



**Alabama State Port Authority**  
***Specification Booklet***

**Project Name**                      **Inter-Terminal Connector Between MCT & ICTF**  
**Location**                              **Mobile, AL**  
**Project #**      **11165**      **Task # 01**                                      **May 2024**

# **SPECIFICATIONS AND CONTRACT DOCUMENTS**



**PORT OF MOBILE**  
ALABAMA PORT AUTHORITY

**John C. Driscoll, Director & CEO**

**Kay Ivey, Governor of Alabama**

**ISSUED BY**

**Engineering Services Department**























































**Alabama State Port Authority**  
**Specification Booklet**

**Project Name**

**Inter-Terminal Connector Between MCT & ICTF**

**Location**

**Mobile, AL**

**Project # 11165**

**Task# 01**

**May 2024**

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That: \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

\_\_\_\_\_  
(City, State, Zip)

I, a(n) \_\_\_\_\_ corporation, hereinafter called Principal, and  
(state of domicile)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the Alabama State Port Authority hereinafter called OWNER, in the penal sum of \_\_\_\_\_ DOLLARS, (\$ \_\_\_\_\_) (100% of the Contract Amount) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, a copy of which is hereto attached and made a part hereof for the construction of:

**Inter-Terminal Connector Between MCT & ICTF**  
**MOBILE, ALABAMA**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may insure in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract of the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.



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PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

|                                 |           |
|---------------------------------|-----------|
| _____                           | _____     |
|                                 | Principal |
| _____                           | _____ (S) |
| (Principal) Secretary<br>(SEAL) |           |
| _____                           | _____     |
| (Witness as to Principal)       | (Address) |
| _____                           | _____     |
|                                 | Surety    |

ATTEST:

|                              |                  |
|------------------------------|------------------|
| _____                        | _____            |
| (Surety) Secretary<br>(SEAL) |                  |
| _____                        | BY: _____        |
| Witness as to Surety         | Attorney-in-fact |
| _____                        | _____            |
| (Address)                    | (Address)        |
| _____                        | _____            |

**NOTE: Date of BOND must not be prior to date of CONTRACT.**  
**If CONTRACTOR is Partnership, all partners should execute BOND.**





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PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

\_\_\_\_\_ Principal

\_\_\_\_\_  
 (Principal) Secretary  
 (SEAL)

BY: \_\_\_\_\_ (s)

\_\_\_\_\_  
 Witness as to Surety Principal

\_\_\_\_\_ (Address)

\_\_\_\_\_  
 (Address)

\_\_\_\_\_ Surety

ATTEST:

\_\_\_\_\_  
 Witness as to Surety

BY: \_\_\_\_\_ Attorney-In-Fact

\_\_\_\_\_  
 (Address)

\_\_\_\_\_ (Address)

\_\_\_\_\_

\_\_\_\_\_

***NOTE: Date of BOND must not be prior to date of CONTRACT.  
 If CONTRACTOR is Partnership, all partners should execute BOND.***



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**ACKNOWLEDGEMENT FOR CHANGE ORDERS**

**TO:**     ALABAMA STATE PORT AUTHORITY

**RE:**     Inter-Terminal Connector Between MCT & ICTF

Gentlemen:

In order to avoid the necessity of extensive amendment to the referenced Contract, the undersigned hereby acknowledges that the following conditions are those for which change orders are allowed under the Bid law:

1. Unusual and difficult circumstances which arise during the course of the execution of the Contract which could not have been reasonably foreseen.
2. Where competitive bidding for the new work will be to the serious detriment of the Owner.
3. Emergencies arising during the course of work.
4. Changes or alterations provided for in the original bid and original Contract.
5. The Contractor also acknowledges that he has read paragraph 50-04 (EXTRA WORK) and 60-17 of the (CLAIMS FOR ADJUSTMENT AND DISPUTES) of the General Provisions and agrees that "If for any reason the Contractor deems that additional compensation is due him for work or materials not clearly provided in the Contract, plans, or specifications or previously authorized as extra work, he shall notify the Engineer in writing of his intention to claim such additional compensation before he begins the work on which he bases his claim."

\_\_\_\_\_  
CONTRACTOR

**BY:** \_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE



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**CONTRACT**

THIS AGREEMENT, made and executed on this \_\_\_\_\_ day of the month of \_\_\_\_\_, Two Thousand and \_\_\_\_\_ (20\_\_\_\_), by and between The Alabama State Port Authority, and \_\_\_\_\_, domiciled in the state of \_\_\_\_\_, Party of the Second Part, and hereinafter designated as "CONTRACTOR," WITNESSETH, that in consideration of the covenants and agreements herein contained, to be performed by the parties hereto and of the payments hereinafter agreed to be made, it is mutually agreed as follows:

The CONTRACTOR shall and will provide and furnish all equipment and labor, and perform the work required to build, construct, and complete in a thorough and workmanlike manner, to the satisfaction of the Alabama State Port Authority:

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**Project #** 11165 Task No. 01

Hereinafter called the project, for the base Contract price of \_\_\_\_\_ DOLLARS, (\$ \_\_\_\_\_) and all extra work in connection therewith, and in accordance with plans, specifications, and Proposal, which are made a part thereof as fully as is set out herein, and hereby becomes a part of this Contract.

It is agreed and understood that the Alabama State Port Authority shall pay, and the Contractor shall receive, the full compensation for the work performed in accordance with the Specifications.

The project shall commence and will be completed in accordance with Paragraph SP-03 of the Special Provisions.

This contract shall become effective immediately upon, and as of the date all necessary parties hereto have approached and signed the same.

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

IN WITNESS WHEREOF, the parties of these presents have executed this Agreement in the year and day first above written.

WITNESS: \_\_\_\_\_ Alabama State Port Authority  
BY: \_\_\_\_\_

WITNESS: \_\_\_\_\_ Contractor Party of the Second Part  
BY: \_\_\_\_\_



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### **SP-01 DESCRIPTION OF WORK**

The work consists principally of providing bonds, labor, materials, equipment, supervision, insurance, and incidentals necessary to construct a connector road between Mobile Container Terminal & Garrows Bend Intermodal Container Transfer Facility in Mobile, Alabama as indicated in the Contract Plans and Specifications.

### **SP-02 PURCHASE OF MATERIALS**

The Alabama State Port Authority will utilize its sales tax exemption status on this project. The Contractor will be responsible for the purchase of all materials and will be required to apply for sales and use tax certificate of exemption upon contract award.

