, 2012

**CONTRACTOR:**  
Electronic System Services, Inc  
5840 Halifax Avenue  
Fort Myers, Florida 33912

**PROJECT NUMBER:** PWD-236-129-2011  
**CONTRACT DATE:** September 21, 2011  
**NOTICE TO PROCEED:** October 7, 2011  
**CONTRACT FOR:** General Construction

### THE CONTRACT IS CHANGED AS FOLLOWS:

To enhance public energy conservation education and participation, install two additional Energy Efficiency Educational Dashboard systems and five additional meter locations including computer modules, digital energy meters, JACE control panels, wall brackets, electrical power wiring with receptacles, conduit for LAN drops, interface with Periscope software system and permitting. Dashboard installation locations are to be at the Murray Nelson Cultural Center and the Historic Gato Building. Final approval and implementation of this change order is subject to the approval of the Department of Agriculture and Consumer Services.

The original Contract Sum was	<u>\$599,000.00</u>
The net change by previously authorized Change Orders	<u>\$ 0.00</u>
The Contract Sum prior to this Change Order was	<u>\$599,000.00</u>
The Contract Sum will be changed by this Change Order in the amount of	<u>\$ 88,700.00</u>
The new Contract Sum including this Change Order will be	<u>\$687,700.00</u>

The Contract Time is not increased.

The date of Final Completion as of the date of this Change Order therefore, remains March 15, 2012.

### NOT VALID UNTIL SIGNED BY THE CONTRACTOR AND THE OWNER

Robert A. Stone, MCPW  
Owner's Representative

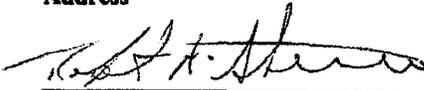
Electronic Systems Services, Inc  
Contractor

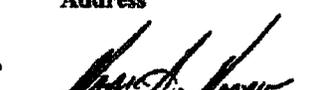
Monroe County, FL  
Owner

10600 Aviation Blvd., Marathon, FL  
Marathon, FL 33050  
Address

5840 Halifax Avenue  
Fort Myers, FL 33912  
Address

1100 Simonton Street  
Key West, FL 33040  
Address

  
BY (Signature)

  
BY (Signature)

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

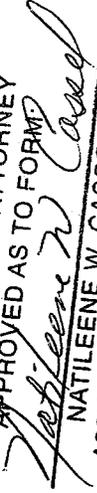
DATE

1/27/12

DATE

Jan 27, 2012

DATE

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM  
  
NATILEENE W. CASSE  
ASSISTANT COUNTY ATTORNEY  
Date 1-30-2012

## Change Order Attachment per Ordinance No. 004-1999

- Change Order was not included in the original contract specifications. Yes  No

If Yes, explanation:

1. Three Energy Efficiency Educational Dashboard systems were included within the contract documents – To enhance Public energy conservation education and participation, this change order is an Owner’s requested change order to provide two additional dashboard systems that will display Jackson Square information in a public place at the Murray Nelson Cultural Center and the Historic Gato Building. If approved, the Dashboards will also be able to display data from five additional meter locations.

2. Five digital meter location systems were included within the contract documents – To further Monroe County’s sustainability efforts and begin monitoring, tracking and analyzing energy use of County facilities, it is desired to extend the five meter locations to ten. The next five largest energy-using facilities could be chosen.

- Change Order was included in the original specifications. Yes  No

If Yes, explanation of Increase in price:

- Change Order exceeds \$25,000 or 5% of contract price (whichever is greater). Yes  No

If Yes, explanation as to why It is not subject for a calling for bids:

This would be an extension of the new proprietary, dashboard and “Periscope” system, which is funded through Grant Agreement #ARS010 between MCBOCC and the Department of Agriculture & Consumer Services. The Grant Manager has identified additional funds and this effort would be a positive step in achieving the County’s sustainability goals.

- Project architect approves the change order. Yes  No

If no, explanation of why:

This is an Owner initiated change order and the Engineer has no objections

- Change Order is correcting an error or omission in design document. Yes  No

- Should a claim under the applicable professional liability policy be made? Yes  No

Explain:



January 27, 2012

Mr. Bob Stone  
Monroe County Division of Public Works  
10600 Aviation Boulevard  
Marathon, FL 33050

Reference: Monroe County Buildings throughout the Keys

Regarding: Installation of 2-Flat Touch Screen Displays & 5-Meter & JACE Panel Systems

Dear Mr. Stone,

We propose to furnish and install 2-flat touch screen displays and one will be located at the Gato Building in Key West and the other in the Murray Building in Key Largo. Also, we will furnish and install 5-Meter & JACE Panel Systems in building within the Keys that are to be identified at a later date.

**Work Included:** Computer modules and wall brackets for touch screen displays, conduit for LAN drops, electrical power wiring, interface with Periscope software system and the components used will meet ARRA compliance and Davis Bacon Act. .

**Price Includes:** Materials, engineering, labor, applicable tax and permits.

**Work Not Included:** LAN wiring to flat touch screen displays and each meter and JACE control panel and additional meters.

**Selling Price:** \$88,700.00 / Progressive As Billed

Price is valid for 90-days. After 90 days, add 3% to the selling price to cover up to 6 months.

**NOTE:** The installation for these 5-locations will maximize the current license agreement of the Periscope software and any additional Meter & JACE Panel Systems will require the purchase of an additional license.

Mark Moore  
Branch Manager



January 27, 2012

Mr. Bob Stone  
Monroe County Division of Public Works  
10600 Aviation Boulevard  
Marathon, FL 33050

Reference: Monroe County Buildings throughout the Keys

Regarding: Installation of 2-Flat Touch Screen Displays & 5-Meter & JACE Panel Systems

2-Flat Touch Screen TV's with Computer Module & Bracket	4,253.00
5-JACE Computerized Controllers with Ethernet Ports	13,180.00
5-JACE Low Voltage Power Packs	878.00
5-JACE Embedded Work Bench	1,174.00
5-Ethernet Switches	1,463.00
5-Energy Meters with Communications Board & Fuse Kit	11,544.00
5-50va Transformers	91.00
500 ft-Shielded Cable	260.00
5-Enclosures with Locks & UL Listing	537.00
Shipping & Delivery	600.00
Engineering - 50 Hours	5,000.00
Field Installation – 230 Hours	23,000.00
Hotel & Meals	4,086.00
Mechanical & Electrical Permits	2,300.00
Electrical Power Wiring & Conduit for LAN	20,334.00
Selling Price	\$88,700.00

Mark Moore  
Branch Manager

activelogix

For Owners

For energy conscious owners and sustainability managers, the Periscope dashboard is an intuitive tool to enable comparisons between campuses, buildings and departments. Using Periscope's Ranking Chart Viewlet, assessments can be made to foster improved energy awareness.