### **SP-03 COMMENCEMENT AND COMPLETION**

The Contractor will be required to commence work under this contract in accordance with GENERAL PROVISIONS Article 90-02 (NOTICE TO PROCEED), to prosecute said work with faithfulness and energy, and to complete the entire project within **730 calendar days** after receipt of Notice to Proceed. The time stated for final completion shall include final clean-up of all work sites. Failure to complete work on schedule shall initiate liquidated damages, which will be assessed in accordance with the provisions of Paragraph 20-13 (LIQUIDATED DAMAGES) of GENERAL PROVISIONS. In addition, liquidated damages referenced in CONSTRUCTION SPECIFICATIONS, shall also be initiated.

### **SP-04 QUALIFICATION OF BIDDERS**

In addition to the requirements of Article 20-01 and 20-03 of GENERAL PROVISIONS, the Owner may make such investigations as he deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein. Conditional bids will not be accepted.

### **SP-05 ACCEPTANCE OR REJECTION OF BIDS**

The Authority reserves the right to accept or reject any or all bids and to waive informalities. All bidders must be licensed to operate as contractors in the State of Alabama. Attention of bidders is directed to Chapter 8 of Title 23 of the Code of Alabama, 1975, and Amendments thereto, relating to the licensing of General Contractors. No bid will be accepted from anyone except a qualified Contractor, licensed by the State Licensing Board for General Contractors. In addition, non-residents of the State must show evidence of having qualified with the Secretary of State to do business in Alabama.

### **SP-06 NON-RESIDENT (OUT-OF-STATE) CONTRACTORS**

Preference shall be given to resident contractors, and non-resident bidders domiciled in a state having laws granting preference to local contractors shall be awarded Alabama public contracts the same as Alabama contractors bidding under similar circumstances; and resident contractors







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The assigned superintendent shall remain on the Project site while work under the Contract is being performed. In the superintendent’s absence from the site, another named person shall be responsible for all aspects of the work. Notification of the name of the individual shall be filed with the Owner and Engineer. The Contractor shall not reassign a superintendent without the acknowledgement and approval of the Owner.

The Contractor shall maintain an onsite trailer for the duration of the project. The Contractor shall also provide office space for the Engineer’s representative. This space shall be air conditioned and shall be provided with a suitable desk and chair for the purpose of reviewing project drawings.

### SP-09 CONTRACTOR'S REPRESENTATIVE

A representative of the Contractor shall be on the site at all times work is being conducted as required by paragraph 90-01 (SUBLETTING OF CONTRACT). A telephone number should be given to the Engineer where he might contact the Representative after working hours in case of an emergency.

### SP-10 METHOD OF PAYMENT

Payment will be made in accordance with the provisions of Paragraph 100-06 (PARTIAL PAYMENT) except that there will be no payment for materials on hand. Paragraph 100-07 (PAYMENT FOR MATERIALS ON HAND) is to be deleted in its entirety.

### SP-11 INSURANCE

The following shall apply to Section 40 (Indemnification and Insurance Requirements) of General Provisions:

- 1) 40-07 Ocean Marine Coverage – Only required in the event work involves the use of watercraft in the completion of the contract.
- 2) 40-10 Professional Liability Insurance – Delete in its entirety

### SP-12 TAXPAYER AND CITIZEN PROTECTION ACT

Effective October 1, 2011, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (“the Act”) requires that any business entity contracting with or providing any grant or incentives to the state, including the Alabama State Port Authority, certify compliance with the Act. All Bidders must certify such compliance by executing the enclosed Certificate of Compliance and returning it to the Alabama State Port Authority along with proof of the bidding company’s enrollment in the e-verify program with your bid package. The affidavit must be notarized. The following E-Verify website link is provided for convenience: <https://www.e-verify.gov>

### SP-13 GUARANTEE

The Contractor shall furnish to the Alabama Port Authority a two (2) year written guarantee issued from the date of final acceptance. This guarantee shall cover any defective material or workmanship on the entire project.





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### SECTION 10 – DEFINITION OF TERMS

Whenever the following terms are used in these specifications, in the Contract, in any documents or other instruments pertaining to construction where these specifications govern, the intent and meaning shall be interpreted as follows:

**10-01 AASHTO.** The American Association of State Highway and Transportation Officials, the successor association of AASHO.

**10-02 ACCESS ROAD.** The right-of-way, the roadway and all improvements constructed thereon connecting the site of work to a public highway.

**10-03 ADVERTISEMENT.** A public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.

**10-04 ALDOT SPECS.** The State of Alabama Department of Transportation Standard Specifications for Roads and Bridges, latest edition.

**10-05 AISC.** The American Institute of Steel Construction.

**10-06 AREA.** American Railway Engineering Association.

**10-07 ASA.** American Standards Association.

**10-08 ASTM.** The American Society for Testing and Materials.

**10-09 AWARD.** The acceptance, by the OWNER, of the successful bidder's proposal.

**10-10 AWPI.** American Wood Preservers Institute.

**10-11 BIDDER.** Any individual, partnership, firm or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.

**10-12 CALENDAR DAY.** Every day shown on the calendar.

**10-13 CHANGE ORDER.** A written order to the Contractor covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and Contract time adjustment, if any, for the work affected by such changes. The work, covered by a change order, shall be within the scope of the Contract.

**10-14 COMMERCE.** The prime business of the OWNER, consisting of the transshipping and storage of goods and materials by highway, rail, barge, and ship.

**10-15 CONSTRUCTION MANAGER.** The individual, partnership, firm, or corporation duly authorized by the OWNER to be responsible for construction management supervision of the Contract work and acting directly or through an authorized representative.

**10-16 CONTRACT.** The written agreement covering the work to be performed. The awarded Contract shall include but is not limited to: The Advertisement; The Contract Form; The Proposal; The Performance Bond; The Payment Bond; any required insurance certificates; The Specifications; The Plans; Change Orders and any addenda issued to bidders.

**10-17 CONTRACT ITEM (PAY ITEM).** A specific unit of work for which a price is provided in the Contract.



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**10-18 CONTRACT TIME.** The number of calendar days or working days, stated in the special provisions, allowed for completion of the Contract, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar or working days, the Contract shall be completed by that date.

**10-19 CONTRACTOR.** The individual, partnership, firm or corporation primarily liable for the acceptable performance of the work Contracted and for the payment of all legal debts pertaining to the work who acts directly or through lawful agents or employees to complete the Contract work.

**10-20 DEPARTMENT.** The Alabama State Port Authority.

**10-21 DIRECTOR.** The Director of the Alabama State Port Authority, as constituted under the laws of Alabama.

**10-22 ENGINEER.** The individual, partnership, firm or corporation duly authorized by the OWNER to be responsible for Engineering supervision of the Contract work and acting directly or through an authorized representative.

**10-23 EQUIPMENT.** All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the work.

**10-24 EXTRA WORK.** An item of work not provided for in the awarded Contract is previously modified by change order or supplemental agreement, but which is found by the Engineer to be necessary to complete the work within the intended scope of the Contract as previously modified.