For Operators

For the owner/operator, Periscope offers a real-time "network status" graphical viewlet which allows for immediate color-coded visual identification of "device health" or other problem areas in the connected Niagara<sup>AX</sup> network.

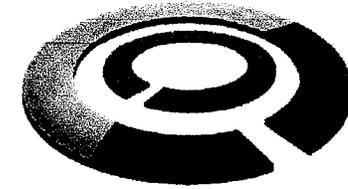
For Integrators

For the systems integrator, Periscope can be used as a flexible Graphical User Interface (GUI) by integrating graphical equipment views and floor plans alongside standard charts, KPI analyses, and third-party websites.

For Administrators

For the administrator or energy manager, Periscope enables the user to visualize locations that are deviating from their historical performance or operating outside the norm for similar structures. Periscope can also provide timely tracking of savings enhanced as a result of investment in conservation or capital projects.

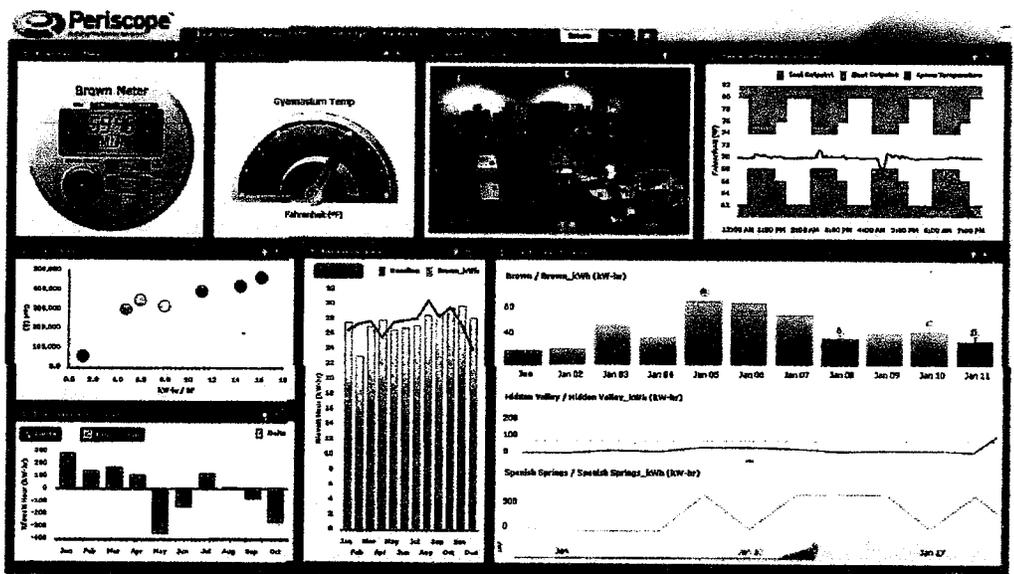
Powered by  
**niagara<sup>AX</sup>**  
FRAMEWORK



**Periscope™**  
Building Intelligence for Action

### Overview

Periscope™ by Activelogix is a configurable, browser-based dashboard application that provides identification of real-time data and historical trends in the rapidly changing environments of multi-facility operations. Periscope reduces volumes of data from disparate systems into visual knowledge, providing the opportunity for users to quickly identify issues, assess relationships, and take action in order to optimize resource efficiencies.



Built by you, for you – The dashboard can include multiple tabs, with each tab containing a unique number of "viewlets". The custom "on-the-fly" setup allows for unlimited configurations.

### To Each Their Own

Periscope is the solution for end users who desire a more dynamic, configurable way to view the facility information in their enterprise. Due to the wide range of potential users, from the highly technical to the non-technical, Periscope was designed to provide each user with their own unique dashboard client. The dashboard can easily be set up and modified from a growing library of "viewlets" by any user without affecting any other users' preferences and settings.

### User-Defined Layouts

Periscope's dynamic viewlet sizing and positioning capability allows users to create unlimited dashboard configurations. Users can manually move and scale the viewlets, making them the exact size desired for the best possible dashboard layout.

### Enterprise Libraries

Periscope allows users to save tabs and viewlets to a shared knowledge library. Users can then quickly add pre-configured tabs and viewlets to their dashboards, providing an efficient way to create, save, and share a common knowledge base.

## **AGREEMENT**

### **ENERGY RETROFIT – JACKSON SQUARE** **MONROE COUNTY**

### **ELECTRONIC SYSTEM SERVICES, INC.**

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THIS AGREEMENT, made and entered into this 21<sup>ST</sup> day of September, 2011 by and between MONROE COUNTY, a political subdivision of the State of Florida hereinafter called "County", whose address is 1100 Simonton Street, Key West, Florida 33040 and Electronic System Services, Inc., a Florida corporation, hereinafter called "Contractor", whose address is 5840 Halifax Avenue, Fort Myers, Florida 33912.

WHEREAS, the County is in need of Energy Conservation Measures at its Jackson Square Complex; and

WHEREAS, the Contractor is licensed, qualified, properly equipped and is in the business of implementing Energy Conservation Measures; now, therefore

IN CONSIDERATION of the premises and of mutual covenants and promises hereinafter contained, the parties hereto do hereby agree as follows:

**1. THE CONTRACT**

The contract between the County and the Contractor, of which this Agreement is a part, consists of the contract documents, as specified in paragraph 2.

**2. THE CONTRACT DOCUMENTS**

The contract documents consist of the Agreement, the Request for Bid, HDR Engineering Drawings and Specifications as listed below in Paragraph 2.A, all Change Orders and any addenda, all applicable provisions of the Florida Energy And Climate Commission Grant Agreement No. ARS010 that is hereby incorporated by reference, Contractor's Bid documents, any other amendments hereto executed by the parties, together with the required County documents furnished as part of the Bid or required to be furnished by the BID, and all required insurance documentation.

- A. The following attached technical drawings and specifications as provided by HDR Engineering, Inc., titled "Energy Retrofit Jackson Square Key West, Florida" and dated June 2011, are included within the Contract Documents and Scope of Work.
  - 1. HDR Engineering Inc. Drawing Nos. G-000, 00G-001, 01A-01, 00M-01, 00M-02, 01M-01, 02M-01 through 02M-05, 03M-01, 04M-01 through 04M-03; 00E-01 through 00E-05, 01E-01 through 01E-03, 02E-01 through 02E-05, 03E-01, 04E-01 through 04E-04, dated July 2011.
  - 2. HDR Engineering Inc. Technical Specifications dated July 2011 consisting of ninety-six pages and Specification Sections 08871, 15080, 15225, 15400, 16010, 16120, 16130, 16265 & 16490.
- B. Applicable provisions of Florida Energy And Climate Commission Grant Agreement No. ARS010 is included in the Scope of Work and is incorporated within this agreement by reference with a copy available on request.
- C. The following additional Attachments are incorporated within this agreement and are as follows:
  - 1. Attachment A – Public Construction Bond
  - 2. Attachment B – Special Audit Requirements
  - 3. Attachment C – Wage Determination FL162
  - 4. Attachment D – Certified Payroll Form
  - 5. Attachment E - Labor Standards Interview Form
  - 6. Attachment F – Whistleblower Poster
  - 7. Attachment G – DBA Poster

**3. SCOPE OF THE WORK – Energy Retrofit – Jackson Square – Key West, Florida 33040.**

A. The Contractor shall perform all of the work required, implied or reasonably inferable from this agreement. The term "work" shall mean whatever is done by or required of the contractor to perform and complete its duties under this agreement, including the following: construction of the whole or a designated part of the project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, reporting, engineering services, material, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, debris disposal, the payment of any applicable sales and use taxes; procurement and payment of any required permits from local, state or Federal authorities having jurisdiction, royalties and product license fees; fuel, heat, light, cooling, sanitation and all other utilities as required by this contract. The work is to be coordinated with the Owner so as to minimize or eliminate any disruption to the Users' normal operations. Some work may have to be scheduled for after normal working hours. Contractor is to abide by all security rules and regulations. The work to be performed by the contractor is generally described as follows:

### **3.01 DESCRIPTION**

- A. Provide all labor, material, equipment, and tools as required for complete installation, testing and commissioning of energy conservation measures as indicated within the contract drawings and specifications listed in Paragraph 2 above, along with all required reporting and documentation in compliance with this agreement.

### **3.02 QUALITY ASSURANCE**

- A. The Contractor is responsible for the quality of the work performed by his work force of any tier on this project as well as the quality of the material, equipment and supplies furnished by the contractor that is to be incorporated into the work.
- B. The Contractor will designate a Quality Control Representative who will be on site at all times while the work is in progress and will have the authority and responsibility to accept or reject items of work. The Quality Control Representative will be fluent in the English language and may be the Project Superintendent.
- C. The Contractor is responsible for the scheduling of all required testing and inspections. The Contractor will provide personnel, equipment and documentation to perform operational and commissioning testing of the equipment, facilities, systems or equipment constructed, fabricated or installed under this agreement. The Contractor shall coordinate with the Owner in scheduling such tests and final inspection with at least ten days notification.
- D. Daily Construction/QC Reports shall be submitted by the Contractor on a weekly basis. A form can be provided or the Contractor can provide the form containing the following information
  - 1. Title of Project
  - 2. Name of Contractor
  - 3. Date and day of Report information
  - 4. Note any major shipments received on that day
  - 5. Note major equipment used that day
  - 6. Note manpower used and designate what trades
  - 7. Note any deficiencies in the work and corrective action taken
  - 8. Note any safety violations and corrective action taken
  - 9. Provide a description of work performed by employees and subcontractors along with any problems or unusual conditions

10. Report is to be signed by the authorized representative of the Contractor and should the signature not be legible, the name shall be printed next to the signature

E. Weekly coordination meetings shall be scheduled and conducted between the Owner and Contractor. Daily Construction/QC Reports may be submitted at that time.

### **3.03 PROGRESS SCHEDULE**

A. Prepare and submit to the Owner for approval within ten days of Notice to Proceed, construction progress schedules for the work, with as needed sub-schedules of related activities, which are essential to its progress. Incorporate manpower loading related to each activity identified on the progress schedule.

1. Contactor is to submit format of schedule for approval

2. Submit revised/updated progress schedules with each payment application.

3. Time line between Notice to Proceed and Project Completion date shall not exceed 130 calendar days.

B. Indicate complete sequence of construction by activity, with dates for beginning and completion for each element of construction.

C. Identify work of separate stages and other logically grouped activities.

D. Provide sub-schedules as needed to define critical portions of the schedule

E. With each schedule submission, indicate progress of each activity to date and the projected completion date of each activity.

F. Identify activities modified since previous submittal, major changes in scope and other identifiable changes.

G. Note: It is not incumbent upon the Owner or Engineer to notify the Contractor when to begin, to cease or to resume work, nor to give early notice neither of faulty or defective work, nor in any way to superintend to relieve the Contractor of responsibility or of any consequence of neglect or carelessness.

### **3.04 SCHEDULE OF VALUES**

A. The Schedule of Values allocated to the various portions of the Work shall be submitted to the Owner within ten days after the issuance of a Notice to Proceed.

B. Upon the request of the Owner, revise and/or support the values with data of which will substantiate their correctness.

C. The Schedule of Values forms the basis for the Contractor's Applications for Payment

D. Type schedule on AIA G703 Form; Contractor's standard forms and automated printout will be considered by the Owner upon the Contractor's request. Identify schedule with:

1. Title of Project and location
  2. The Engineer and Owner
  3. Date of Submission
- E. List the installed value of the component parts of the Work in sufficient detail to serve as a basis for computing values for progress payment during construction
  - F. For each major line item list sub-values of major products or operations under the item.
  - G. Include a directly proportional amount of the Contractor's overhead and profit for each item.
  - H. The sum of values listed in the schedule shall equal the total Contract Sum.
  - I. After review by the Owner, revise and resubmit schedule as required.

**3.05 SUBMITTALS** – Submit to the Owner shop drawings, product data, certifications and samples required by the technical Contract Drawings and Specifications as described below:

- A. The Contractor shall submit within ten days of the Notice to Proceed and prior to proceeding with the work, a preliminary Submittal Schedule to the Owner/Engineer 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 for all required submittals:
  1. Related drawing number and related note
  2. Submittal information required, (i.e., sample, test data, shop drawing, etc.)
  3. Date submittal is scheduled to be submitted to the Owner/Engineer
  4. Date contractor has scheduled to order material or equipment
  5. Date contractor has scheduled delivery to the job-site of material or equipment in order to meet project schedule

The Contractor shall allow a minimum of two weeks for review of submittal by Owner/Engineer. The approved Submittal Schedule will then be used to track submittals and facilitate project schedule.

- B. Shop Drawings
  1. Provide shop drawings as complete legible submittals (no partial sets) on original drawings or information prepared solely by the fabricator or supplier.
  2. Do not reproduce the Contract Drawings for shop drawing submittals

3. Sheet sizes shall be the same for all sheets and shall not exceed the size of the Contract Drawings
4. Each print shall have blank spaces large enough to accept 4" x 4" review stamps of the Engineer and the Contractor
5. Each print shall carry the following information
  - a. Project Name and Date
  - b. Names of the Engineer, Owner, Contractor, Supplier and/or Manufacturer
  - c. Identification of product or material
  - d. Related drawing number and note
  - e. Relation to adjacent structure or materials
  - f. Identification of deviations from Contract Documents
  - g. Certification that equipment or material complies with the Buy American Act
6. Four submittal copies will be retained by the Owner/Engineer. Contractor shall provide additional copies as needed for his use and distribution.