**10-25 FEDERAL SPECIFICATIONS.** The Federal Specifications and Standards, and supplements, amendments and indices thereto are prepared and issued by the General Services Administration of the Federal Government. They may be obtained from the Specifications Activity, Printed Materials Supply Division, Building 197, Naval Weapons Plant, Washington D.C. 20407.

**10-26 FORCE ACCOUNT.** The term used to describe a method of accounting which may be employed as a basis of payment to the Contractor for Extra Work.

**10-27 INSPECTOR.** An authorized representative of the Engineer assigned to make all necessary reviews of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.

**10-28 INTENTION OF TERMS.** Whenever, in these specifications or on the plans, the words "directed", "required", "permitted", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Engineer is intended; and similarly, the words "approved", "acceptable" "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer, subject to each case to the final determination of the OWNER.

Any reference to a specific requirement of a numbered paragraph of the Contract specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.

**10-29 LABORATORY.** The official testing laboratories of the OWNER or such other laboratories as may be designated by the Engineer.



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**10-30 MAJOR AND MINOR CONTRACT ITEMS.** A major Contract item shall be any item that is listed in the proposal, the total cost of which is equal to or greater than 10 percent of the total amount of the awarded Contract. All other items shall be considered minor Contract items.

**10-31 MATERIALS.** Any substance specified for use in the construction of the Contract work.

**10-32 NOTICE TO PROCEED.** A written notice to the Contractor to begin the actual work on a previously agreed to date. If applicable, the Notice to Proceed shall state the date on which the Contract time begins.

**10-33 OWNER.** The term OWNER shall mean the State of Alabama acting by and through the Alabama State Port Authority.

**10-34 PAYMENT BOND.** The approved form of security furnished by the Contractor and his surety as a guaranty that he will pay in full all bills and accounts for materials and labor used in the construction of the work.

**10-35 PERFORMANCE BOND.** The approved form of security furnished by the Contractor and his surety as a guaranty that the Contractor will complete the work in accordance with the terms of the Contract.

**10-36 PLANS.** The official drawings or exact reproductions, approved by the Engineer, which show the location, character, dimensions, and details of the work to be done and which are to be considered as a part of the Contract, supplementary to the specifications.

**10-37 PROJECT.** The agreed scope of work for accomplishing specific development.

**10-38 PROPOSAL.** The written offer of the bidder (when submitted on the approved proposal form) to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the plans and specifications.

**10-39 PROPOSAL FORM.** The approved, prepared form on which the OWNER requires that formal bids be submitted for the work contemplated.

**10-40 PROPOSAL GUARANTY.** The security furnished with a proposal to guarantee that the bidder will enter into a Contract if his proposal is accepted by the OWNER.

**10-41 SPECIAL PROVISIONS.** Specific directions and provisions additional to these GENERAL PROVISIONS and to any CONSTRUCTION SPECIFICATIONS setting forth conditions or requirements of construction which are not satisfactorily covered by these GENERAL PROVISIONS or the CONSTRUCTION SPECIFICATIONS. SPECIAL PROVISIONS shall prevail over the GENERAL PROVISIONS and CONSTRUCTION SPECIFICATIONS because they set forth the final Contractual intent as to the matter involved.

**10-42 SPECIFICATIONS.** A part of the Contract containing the written directions and requirements for completing the Contract work. Standards for specifying materials or testing which are cited in the Contract specifications by reference shall have the same force and effect as if included in the Contract physically.

**10-43 STATE.** The State of Alabama, the Party of the First Part to the Contract, acting by and through the Alabama State Port Authority.

**10-44 STRUCTURES.** Port facilities such as wharves, piers, dolphins, bridges, culverts, catch basins, inlets, retaining walls, cribbing, storm and sanitary sewer lines, water lines, under drains,



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electrical ducts, manholes, handholes, lighting fixtures and bases, transformers, flexible and rigid pavements, buildings, vaults, and other man-made features of the port that may be encountered in the work and not otherwise classified herein.

**10-45 SUBCONTRACTOR.** Any properly qualified individual undertaking the performance of any part of the work under the terms of the Contract, by virtue of an agreement between himself and the Contractor, with the approval of the OWNER.

**10-46 SUBGRADE.** The soil which forms the pavement foundation.

**10-47 SUPERINTENDENT.** The Contractor's executive representative who is present on the work site during progress, authorized to receive and fulfill instructions from the Engineer, and who shall supervise and direct the construction.

**10-48 SUPPLEMENTAL AGREEMENT.** A written agreement between the Contractor and the OWNER covering: (1) work that would increase or decrease the total amount of the awarded Contract by not more than 10 percent; or any major Contract item, by more than 25 percent, such increased or decreased work being within the scope of the originally awarded Contract, or (2) work that is not within the scope of the originally awarded Contract.

**10-49 SURETY.** The corporate body, licensed under the laws of Alabama, bound with and for the Contractor for the acceptable performance of the Contract and for the payment of all claims recoverable under the Contract Bonds.

**10-50 WORK.** The furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's performance of all duties and obligations imposed by the Contract, plans and specifications.

**10-51 WORKING DAY.** A working day shall be any day other than a national legal holiday, Saturday, or Sunday, on which the normal working forces of the Contractor may proceed with regular work for at least 6 hours toward completion of the Contract. Unless work is suspended for causes beyond the Contractor's control, Saturdays, Sundays, and national holidays on which the Contractor's forces engage in regular work, requiring the presence of an inspector, will be considered as working days.



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**SECTION 20 – PROPOSAL REQUIREMENTS AND CONDITIONS**

**20-01 PREQUALIFICATION OF BIDDERS**

Proposal forms will be issued only to prospective Bidders who are licensed under the terms of the existing State laws. If the applicant is a corporation organized in a state other than Alabama, it shall furnish a certificate from the Secretary of State showing that it is qualified to transact business in Alabama.

**20-02 CONTENTS OF PROPOSAL FORMS**

The OWNER shall furnish bidders with proposal forms. All papers bound with or attached to the proposal forms are necessary parts and must not be detached. The plans, specifications, and other documents designated in the proposal form shall be considered a part of the proposal whether attached or not.

**20-03 ISSUANCE OF PROPOSAL FORMS**

The OWNER reserves the right to refuse to issue a proposal form to a prospective bidder should such bidder be in default for any of the following reasons:

- (a) Failure to pay, or satisfactorily settle, all bills due for labor and materials on former Contracts in force with the OWNER.
- (b) Contractor default under previous Contracts with the OWNER.
- (c) Proposal withdrawal or Bid Bond forfeiture on previous project with the OWNER.
- (d) Unsatisfactory work on previous Contract with the OWNER.
- (e) Performance failure of manufacturer’s product or materials.