**C. Product Data**

1. Product data such as catalog cuts, brochures or manufacturer's sheets will be submitted and adequately identified to the Owner/Engineer.
2. Modify product data sheets to delete information of which is not applicable to the project. Provide additional information if necessary to supplement standard information
3. Four submittal copies will be retained by the Owner/Engineer. Contractor shall provide additional copies as needed for his use and distribution.
4. Provide certification that equipment or material complies with the Buy American Act

**D. Samples - Provide three window tint samples for Owner's selection. Two sets of samples will be retained by the Owner/Engineer. Contractor shall provide additional samples as needed for his use and distribution.**

**E. Contractor's Responsibilities**

1. Before making submittals to the Owner/Engineer, 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 for review. Return submittals not meeting Contract requirements back to the submitting subcontractor and do not forward such submittals to the Owner.

2. After the Owner/Engineer accepted review, distribute copies with one copy to be maintained at the Project Site for reference use and other copies distributed to suppliers and fabricators.
3. Do not begin the Work of which requires submittals until return of submittals with the Engineer's stamp and initials indicating accepted review.
4. The Contractor's responsibility for errors and omissions in submittals is not relieved by the Owner or Engineer's review of submittals.
5. The Contractor's responsibility for deviation in submittals from requirements of the Contract Documents is not relieved by the Owner or the Engineer's review of submittals unless the Engineer through the Owner provides written acceptance of the specific deviations.

**F. Engineer's Responsibilities**

1. The Engineer will review submittals with reasonable promptness, checking only for conformance with the design compliance of the project and compliance with information given in the Contact Documents.
2. The Engineer will make changes or notations directly on the submittal, identify such review with his review stamp, obtain and record the Engineer file copy and return the submittal to the Contractor through the Owner.
3. The Owner/Engineer 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.

**3.06 DELIVERY & STORAGE**

- A. Deliver all materials to the job site in manufacturer's original, unopened, undamaged containers, with legible labels and in sufficient quantity to allow for continuity of work.
- B. Select and operate material handling equipment in a safe manner, guarding against damage to existing construction while conforming to manufacturer's recommendations of handling and storage.
- C. Staging and/or storage areas shall be coordinated with and approved by the Owner
- D. The Contractor shall be responsible for the proper storage of all materials, supplies and equipment to be installed under this Contact. Materials stored on site but not adequately protected will not be included in estimates for payment. Except for materials stored within designated and approved storage sheds, vans or trailers, the Contractor shall not store in any manner at the site any materials and equipment which will not be incorporated into the permanent Work within seven days from the delivery date. The Contractor shall be responsible for arranging and paying for the use of property off the site for storage of materials and equipment as may be required.
- E. The Contractor shall be totally responsible for the security of his work, materials, equipment, supplies, tools, machinery and construction equipment.

- F. Flammable materials shall be stored in a cool, dry area away from sparks and open flames. Follow all precautions as outlined in manufacturer's Material Safety Data Sheets.
- G. Materials, having been determined by the owner/owner's representative to be damaged, shall be immediately removed from the construction site and replaced at no cost to the owner.

### **3.07 JOB CONDITIONS**

#### **A. Safety**

1. Each Contractor and Subcontractor shall conduct work in a safe and practical manner in conformance with the OSHA Safety and Health Regulations and the latest edition of the Manual of Accident Prevention, Associated General Contractors of America.
2. Each Contractor and Subcontractor shall observe all applicable Federal, State, local and project laws and regulations pertaining to safety and health, pollution control, water supply, fire protection, sanitation facilities, waste disposal and other related items.
3. Good housekeeping shall be observed at all times. Waste, debris and garbage shall be removed daily or placed in appropriate waste containers. Special attention shall be provided by the Contractor while working in occupied areas regarding noise pollution, dust containment and keeping the areas clean and safe for occupants and visitors.

### **3.08 COORDINATION**

- A. Prior to commencement of work, a pre-construction conference will be held with the contractor, and owner/owner's representative(s) to discuss the scope of work, scheduling and the expectations of all parties involved including any security measures. The owner/owner's representative shall notify all parties a minimum of ten days prior to the meeting. After commencement of construction, a weekly coordination meeting shall be scheduled between the Contractor, Owner and any other interested parties.
- B. Planned Service Interruptions: If any utility services must be discontinued temporarily to perform work, such interruptions shall be described and indicated on a project installation sub-schedule. The description shall include the length of the interruption, its time (date, day of week, time of day, etc.) and can be part of the request noted in the following paragraph.
- C. Take all necessary precautions to plan and coordinate the work in a manner that does not impact facility operations. For any required planned utility service interruptions, the Contractor shall furnish a request to the Owner for approval at least ten (10) working days in advance. The request shall identify the affected buildings and duration of planned outage. Contractor must be aware and take into account that the buildings

concerned are large public buildings, including the courthouse, and that court administration, the clerk of courts and others must be included in the planning for utility service interruptions and must be accommodated.

- D. When the implementation of an Installed ECM results in a change in an existing operations work procedure, the Contractor shall prepare a new written operations work procedure for approval by the Owner.
- E. After completion of installation and County acceptance of installed ECMs, the Contractor shall submit as-built drawings to the Owner for approval.

### **3.09 OPERATIONS AND MAINTENANCE MANUALS AND TRAINING**

- A. The Contractor shall furnish operation and maintenance (O&M) manuals and recommended spare parts lists for O&M of the contractor-installed ECMs and modified County equipment. O&M plans and spare parts lists shall be submitted prior to any required training and County acceptance of the project.
- B. Thirty (30) days prior to the installation completion, the Contractor shall train County personnel and/or County Operations and Maintenance (O&M) contractors as required to operate, maintain, and repair ECM equipment and systems during normal operation and in the event of emergencies.
  - a. Training Program - General Requirements: The Contractor shall provide a training program for County personnel and/or County O&M contractors for each ECM in a project. The program shall provide instruction on operation, troubleshooting, maintenance, and repair of ECMs. Training shall include both a classroom phase and a practical application phase. The course material shall include the operation and maintenance plans and manuals. The program shall be conducted on-site, in facilities provided by the County.

### **3.10 REQUIRED PROVISIONS - Florida Energy And Climate Commission Grant Agreement No.ARS010**

- A. The Contractor shall comply with all applicable federal, state and local rules and regulations. The Contractor acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. The Contractor further agrees to include this provision in all subcontracts issued as a result of this Agreement.
- B. In accordance with Presidential Executive Order 12549, Debarment and Suspension (10 CFR Part 606, later moved to 2 CFR Part 901), the Contractor shall agree and certify that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the Contractor shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction, unless authorized in writing by USDOE to the Commission.
  - 1. To be included with submission of the bid, the Contractor shall complete and sign the Certification Regarding Debarments, Suspension, Ineligibility and Voluntary

Exclusion- Lower Tier Federally Funded Transactions located in Section Two, Response Forms.

2. The Contractor shall include the language of this Section and the Certification Regarding Debarments, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Federally Funded Transactions, in all subcontracts and sub-grants or lower tier agreements executed to support the Contractor's work under this Agreement.
- C. The Contractor shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles. The Commission, the State of Florida, USDOE or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five years following Agreement completion. In the event any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.
1. The Contractor shall retain and maintain all records referenced in Section 16 and make such records available for an audit as may be requested. Such records shall include independent auditor working papers, books, documents and other evidence, including but not limited to, vouchers, bills, invoices, requests for payment and other supporting documentation, which, according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all program costs expended in the performance of this Agreement.
  2. The Contractor agrees to comply with the audit requirements of Section 215.97, Florida Statutes, and those found in Attachment D, Special Audit Requirements as applicable.
  3. The Contractor shall include the audit and record keeping requirements described above and in Attachment B, Special Audit Requirements, in all subcontracts and assignments with sub-Contractors of funds according to Section 215.97, Florida Statutes. For purposes of this Agreement, "sub recipient" shall be defined in accordance with Section 215.97(2)(x), Florida Statutes.
  4. The Contractor must provide copies of any audit referencing this Agreement, the audit transmittal letter, and any response to such audit to the Commission within 30 calendar days of its receipt. The Contractor should confer with its chief financial officer, audit director or contact the Commission for assistance with questions pertaining to the applicability of these requirements.
- D. The Contractor certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Contractor, 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, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. If any non-Federal funds are used for lobbying activities as described above, the Contractor shall submit, Standard Form-LLL, Disclosure of Lobbying Activities, and shall file quarterly updates of any material changes. The Contractor shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly. [10 CFR Part 601]

1. In accordance with Section 216.347, Florida Statutes, the Contractor is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a State agency.
  2. Pursuant to the Lobbying Disclosure Act of 1995, any organization described in Section 501(c)4 of the Internal Revenue Code of 1986 shall not be eligible for sub-grants under this Agreement, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the sub-grant. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.
- E. The employment of unauthorized aliens by any Contractor /vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor/vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- U.S. law requires companies to employ only individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization. E-Verify is an internet-based system, which is free and that allows businesses to determine the eligibility of their employees to work in the United States.
- F. No person on the grounds of race, creed, color, national origin, age, sex or disability shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement.
1. The Contractor agrees to comply with 10 CFR Part 1040 "Nondiscrimination in Federally Assisted Programs."
  2. The Contractor affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes, and that at no time has the Contractor been placed on the Discriminatory Vendor List. The Contractor further agrees that it shall not violate such law and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.
  3. The Contractor affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has the Contractor been convicted of a Public Entity Crime. The Contractor agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement. The Contractor shall insert a provision in accordance with this paragraph in all subcontracts for services in relation to this Agreement.
- G. If the Contractor brings to the performance of this Agreement pre-existing intellectual property, the Contractor shall retain all rights and entitlements to that pre-existing intellectual property.
1. All patent rights, copyrights, and data rights must be in accordance with 10 CFR Part 600.

2. If, during the course of the Agreement, the Contractor modifies a pre-existing invention to the point where it is a new invention, patentable in its own right, or if any discovery or subject invention arises or is developed in the course of, or as a result of, work or services performed under this Agreement, or in any way connected herewith, the Contractor shall retain the entire right, title, and interest to each discovery or subject invention, subject to the provisions of this Section. With respect to any subject invention in which the Contractor retains title, the Commission shall have a royalty-free, nonexclusive, transferable, irrevocable, paid up license to practice or have practiced for, or on behalf of, the Commission or the State of Florida the subject invention and sublicense the same.
3. In the event that any books, manuals, films, software, databases, or other copyrightable material are produced, which are intended to be made available to the public, the Contractor shall notify the Commission. The Commission shall have a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work, and to authorize others to do the same. The Contractor hereby grants the Commission full authority and right to modify or create derivative works of, or allow others to modify or create derivative works on behalf of the Commission, any publications first produced under this Agreement. Any content submitted to the Commission which is asserted to be exempt under Florida's Public Records Act, Chapter 119, Florida Statutes, shall be clearly marked "business proprietary", "exempt," "confidential," or "trade secret" (as applicable), with the statutory basis for such claim of exemption, confidentiality, or trade secret specifically identified in writing. Failure to identify any such content shall constitute a waiver of any claimed exemption, confidentiality, or trade secret.
4. The terms and conditions specified in Section 3.10.G shall also apply to any subcontracts made under this Agreement. The Contractor shall be responsible for informing the subcontractor of the provisions of this Section and obtaining disclosures.

H. Formal regulations concerning administrative procedures for USDOE grants appear in Title 10 of the Code of Federal Regulations. Grant program administrative regulations appear in Part 600. Other USDOE regulations also impact grant programs. The following list contains regulations and Office of Management and Budget Circulars, which may apply to the work performed under this Agreement.

2 CFR 176	Award Terms for Assistance Agreements that include funds under the American Recovery and Reinvestment Act of 2009, Public Law 111-5
2 CFR 901	Nonprocurement Debarment and Suspension
10 CFR 600	Financial Assistance Rules
10 CFR 601	New Restrictions on Lobbying
10 CFR 607	Government wide requirements for drug-free work place (financial assistance)
10 CFR 1039	Uniform relocation assistance and real property acquisition for federal and federally assisted programs
10 CRF 1040	Nondiscrimination in Federally Assisted Programs or Activities
10 CFR 1041	Enforcement of Nondiscrimination on the basis of handicap in programs or activities conducted by USDOE
10 CFR 1042	Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance

Other Federal Regulations	
45 CFR Subtitle A – Appendix E to Part 74	Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals
48 CFR 31	Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal agency
<b>Office of Management and Budget Circulars</b>	
A-21	Cost Principles for Educational Institutions
A-87	Cost Principles for State, Local, and Indian Tribal Governments
A-102	Grants and Cooperative Agreements with State and Local Governments
A-110	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
A-122	Cost Principles for Non-Profit Organizations
A-133	Audit Requirements

- i. All sub-grants and contracts awarded by the Contractor, including small purchases, shall contain and be governed by the following provisions as applicable:
  1. Equal Employment Opportunity- All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
  2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)- All contracts and sub-contracts in excess of \$2,000 for construction or repair awarded by recipients and sub-recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), 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 shall 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 is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
  3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) - When required by Federal program legislation, all construction contracts awarded by the recipients and sub-recipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of

Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

a. **Davis Bacon Act**

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor **which is attached hereto, as Attachment C, and made a part hereof**, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and

- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon

prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

- (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).

The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site and is attached to this agreement as Attachment D. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Sub-recipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Sub-recipient (as applicable), applicant, sponsor, or owner).