**20-04 INTERPRETATION OF ESTIMATED PROPOSAL QUANTITIES**

An estimate of quantities of work to be done and materials to be furnished under these specifications is given in the proposal. It is the result of careful calculations and is believed to be correct. It is given only as a basis for comparison of proposals and the award of the Contract. The OWNER does not expressly, or by implication, agree that the actual quantities involved will correspond exactly therewith; nor shall the bidder plead misunderstanding or deception because of such estimates of quantities, or of the character, location or other conditions pertaining to the work. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities may be increased or decreased as hereinafter provided in the subsection titled 50-02 ALTERATION OF WORK AND QUANTITIES of Division IV, without in any way invalidating the unit bid prices.

**20-05 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE**

The bidder is expected to carefully examine the site of the proposed work, the proposal, plans, specifications, and Contract forms. He shall satisfy himself as to the character, quality, and quantities of work to be performed, materials to be furnished, and as to the requirements of the proposed Contract. The submission of a proposal shall be prima facie evidence that the bidder



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has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the proposed Contract, plans, and specifications.

Boring logs and other records of subsurface investigations and tests are available for inspection of bidders. It is understood and agreed that such subsurface information, whether included in the plans, specifications, or otherwise made available to the bidder, was obtained and is intended for the OWNER's design and estimating purposes only. Such information has been made available for the convenience of all bidders. It is further understood and agreed that each bidder is solely responsible for all assumptions, deductions, or conclusions which he may make or obtain from his examination of the boring logs and other records of subsurface investigations and tests that are furnished by the OWNER.

**20-06 PREPARATION OF PROPOSAL**

The bidder shall submit his proposal on the forms furnished by the OWNER. All blank spaces in the proposal forms must be correctly filled in where indicated for each and every item for which a quantity is given. The bidder shall state the price (written in ink or typed) both in words and numerals for which he proposed to do each pay item furnished in the proposal. The Department will check the gross sum given in the proposal and in case of error or discrepancy, the gross sum obtained by adding the products of the unit prices and the various estimated quantities listed in the proposal shall prevail and this shall be the Contract Bid Price. In case of conflict between words and numerals, the words, unless obviously incorrect, shall govern.

The bidder shall sign his proposal correctly and in ink. If the proposal is made by an individual, his name and post office address must be shown. If made by a partnership, the name and post office address of each member of the partnership must be shown. If made by a corporation the person signing the proposal shall give the name of the State under the laws of which the corporation was chartered and the name, titles, and business address of the president, secretary, and the treasurer. Anyone signing a proposal as an agent shall file evidence of his authority to do so and that the signature is binding upon the firm or corporation.

**20-07 IRREGULAR PROPOSALS**

Proposals shall be considered irregular for the following reasons:

- (a) If the proposal is on a form other than that furnished by the OWNER, if the OWNER's form is altered, or if any part of the proposal form is detached.
- (b) If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind which make the proposal incomplete, indefinite, or otherwise ambiguous.
- (c) If the proposal does not contain a unit price for each pay item listed in the proposal, except in the case of authorized alternate pay items, for which the bidder is not required to furnish a unit price.
- (d) If the proposal contains unit prices that are obviously unbalanced.
- (e) If the proposal is not accompanied by the bid bond specified by the OWNER.

The OWNER reserves the right to reject any irregular proposal and the right to waive technicalities if such waiver is in the best interest of the OWNER and conforms to laws and ordinances pertaining to the letting of construction Contracts.





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### 20-08 PROPOSAL GUARANTY

Each separate proposal shall be accompanied by a certified check, or other specified acceptable collateral, in the amount of 5% of the bid price, but not more than \$10,000. Such check, or collateral, shall be made payable to the Alabama State Port Authority.

### 20-09 DELIVERY OF PROPOSAL

Each proposal submitted shall be placed in a sealed envelope plainly marked on the outside with the project description, Bidder's name and address, Contractor's License number, Contractor's Classification of License, and the time and date of bid opening. When sent by mail, preferably registered, the sealed proposal, marked as indicated above, should be enclosed in an additional envelope. No proposal will be considered unless received at the place specified in the advertisement before the time specified for opening all bids.

Proposals received after the bid opening time shall be returned to the bidder unopened.

### 20-10 WITHDRAWAL OR REVISION OF PROPOSALS

A bidder may withdraw or revise (by withdrawal of one proposal and submission of another) a proposal provided that the bidder's request for withdrawal is received by the OWNER in writing or by telegram before the time specified for opening bids. Revised proposals must be received at the place specified in the advertisement before the time specified for opening all bids.

### 20-11 PUBLIC OPENING OF PROPOSALS

Proposals shall be opened, and read, publicly at the time and place specified in the advertisement. Bidders, their authorized agents, and other interested persons are invited to attend.

Proposals that have been withdrawn (by written or telegraphic request) or received after the time specified for opening bids shall be returned to the bidder unopened.

### 20-12 DISQUALIFICATION OF BIDDERS

A bidder shall be considered disqualified for any of the following reasons:

- (a) Submitting more than one proposal from the same partnership, firm or corporation under the same or different name.
- (b) Evidence of collusion among bidders. Bidders participating in such collusion shall be disqualified as bidders for any future work of the OWNER.
- (c) If the bidder is considered to be in "default" for any reason specified in the paragraph titled ISSUANCE OF PROPOSAL FORMS of this subsection.
- (d) If the bidder has not complied with the provisions of the Laws of the State of Alabama concerning licensing of Contractors.
- (e) If an out-of-state bidder has not qualified with the Secretary of State to do business in Alabama.





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**20-13 LIQUIDATED DAMAGES**

Time is an essential element in the Contract. As the prosecution of the Work will inconvenience the public, obstruct traffic, and interfere with business, it is important that the work be pressed vigorously to completion. Also, the cost to the Department of the administration of the Contract, supervision, inspection, engineering, and in some cases maintenance of detours around or over the work under construction will be increased or decreased as the time occupied in the Work is lengthened or shortened. Therefore, exclusive of Sundays, national holidays, and other exceptions and extensions as detailed elsewhere in these Specifications for each day that the Work remains incomplete after the time specified in the Contract, or additional time that may be allowed by the Engineer for the completion of the work when extra or additional work is ordered by the Engineer, the amount specified in the following schedule shall be paid by the Contractor to the Department as liquidated damages for the loss sustained by the State because of failure of the Contractor to complete the work within the specified time.