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

- (iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize

apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
- (6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

- (7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
  - (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- 4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) -Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for 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). 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 1.5 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.
  - a. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- (1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(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 (a)(1) of this section.
  - (3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient 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 (a)(2) of this section.
  - (4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.
5. Rights to Inventions Made Under a Contract or Agreement - Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 10 CFR part 600.325, "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.

6. Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- 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.
8. Debarment and Suspension (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.
9. Section 508 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1368) and Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h-3(e))- Contracts and sub-grants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1368) and Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h-3(e)). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
10. Compliance with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of sex; (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 795), which prohibits discrimination on the basis of handicaps; (c) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (d) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (e) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (f) Sections 523

and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (h) any other nondiscrimination provisions in the specific statute(s) made; and, (i) the requirements of any other nondiscrimination statute(s) which may apply.

11. Compliance with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Compliance with the provision of the Hatch Act (5 U.S.C. 1501 - 1508 and 7324 - 7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
14. Compliance with environmental standards which may be prescribed to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EP 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplain in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
15. Compliance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
16. Compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.)
17. Compliance with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

18. Compliance with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this Agreement.
19. Compliance with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
20. Compliance with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in accordance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
21. Assist the Commission in complying with the State Energy Conservation Program as described in the Code of Federal Regulations, Title 10, Parts 420 and 450 and guidance issued by the U.S. Department of Energy and subsequent guidance issued by the U.S. Department of Energy; the Financial Assistance Rules described in Title 10, Part 600, as well as those regulations concerning the use of oil overcharge recovery funds.
22. The Commission reserves the right to transfer equipment acquired under this grant as provided in Title 10, Part 600.117. The Recipient can obtain a release of this right upon application containing certain commitments.
23. Compliance with the Buy American Act (41 U.S.C. 10a-10c) By accepting funds under this Agreement, the Contractor agrees to comply with sections 2 through 4 of the Act of March 3, 1933, popularly known as the "Buy American Act." The Contractor should review the provisions of the Act to ensure that expenditures made under this Agreement are in accordance with it. It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement should be American-made.
24. Preservation of open and competition and government neutrality towards contractors' labor relations on federally funded construction projects
  - a. Unless in conflict with State or local laws, you must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this agreement, or pursuant to a subaward to this agreement, do not:
    1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
    2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

- b. The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
  - c. Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering into agreements with labor organizations.
25. Compliance with the provision included in Title XV and Title XVI of Public Law 111-5, the American Recovery and Reinvestment Act of 2009.
26. Segregation of Costs - Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track, and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.
27. False Claims Act- Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principle, employee, agent, contractor, sub-Contractor, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

#### **4. THE CONTRACT AMOUNT**

- A. The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract per Paragraph 4.B of which follows, the Contract sum of Five Hundred and Ninety Nine Thousand Dollars (\$599,000.00).
- B. This paragraph specifies administrative and procedural requirements necessary to prepare and process Applications for Payment.
- 1. Bar-Chart Schedule: Prepare a fully developed, horizontal bar-chart-type, contractor's progress scheduled per Paragraph 3.03
    - b. Contract completion shall not extend 130 days past the issuance date of a Notice to Proceed.
  - 2. Schedule of Values: Coordinate preparation of the Schedule of Values with the Progress Schedule. Submit Schedule of Values per Paragraph 3.04.
  - 3. Application for Payment: Partial progress payments may be issued to the Contractor with the Owner's approval and with submission of properly executed invoice and partial release of liens. Ten percent retainage will be withheld on all progress payments. Attach a legible copy of vendor's invoice or bill of sale, listing Serial Number, for all equipment costing \$1,000 or more, installed under this agreement during the current invoicing period. When the final work is

accepted by the owner, the contractor shall invoice the County for full and final payment.

- A. The owner may decline to make payment, may withhold funds, and if necessary, may demand the return of some or all of the amounts previously paid to the contractor, to protect the owner from loss because of:
1. defective work not remedied by the contractor nor, in the opinion of the owner, likely to be remedied by the contractor;
  2. claims of third parties against the owner or the owner's property;
  3. failure by the contractor to pay subcontractors or others in a prompt and proper fashion;
  4. evidence that the balance of the work cannot be completed in accordance with the contract for the unpaid balance of the contract price;
  5. persistent failure to carry out the work in accordance with the contract;
  6. damage to the owner or a third party to whom the owner is, or may be, liable.
  7. failure to submit accurate required reporting elements i.e. weekly certified payroll, daily reports, invoicing etc.

In the event that the owner makes written demand upon the contractor for amounts previously paid by the owner as contemplated in this subparagraph, the contractor shall promptly comply with such demand.

4. When all of the work is finally complete and the contractor is ready for a final inspection, it shall notify the owner thereof in writing. Thereupon, the owner will make final inspection of the work and, if work and all submissions are complete, in full accordance with this contract and this contract has been fully performed, the owner will promptly issue a final certificate for payment certifying that the project is complete and the contractor is entitled to the remainder of the unpaid contract price, less any amount withheld pursuant to this contract. Guarantees and warranties required by the contract shall commence on the date of completion of the work. If the owner is unable to issue its final certificate for payment and is required to repeat its final inspection of the work, the contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the owner from the contractor's final payment.
5. The contractor shall not be entitled to payment unless and until it submits to the owner invoices with supporting documentation acceptable to the Clerk of Court of which may include partial and final releases and waivers of lien; releases and waivers of lien from all subcontractors of the contractor and of any and all parties required by the owner. Acceptability to the Clerk is based on generally accepted accounting principles and such laws, rules and regulations as may govern the Clerk's disbursement of funds. The County designates the Clerk of

Courts as its agent under the Local Government Prompt Payment Act, Florida Statutes Section 218.735

6. Acceptance of final payment by the contractor shall constitute a waiver of all claims against the owner by the contractor except for those claims previously made in writing against the owner by the contractor, pending at the time of final payment, and identified in writing by the contractor as unsettled at the time of its request for final payment.
- C. Final payment, constituting the entire unpaid balance of the Contract Amount, shall be made by the Owner to the Contractor when the Contract has been fully performed by the Contractor.
  - D. Liquidated Damages: The work to be performed under this contract shall be commenced within ten (10) calendar days after date of Notice to Proceed and shall be finally completed within one hundred and thirty (130) days after the date of this Notice to Proceed. Inasmuch as failure to complete the project within the time fixed above will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that if the project is not finally completed, with finally completed being the issuance of a Certificate of Final Completion by the Owner or within such further time, if any, in accordance with the provisions of the Contract Documents shall be allowed for such final completion, the Contractor shall pay to the Owner as liquidated damages for such delay, and not as a penalty, Three Hundred dollars (\$300.00) for each and every calendar day elapsing between the dated fixed for final completion above and the date such final completion shall have been fully accomplished. Said liquidated damages shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner and shall not exclude the recovery of damages by the Owner under other provisions of the Contract Documents, except for Contractor's delay. This provision of liquidated damages for delay shall in no manner affect the Owner's right to terminate the contract as provided elsewhere in the Contract Documents. The Owner's exercise of the right to terminate shall not release the Contractor from his obligation to pay said liquidated damages in the amount set out above. It is further agreed that the Owner may deduct from the balance retained by the Owner, under the provisions above, the liquidated damages stipulated therein for delay, or such portions thereof as the said retained balance will cover.
  - E. 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.

## 5. WARRANTY

- A. The contractor warrants to the owner that all labor furnished to progress the work under this contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by the contract, and that the work will be of good quality, free from faults and defects and in strict conformance with the contract and warrant same for a period of one year, notwithstanding any required extended warranties or service agreements, commencing at final completion. This one-year warranty is inclusive of all labor, transportation, equipment and material cost with no cost to the owner. All work not conforming to these requirements may be considered defective.

- B. If, within any guarantee period, repairs or changes are required in connection with the guarantee work, which in the opinion of the Owner is rendered necessary as a result of the use of materials, equipment or workmanship, which are defective or inferior or not in accordance with the terms of the Contract, the Contractor shall, promptly upon receipt of notice from the Owner and without expense to the Owner, proceed to

Place in satisfactory condition in every particular all of such guaranteed work, correct all defects therein; and

Make good all damages to the structure or site or equipment or contents thereof, which, in the opinion of the Owner, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract; and

Make good any work or materials or the equipment and contents of structures or site disturbed in fulfilling any such guarantee.

If the Contractor, after receipt of any such written notice, fails within seventy-two (72) hours to commence at the job site with performance of the work necessary to remedy all defects in the work described in such notice so as to provide the Owner with the subject project completed in accordance with all requirements of the Contract Documents, or fails to complete the performance of such remedial work with a reasonable time after commencing same, the Owner shall be entitled to have such defective work remedied on the account of the Contractor, in which event, the Contractor shall be fully liable for all costs and expenses reasonably incurred by the Owner in having such defective work remedied.

## 6. CHANGES IN THE WORK

- A. Changes in the work within the general scope of this contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this agreement, by change order or by field order.
- B. Change order shall mean a written order to the contractor executed by the owner, issued after execution of this agreement, authorizing and directing a change in the work or an adjustment in the contract price or the contract time, or any combination thereof. The contract price and the contract time may be changed only by change order.
- C. Any change in the contract price resulting from a change order shall be determined as follows: (a) by mutual agreement between the owner and the contractor as evidenced by (1) the change in the contract price being set forth in the change order, (2) such change in the contract price, together with any conditions or requirements related thereof, being initialed by both parties and (3) the contractor's execution of the change order, or (b) if no mutual agreement occurs between the owner and the contractor, then the change in the contract price, if any, shall then be determined by the owner on the basis of the reasonable expenditures or savings of those performing, deleting or revising the work attributable to the change, including, in the case of an increase or decrease in the contract price, an allowance for direct job site overhead of 5%, and profit 5% will be utilized.

- D. The execution of a change order by the contractor shall constitute conclusive evidence of the contractor's agreement to the ordered changes in the work, this agreement as thus amended, the contract price and the contract time. The contractor, by executing the change order, waives and forever releases any claim against the owner for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed change order.

**7. CONTRACTOR'S ACCEPTANCE OF CONDITIONS**

- A. This Agreement and the provision of the services at the location listed have been fully considered by the Contractor, who understands the same and agrees to their sufficiency and suitability. Under no circumstances, conditions, or situations shall this Contract be more strongly construed against the County than against the Contractor.
- B. The passing, approval, and/or acceptance by the County of any of the services furnished by the Contractor shall not operate as a waiver by the County of strict compliance with the terms of this Contract, and specifications covering the services. Failure on the part of the Contractor, immediately after Notice to Correct shall entitle the County, if it sees fit, to correct the same and recover the reasonable cost of such replacement and/or repair from the Contractor, who shall in any event be jointly and severally liable to the County for all damage, loss, and expense caused to the County by reason of the Contractor's breach of this Contract and/or his failure to comply strictly and in all things with this Contract and with the specifications.

**8. INDEMNIFICATION/HOLD HARMLESS**

Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, Contractor shall defend, indemnify and hold the COUNTY and the COUNTY's elected and appointed officers and employees harmless from and against (i) any claims, actions or causes of action, (ii) any 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) any costs or expenses that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with, (A) any activity of Contractor or any of its employees, agents, sub-contractors or other invitees during the term of this Contract, (B) the negligence or willful misconduct of Contractor or any of its employees, agents, sub-contractors or other invitees, or (C) Contractor's default in respect of any of the obligations that it undertakes under the terms of this Contract, except to the extent the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or sole negligent acts or omissions of the COUNTY or any of its employees, agents, contractors or invitees (other than CONTRACTOR). 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 Contract, this section will survive the expiration of the term of this Contract or any earlier termination of this Contract.

In the event that the service is delayed or suspended because of the Contractor's failure to purchase or maintain the required insurance, the Contractor shall indemnify the County from any and all increased expenses or lost revenue resulting from such delay.

The first ten dollars (\$10.00) of remuneration paid to the Contractor is for the indemnification provided for above. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement. The provisions of this section shall survive the expiration or earlier termination of this agreement.

**9. INDEPENDENT CONTRACTOR**

At all times and for all purposes under this agreement the Contractor is an independent contractor and not an employee of the Board of County Commissioners for Monroe County. No statement contained in this agreement shall be construed so as to find the Contractor or any of his/her employees, contractors, servants, or agents to be employees of the Board of County Commissioners for Monroe County.

**10. ASSURANCE AGAINST DISCRIMINATION**

The Contractor shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age, or any other characteristic or aspect which is not job related, in its recruiting, hiring, promoting, terminating, or any other area affecting employment under this agreement or with the provision of services or goods under this agreement.

**11. ASSIGNMENT/SUBCONTRACT**

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 and Contractor, 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. Unless expressly provided for therein, such approval shall in no manner or event be deemed to impose any obligation upon the board in addition to the total agreed-upon price of the services/goods of the Contractor and compensation to County.

**12. COMPLIANCE WITH LAW**

In providing all services/goods pursuant to this agreement, the Contractor shall abide by all statutes, ordinances, rules and regulation pertaining to, or regulating the provisions of, such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this contract immediately upon delivery of written notice of termination to the Contractor. The Contractor shall possess proper licenses to perform work in accordance with these specifications throughout the term of this contract.

**13. INSURANCE**

Prior to execution of this agreement, and maintained throughout the life of the contract, the Contractor shall furnish to the County Certificates of Insurance indicating the minimum coverage limitation as listed below:

- A. General Liability – include as a minimum:
- Premises Operations
  - Products and Completed Operations
  - Blanket Contractual Liability

- Personal Injury Liability
- Expanded Definition of Property Damage

The minimum limits acceptable shall be \$1,000,000 Combined Single Limit

If split limits are provided, the minimum limits acceptable shall be: \$500,000 per person; \$1,000,000 per Occurrence; and \$100,000 Property Damage.