**SCHEDULE OF LIQUIDATED DAMAGES**

| <u>Contract Bid Price</u>                   | <u>Amount of Liquidated Damages per Day</u> |
|---|---|
| \$100,000 and less                          | \$ 1,100.00                                 |
| More than \$100,000 and less than \$250,000 | \$ 1,500.00                                 |
| \$250,000 and less than \$600,000           | \$ 1,900.00                                 |
| \$600,000 or more                           | \$ 5,000.00                                 |

**20-14 PURCHASE OF MATERIALS**

**20-14.1** In accordance with the State of Alabama Statutes for **Sales Tax exemptions for a State Agency**, it is the intent of this Contract for the Alabama State Port Authority (Owner) to reduce sales tax.

**20-14.2 Materials and Equipment Responsibility**

The General Contractor shall retain as part of his Bid and Fee the following responsibilities for care, custody and control of the purchased Materials and Equipment.

1. Ensure that all Materials and Equipment purchased are in complete accordance with the plans and specifications.
2. Shop drawings and submittals.
3. Scheduling.
4. Shipment, receipt, unloading, inspection, storage, and handling.
5. Return of damaged Materials and Equipment.
6. Filing of freight claims.
7. Installation as required.
8. Startup and testing as required per specifications.
9. Warranty and maintenance as required per specifications.



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10. Training as required per specifications.
11. Spare parts. Special tools and additional stock as required by the specifications.
12. In the event the Contractor orders non-specified, wrong size or dimensioned Material or Equipment it will be his responsibility to replace such at no cost to the Owner.



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**SECTION 30 – AWARD AND EXECUTION OF CONTRACT**

**30-01 CONSIDERATION OF PROPOSALS**

After the proposals are publicly opened and read, they will be compared on the basis of the summation of the products obtained by multiplying the estimated quantities shown in the proposal by the unit bid prices. If a bidder's proposal contains a discrepancy between unit bid prices written in words and unit bid prices written in numbers, the unit price written in words shall govern.

Until the award of the Contract is made, the OWNER reserves the right to reject a bidder's proposal for any of the following reasons:

- a) If the proposal is irregular as specified in the subsection titled IRREGULAR PROPOSALS of Subsection 20.
- b) If the bidder is disqualified for any of the reasons specified in the subsection titled DISQUALIFICATION OF BIDDERS of Subsection 20.

In addition, until the award of a Contract is made, the OWNER reserves the right to reject any or all proposals; waive technicalities, if such waiver is in the best interest of the OWNER and is in conformance with applicable laws or regulations pertaining to the letting of construction Contracts; advertise for new proposals; or proceed with the work otherwise. All such actions shall promote the OWNER's best interests.

**30-02 AWARD OF CONTRACT**

The award of a Contract, if it is to be awarded, shall be made within 60 calendar days of the date specified for publicly opening proposals.

Award of the Contract shall be made by the OWNER to the lowest qualified bidder whose proposal conforms to the cited requirements of the OWNER.

**30-03 CANCELLATION OF AWARD**

The OWNER reserves the right to cancel the award without liability to the bidder, except return of proposal guaranty, at any time before a Contract has been fully executed by all parties and is approved by the OWNER in accordance with the paragraph titled APPROVAL OF CONTRACT of this subsection.

**30-04 RETURN OF PROPOSAL GUARANTY**

All proposal guaranties, except those of the three lowest bidders, will be returned immediately after the OWNER has made a comparison of bids as hereinbefore specified in the paragraph titled CONSIDERATION OF PROPOSALS of this subsection. Proposal guaranties of the two lowest bidders will be retained by the OWNER until such time as an award is made, at which time, the unsuccessful bidders' proposal guaranty will be returned. The successful bidder's proposal guaranty will be returned as soon as the OWNER receives the contract bonds as specified in the paragraph titled "REQUIREMENTS OF CONTRACT BONDS" of the subsection.



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#### **30-05 REQUIREMENTS OF CONTRACT BONDS**

In order to insure the faithful performance of each and every condition, stipulation, and requirement of the Contract and to indemnify and save harmless the OWNER from any and all damages, either directly or indirectly, (arising out of any failure to perform same), the successful Bidder to whom the Contract is awarded shall, within ten (10) days from the date of award, furnish at his expense and file with the OWNER an acceptable Surety Bond in an amount equal to one hundred percent (100%) of the Contract Bid Price of the Contract as awarded. Said Bond shall be made on the approved bond form, shall be furnished by a reputable surety company authorized to do business in the State of Alabama, shall be counter-signed by an authorized agent resident in the State who is qualified for the execution of such instruments, and shall be attached thereto power of attorney of the signing agent.

In case of default on the part of the Contractor, all expenses incident to ascertaining and collecting losses suffered by the OWNER under the Bond, including both Engineering and legal services, shall lie against the Contract Bond for Performance of the Work.

In addition thereto, the successful Bidder to whom the Contract is awarded shall, within ten (10) days, furnish at his expense and file with the OWNER an acceptable Surety Bond for Payment of Labor, Materials, and Supplies payable to the OWNER in an amount not less than one hundred percent (100%) of the Contract price with the obligation that the Contractor shall promptly make payment to all persons furnishing him or them with labor, materials, foodstuffs, or supplies for, or in, prosecution of the work including the payment of reasonable attorney's fees, incurred by successful claimants or plaintiffs in suits on said bond.

No surety bonds from any insurance company or bonding company which has a lower rating, in the Best Key Rating Guide, than A will be accepted.

#### **30-06 EXECUTION OF CONTRACT**

The successful bidder shall sign (execute) the necessary agreements for entering into the Contract and return such signed Contract to the OWNER, along with the fully executed surety bond or bonds specified in the paragraph titled REQUIREMENT OF CONTRACT BONDS of this subsection, within 10 calendar days from the date mailed or otherwise delivered to the successful bidder.

#### **30-07 APPROVAL OF CONTRACT**

Upon receipt of the Contract and Contract bond or bonds that have been executed by the successful bidder, the OWNER shall complete the execution of the Contract and return the fully executed Contract to the Contractor. Delivery of the fully executed Contract to the Contractor shall constitute the OWNER's approval to be bound by the successful bidder's proposal and the terms of the Contract.

#### **30-08 FAILURE TO EXECUTE CONTRACT**

Failure of the successful bidder to execute the Contract and furnish an acceptable surety bond or bonds within the 10 calendar day period specified in the paragraph titled "REQUIREMENTS OF CONTRACT BONDS" of this subsection shall be just cause for cancellation of the award and forfeiture of the proposal guaranty, not as a penalty, but as liquidation of damages to the OWNER.



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Award may then be made to the next lowest qualified Bidder or the work may be re-advertised, or otherwise contracted as the Director may decide.





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### **SECTION 40 – INDEMNIFICATION AND INSURANCE REQUIREMENTS**

#### **40-01 INDEMNIFICATION**

The Contractor shall assume all liability for and shall indemnify and save harmless the State of Alabama, the Alabama State Port Authority and its officers and employees, and Engineer from all damages and liability for injury to any person or persons, and injury to or destruction of property, including the loss of use thereof, by reason of an accident or occurrence arising from operations under the Contract, whether such operations are performed by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, occurring on or about the premises, or the ways and means adjacent, during the term of the Contract, or any extension thereof, and shall also assume the liability for injury and/or damages to adjacent or neighboring property by reason of work done under the Contract.

#### **40-02 CONTRACTOR COVERAGE**

The Contractor shall not commence work under the Contract until he has obtained all insurance required under the following paragraphs and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar applicable insurance required of the subcontractor has been obtained and approved. If the subcontractor does not take out insurance in his own name, then the principal Contractor shall provide such insurance protection for subcontractor and his employees by endorsement to the Contractor’s policies or by taking out separate policies in the name of the subcontractor.

#### **40-03 COMMERCIAL GENERAL LIABILITY**

The Contractor shall take out and maintain during the life of the Contract Commercial General Liability insurance, including Blanket Contractual and Completed Operations coverage, in an amount not less than \$5,000,000 for any one occurrence for bodily injury, including death, and property damage liability. Policy shall include endorsement identifying the Owner and Engineer as Primary and Non-contributory Additional Insureds as respects the Contractor’s work for the Owner, to the extent required by written Contract, including a waiver of all rights of subrogation.

#### **40-04 OWNER’S AND CONTRACTOR’S PROTECTIVE LIABILITY**

The Contractor shall take out and maintain during the life of the Contract a separate Owner’s and Contractor’s Protective Liability policy in the names of the Owner and Engineer in an amount not less than \$5,000,000. Policy shall be delivered to the Owner.

#### **40-05 BUSINESS AUTOMOBILE LIABILITY**

The Contractor shall take out and maintain during the life of the Contract Business Automobile Liability insurance covering owned, non-owned and hired vehicles in an amount not less than \$1,000,000 for any one occurrence for bodily injury, including death, and property damage liability. The Owner and Engineer shall be identified as Additional Insureds, to the extent required by written Contract.



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### 40-06 WORKERS COMPENSATION

The Contractor shall take out and maintain during the life of the Contract Workers Compensation and Employers Liability insurance providing coverage under the Alabama Workers Compensation Act in an amount not less than that required by Alabama Law.

Where applicable, Contractor shall take out and maintain during the life of the Contract insurance providing coverage as required by Federal statute, including but not limited to U.S. Longshoremen and Harbor Workers Act (USL&H), Jones Act, and Railroad Federal Employers Liability Act (FELA).

### 40-07 OCEAN MARINE COVERAGE

In the event that work involves the use of watercraft in the completion of the Contract, the Contractor shall provide Protection and Indemnity coverage, including crew, in an amount not less than \$2,000,000 for each loss.

*Only the Contractor and/or Subcontractor using watercraft in the completion of its work shall be required to provide evidence of this coverage. In the event the Contractor subcontracts for this portion of the work, the Contractor shall not allow the subcontractor to commence work until such coverage has first been obtained by the subcontractor and approved by the Owner.*

### 40-08 RAILROAD PROTECTIVE LIABILITY

In any case where the Contract involves work within 50 feet of an operating railroad track, the Contractor shall provide a Railroad Protective Liability policy in the name of the railroad whose right of way is involved. The limits of the policy shall be not less than \$2,000,000 per occurrence with \$6,000,000 aggregate.

NOTE #1: With the written approval of the Owner, in lieu of the Railroad Protective Liability policy, the Contractor may cause to be attached to its Commercial General Liability policy standard ISO endorsement, "Contractual Liability – Railroads" (CG 24 17). The railroad must be identified as an Additional Insured.

NOTE #2: *Only the Contractor and/or Subcontractor performing the work within 50 feet of the railroad track shall be required to provide evidence of this coverage. In the event the Contractor subcontracts this portion of the work, the subcontractor shall not commence work until such coverage has first been obtained by the subcontractor and approved by the Owner.*

### 40-09 BUILDER'S RISK or INSTALLATION FLOATER

The Contractor shall take out and maintain during the life of the Contract Builder's Risk insurance or Installation Floater, written on an "All Risk" basis, insuring the work included in the Contract against all physical loss. The amount of insurance shall at all times be at least equal to the amount of the Contract. The policy shall be in the names of the Owner, Engineer, Contractor, and "all Subcontractors," as their interests appear. Policy shall be provided to the Owner prior to commencement of work.

When changes in scope of work by written Change Order or aggregate Change Orders equal 15 percent of the total Contract, the amount of coverage provided in the Builder's Risk/Installation Floater policy shall be increased accordingly and evidence of increased coverage delivered to the Owner.





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### **SECTION 50 – SCOPE OF WORK**

#### **50-01 INTENT OF CONTRACT**

The intent of the Contract is to provide for construction and completion, in every detail, of the work described. It is further intended that the Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, drawings, specifications, and terms of the Contract.

#### **50-02 ALTERATION OF WORK AND QUANTITIES**

The OWNER reserves and shall have the right to make such alterations in the work as may be necessary or desirable to complete the work originally intended in an acceptable manner. Unless otherwise specified herein, the Engineer shall be and is hereby authorized to make such alterations in the work as may increase or decrease the originally awarded Contract quantities, provided that the aggregate of such alterations does not change the total Contract cost by more than 10% or the total cost of any major Contract item by more than 25 percent (total cost being based on the unit prices and estimated quantities in the awarded Contract). Alterations which do not exceed the 25 percent limitation shall not invalidate the Contract nor release the surety, and the Contractor agrees to accept payment for such alteration as if the altered work had been a part of the original Contract. These alterations, which are for work within the general scope of the Contract shall be covered by “Change Orders” issued by the Engineer. Change orders for altered work shall include extensions of Contract time where, in the Engineer's opinion, such extensions are commensurate with the amount and difficulty of added work.

Should the aggregate amount of altered work exceed the 25 percent limitation hereinbefore specified, such excess altered work shall be covered by supplemental agreement. If the OWNER and the Contractor are unable to agree on a unit adjustment for any Contract item that requires a supplemental agreement, the OWNER reserves the right to terminate the Contract with respect to the item and make other arrangement for its completion.

All supplemental agreements shall require consent of the Contractor's surety and separate performance and payment bonds.

#### **50-03 OMITTED ITEMS**

The Engineer may, in the OWNER's best interest, omit from the work any Contract item, except major Contract items. Major Contract items may be omitted by a supplemental agreement. Such omission of Contract items shall not invalidate any other Contract provision or requirement.