An Occurrence Form policy is preferred. If coverage is changed to or 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 48 months following the termination or expiration of the contract.

**MONROE COUNTY BOARD OF COUNTY COMMISSIONERS MUST BE NAMED AS ADDITIONAL INSURED.**

- B. Vehicle Liability – include as a minimum:
- Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be \$1,000,000 Combined Single Limit

If split limits are provided, the minimum limits acceptable shall be: \$500,000 per Person; \$1,000,000 per Occurrence; and \$100,000 Property Damage.

**MONROE COUNTY BOARD OF COUNTY COMMISSIONERS MUST BE NAMED AS ADDITIONAL INSURED.**

- C. Workers Compensation – limits sufficient to respond to Florida Statute 440.

In addition, the Contractor shall obtain Employers' Liability Insurance with limits of not less than:

\$500,000 Bodily Injury by Accident  
 \$500,000 Bodily Injury by Disease, policy limits  
 \$500,000 Bodily Injury by Disease, each employee

Coverage shall be provided by a company or companies authorized to transact business in the State of Florida and the company or companies must maintain a minimum rating of A-VI, as assigned by the A.M. Best Company.

If the Contractor has been approved by Florida's Department of Labor, as an authorized self-insurer, the County shall recognize and honor the Contractor's status. The Contractor may be required to submit a Letter of Authorization issued by the Department of Labor and Certificate of Insurance, providing details on the Contractor's Excess Insurance Program.

If the Contractor participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the Contractor may be required to submit updated financial statements from the fund upon request from the County.

**14. PUBLIC CONSTRUCTION BOND**

A Public Construction Bond must be provided to Monroe County within fifteen (15) days after award of contract, in the form provided as Attachment A of this agreement, 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 the properly executed Public Construction Bond is not received by the County within the fifteen (15) day period, the contract may be awarded to the next selected Bidder/Proposer.

**15. CONTRACTOR'S RESPONSIBILITY**

The Contractor warrants that it is authorized by law to engage in the performance of the activities encompassed herein, subject to the terms and conditions set forth in these contract documents. Contractor shall at all times exercise independent judgment and shall assume responsibility for the services to be provided.

**16. NOTICE REQUIREMENT**

Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage prepaid, to the other party by certified mail, returned receipt requested, to the following:

FOR COUNTY  
Director, Middle Keys Operations  
Monroe County Facilities Maintenance  
10600 Aviation Blvd.  
Marathon, FL 33050

AND

Monroe County Administrator  
1100 Simonton Street  
Key West, FL 33040

FOR CONTRACTOR  
Mr. W. Steve Brody, CEO  
5840 Halifax Avenue  
Fort Myers, Florida 33912

OR

REPRESENTATIVE AT JOBSITE  
FOREMAN

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

Notice shall be deemed received when hand delivered, delivered by mail, or when deemed undeliverable by the U.S. Postal Service.

**17. CANCELLATION**

- A) 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 days written notification to the Contractor.
- B) In the event that the Contractor (1) 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) disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; (4) disregards requirements under the Florida Energy and Climate Commission Grant Agreement No. ARS010 (5) or otherwise is guilty of substantial breach of a provision of the Contract Documents, the Owner may terminate the Contract.
- C) When any of the above reasons exist, the Owner after consultation with the Engineer 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, 72 hours written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety may (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 and (3) finish the Work by whatever reasonable method the Owner may deem expedient. When the Owner terminates the Contract for one of the reasons stated herein, the Contractor shall not be entitled to receive further payment until the Work is finished.
- D) This contract may be terminated if the State or Federal government fails or refuses to reimburse the County under the Florida Energy and Climate Commission Grant Agreement No. ARS010 upon ten (10) days written notice to contractor delivered by hand or certified mail, return receipt requested, of intent to terminate and the date on which such termination becomes effective. Contractor shall cease work as directed. In such case, Contractor shall be paid for all work executed and termination expenses, and expenses incurred prior to termination. No payment shall be made for profit for work, which has not been performed.

**18. GOVERNING LAWS, VENUE, INTERPRETATION, COSTS, 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 the 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.

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.

**19. RECORDKEEPING**

Contractor shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting

principles consistently applied. Each party to this Agreement or their 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 or not paid to County pursuant to this Agreement were spent for purposes not authorized by this Agreement or wrongfully retained by Contractor, the Contractor shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were to have been paid.

**20. 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.

**21. 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 court costs, in appellate proceedings.

**22. 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.

**23. 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 or individual action, as required by law.

**24. CLAIMS FOR FEDERAL OR STATE AID**

Contractor 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; provided that all applications, requests, grant Bids, and funding solicitations shall be approved by each party prior to submission.

**25. 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 no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at public meeting of the Board of County Commissioners. 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 provision does not negate or waive the provisions of Paragraph 16 concerning cancellation.

## **26. 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.

## **27. NONDISCRIMINATION**

County and Contractor 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. County or Contractor agree 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 VI 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. 1201 Note0, as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement. Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the basis of race, color, sex, religion, disability, 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.

**28. 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.

**29. 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.

**30. 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.

**31. PUBLIC ACCESS**

The County and Contractor shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other 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 Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Contractor.

**32. 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.

**33. PRIVILEGES AND IMMUNITIES**

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers agents or employees of any 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.

**34. 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.

**35. NON-RELIANCE BY NON-PARTIES**

No person or entity shall be entitled to rely upon the terms, or any of them, of the 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.

**36. 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.

**37. 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.

**38. EXECUTION IN COUNTERPART**

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 any of the parties hereto may execute this Agreement by signing any such counterpart.

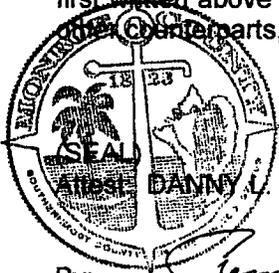
**39. SECTION HEADINGS**

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.

**40. CONTINGENCY STATEMENT**

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first written above in four (4) counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original contract.



Attest: **DANNY L. KOLHAGE, CLERK**

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

By: *Janet Starnock*  
Deputy Clerk

By: *[Signature]*  
Mayor/Chairman

FILED FOR RECORD

2011 OCT -5- PM 1:56

DANNY L. KOLHAGE  
CLERK

Date: September 21, 2011

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
*Natilee W. Cassel*  
NATILEENE W. CASSEL  
ASSISTANT COUNTY ATTORNEY  
Date: 8/31/2011

(SEAL)  
Attest:

CONTRACTOR

By: *Paul O'Hara*, CFO  
WITNESS

By: *W. Lynn Kelly*

Title: CFO

Title: CEO

By: *Megan Begle*  
WITNESS

Date: 8-25-2011

Title: Accounting Clerk