Should a Contract item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all work performed toward completion of such item prior to the date of the order to omit such item. Payment for work performed shall be in accordance with the paragraph titled PAYMENT FOR OMITTED ITEMS of Subsection 100.



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**50-04 EXTRA WORK**

Should acceptable completion of the Contract require the Contractor to perform an item of work for which no basis of payment has been provided in the original Contract or previously issued change orders or supplemental agreements, the same shall be called Extra Work. Extra work that is within the general scope of the Contract shall contain agreed unit prices for performing the change order work in accordance with the requirements specified in the order, and shall contain any adjustment to the Contract time that, in the Engineer's opinion, is necessary for completion of such extra work.

When determined by the Engineer to be in the OWNER's best interest, he may order the Contractor to proceed with extra work by force account as provided in the paragraph titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of Subsection 100.

Extra work that is necessary for acceptable completion of the project, but is not within the general scope of the work covered by the original Contract shall be covered by a Supplemental Agreement as hereinbefore defined in the paragraph titled SUPPLEMENTAL AGREEMENT of Subsection 10.

Any claim for payment of extra work that is not covered by written agreement (change order or supplemental agreement) shall be rejected by the OWNER.

**50-05 MAINTENANCE OF COMMERCE**

It is the explicit intention of the Contract that the safety of workers and vessels, as well as the Contractor's equipment and personnel, is the most important consideration.

It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of vessels in the waterfront areas of the port with respect to his own operations and the operations of all his Subcontractors as specified in the paragraph titled LIMITATION OF OPERATIONS of Subsection 90.

With respect to his own operations and the operations of all his Subcontractors, the Contractor shall provide marking, lighting, and other acceptable means of identifying: personnel; equipment; vehicles; storage areas; and any work area or condition that may be hazardous to the operation of fire rescue equipment, or maintenance vehicles at the port.

When the Contract requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of work that is otherwise provided for in the Contract, plans, and specifications, the Contractor shall keep such road, street, or highway open to all traffic and shall provide such maintenance as may be required to accommodate traffic. The Contractor shall furnish, erect, and maintain barricades, warning signs, flagmen, and other traffic control devices in reasonable conformity with the manual of Uniform Traffic Control Devices for Streets and Highway (published by the United States Government Printing Office), unless otherwise specified herein. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets, or highways.

The Contractor shall make his own estimate of all labor, materials, equipment, and incidentals necessary for providing the maintenance of commerce and vehicular traffic as specified in this subsection.



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The cost of maintaining the commerce and vehicular traffic specified in this subsection shall not be measured or paid for directly but shall be included in the various Contract items.

**50-06 REMOVAL OF EXISTING STRUCTURES**

All existing structures encountered within the established lines, grades, or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, reused in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly but shall be included in the various Contract items.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plan, the Engineer shall be notified prior to disturbing such structure. The disposition of existing structures so encountered shall be immediately determined by the Engineer in accordance with the provisions of the Contract.

Except as provided in the subsection titled RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK of this subsection, it is intended that all existing materials or structures that may be encountered (within the lines, grades, or grading sections established for completion of the work) shall be utilized in the work as otherwise provided for in the Contract and shall remain the property of the OWNER when so utilized in the work.

**50-07 RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK**

Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag, or concrete slabs within the established lines, grades, or grading sections, the use of which is intended by the terms of the Contract to be either embankment or waste, he may at his option either:

- (a) Use such material in another Contract item, providing such use is approved by the OWNER and Engineer and is in conformance with the Contract specifications applicable to such use; or
- (b) Remove such material from the site, upon written approval of the Engineer; or
- (c) Use such material for his own temporary construction on site; or
- (d) Use such material as intended by the terms of the Contract.

Should the Engineer approve the Contractor's wish to exercise option (a), (b), or (c), the Contractor shall be paid for the excavation or removal of such material at the applicable Contract price. The Contractor shall replace, at his own expense, such removed or excavated material with an agreed equal volume of material that is acceptable for use in constructing embankment, backfills, or otherwise to the extent that such replacement material is needed to complete the Contract work. The Contractor shall not be charged for the use of such material so used in the work or removed from the site.

Should the Engineer approve the Contractor's exercise of option (a), the Contractor shall be paid, at the applicable contact price, for furnishing and installing such material in accordance with requirements of the Contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of his exercise of option (a), (b), or (c).











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**60-03 COORDINATION OF CONTRACT, PLANS AND SPECIFICATIONS**

The Contract, plans, specifications, and all referenced standards cited are essential parts of the Contract requirements. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions; special provisions shall govern over plans, Contract construction specifications, Contract general provisions, cited specifications, and cited testing standards; plans shall govern over Contract construction specifications, Contract general provisions, and cited testing standards; Contract construction specification shall govern over Contract general provisions, and cited testing standards; Contract general provisions shall govern over cited testing standards. The Contractor shall not take advantage of any apparent error or omission on the plans or specifications. In the event the Contractor discovers any apparent error or discrepancy, he shall immediately call upon the Engineer for his interpretation and decision, and such decision shall be final.

**60-04 COOPERATION OF THE CONTRACTOR**

The Contractor will be supplied with five (5) copies each of the plans and specifications. He shall have available on the work at all times, one copy each of the plans and specifications. Additional copies of plans and specifications may be obtained by the Contractor for the cost of reproduction.

The Contractor will give constant attention to the work to facilitate the progress thereof, and he shall cooperate with the Engineer and his inspectors and with other Contractors in every way possible. The Engineer shall allocate the work and designate the sequence of construction in case of controversy between Contractors. The Contractor shall have a competent superintendent on the job at all times who is fully authorized as his agent on the work. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the Engineer or his authorized representative.

**60-05 COOPERATION BETWEEN CONTRACTORS**

The OWNER reserves the right to Contract for and perform other or additional work on or near the work covered by this Contract.

When separate Contracts are let within the limits of any one project, Each Contractor shall conduct his work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with his Contract and shall protect and save harmless the OWNER from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations or other Contractors working within the limits of the same project.

The Contractor shall arrange his work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. They shall join their work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.



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#### **60-06 CONSTRUCTION LAYOUT AND STAKES**

The Engineer will establish horizontal and vertical control only and the Contractor must furnish all additional stakes for the layout and construction of the work. The Engineer will also furnish any additional information, upon request of the Contractor, needed to layout and construct the work. The Contractor shall satisfy himself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors which may have been made in laying out the work. Such stakes and markings as the Engineer may set for either his own or the Contractor's guidance shall be scrupulously preserved by the Contractor. In case of negligence on the part of the Contractor, or his employees, resulting in the destruction of such stakes or markings, an amount equal to the cost of replacing the same may be deducted from subsequent estimates due to the Contractor at the discretion of the OWNER.

#### **60-07 AUTOMATICALLY CONTROLLED EQUIPMENT**

Whenever batching or mixing plant equipment is required to be operated automatically under the Contract and a breakdown or malfunction of the automatic controls occurs, the equipment may be operated manually or by other methods for a period of 48 hours following the breakdown or malfunction, provided this method of operations will produce results which conform to all other requirements of the Contract.

#### **60-08 AUTHORITY AND DUTIES OF INSPECTORS**

Inspectors employed by the OWNER shall be authorized to inspect work done and all materials furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors are not authorized to revoke, alter, or waive any provision of the Contract. Inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

Inspectors employed by the OWNER are authorized to notify the Contractor or his representatives of any failure of the work or materials to conform to the requirements of the Contract, plans, or specifications and to reject such nonconforming materials in question until such issues can be referred to the Engineer for his decision.

#### **60-09 INSPECTION OF THE WORK**

All materials and each part or detail of the work shall be subject to review by the Engineer. The Engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance from the Contractor as is required to make a complete and detailed inspection.

If the Engineer requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed.

After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.





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### **60-12 MAINTENANCE DURING CONSTRUCTION**

The Contractor shall maintain the work during construction and until the work is accepted. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so that the work is maintained in satisfactory condition at all times.

All costs of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various Contract items, and the Contractor will not be paid an additional amount for such work.

### **60-13 FAILURE TO MAINTAIN THE WORK**

Should the Contractor at any time fail to maintain the work as provided in the paragraph titled MAINTENANCE DURING CONSTRUCTION of this subsection, the Engineer shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the urgency that exists.

Should the Contractor fail to respond to the OWNER's notification, the OWNER may suspend any work necessary for the OWNER to correct such unsatisfactory maintenance condition, depending on the urgency that exists. Any maintenance costs incurred by the OWNER, shall be deducted from monies due or to become due the Contractor.

### **60-14 PARTIAL ACCEPTANCE**

If at any time during the prosecution of the project the Contractor substantially completes a usable unit or portion of the work, the occupancy of which will benefit the OWNER, he may request the Engineer to make the final inspection of that unit. If the Engineer finds upon inspection that the unit has been satisfactorily completed in compliance with the Contract, he may accept it as being completed, and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the OWNER shall not void or alter any provision of the Contract or warranty.

### **60-15 FINAL CONSTRUCTION INSPECTION**

Whenever the Engineer considers the work provided and contemplated by the Contract is nearing completion, or within ten (10) days after being notified by the Contractor that the work is completed, the Engineer will inspect all the work included in the Contract. If the Engineer finds that the work has not been satisfactorily completed at the time of such inspection, he shall inform the Contractor in writing as to the work to be done or the particular defects to be remedied to place the work in condition satisfactory for Final Construction Inspection. After the work has been satisfactorily completed the Engineer shall make the Final Construction Inspection.

### **60-16 FINAL ACCEPTANCE**

Upon due notice from the Contractor of presumptive completion of the entire project, the Engineer and OWNER will make an inspection. If all construction provided for and contemplated by the Contract is found to be completed in accordance with the Contract, plans and specifications, such inspection shall constitute the final inspection. The Engineer shall notify the Contractor in writing of final acceptance as of the date of the final inspection.



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If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Engineer will give the Contractor the necessary instructions for correction of same, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such an event, the OWNER will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

### **60-17 CLAIMS FOR ADJUSTMENT AND DISPUTES**

If for any reason the Contractor deems that additional compensation is due him for work or materials not clearly provided for in the Contract, plans, or specifications or previously authorized as extra work, he shall notify the Engineer in writing of his intention to claim such additional compensation before he begins the work on which he bases the claim. If such notification is not given or the Engineer is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the OWNER has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit his written claim to the Engineer, who will present it to the OWNER for consideration.

Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute the final payment based on differences in measurements or computations.





















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**80-14 CONTRACTOR'S RESPONSIBILITY FOR UTILITY SERVICE AND FACILITIES OF OTHERS**

As provided in the paragraph titled RESTORATION OF SURFACES DISTURBED BY OTHERS of this subsection, the Contractor shall cooperate with the owner of any public or private utility service, or a utility service of another government agency that may be authorized by the OWNER to construct, reconstruct, or maintain such utility services or facilities during the progress of the work. In addition, the Contractor shall control his operations to prevent the unscheduled interruption of such utility services and facilities.

To the extent that such public or private utility services, or utility services of another governmental agency are known to exist within the limits of the Contract work, the approximate locations have been indicated on the plans.

It is understood and agreed that the OWNER does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the work. Any inaccuracy or omission in such information shall not relieve the Contractor of his responsibility to protect such existing features from damage or unscheduled interruption of service.

It is further understood and agreed that the Contractor shall, upon execution of the Contract, notify the owners of all utility services or other facilities of his plan of operations. Such notification shall be in writing. In addition to the general written notifications hereinbefore provided, it shall be the responsibility of the Contractor to keep such individual owners advised of changes in his plan of operations that would affect such owners.

Prior to commencing the work in the general vicinity of an existing utility service or facility, the Contractor shall again notify Each such owner of his plan or operation. If, in the Contractor's opinion, the owner's assistance is needed to locate the utility service or facility or the presence of a representative of the owner is desirable to observe the work, such advice should be included in the notification. Such notification shall be given by the most expeditious means to reach the utility owner no later than two normal business days prior to the Contractor's commencement of operations in such general vicinity. The Contractor shall furnish a written summary of the notification to the Engineer.

The Contractor's failure to give the two days' notice hereinabove provided shall be cause for the Engineer to suspend the Contractor's operations in the general vicinity of a utility service or facility.

Where the outside limits of an underground utility service have been located and staked on the ground, the Contractor shall be required to use excavation methods acceptable to the Engineer within three (3) feet of such outside limits at such points as may be required to insure protection from damage due to the Contractor's operations.

Should the Contractor damage or interrupt the operations of a utility service or facility by accident or otherwise, he shall immediately notify the proper authority and the Engineer and shall take all reasonable measures to prevent further damage or interruption of service. The Contractor, in such events, shall cooperate with the utility service or facility owner and the Engineer continuously until such damage has been repaired and service restored to the satisfaction of the utility or facility owner.









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## SECTION 90 – PROSECUTION AND PROGRESS

### 90-01 SUBLETTING OF CONTRACT

The OWNER will not recognize any Subcontractor on the work. The Contractor shall at all times when work is in progress be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Engineer.

Should the Contractor elect to assign his Contract, said assignment shall be concurred in by the surety, shall be presented for the consideration and approval of the OWNER. In case of approval, the Contractor shall file copies of all Subcontractors with the Engineer.

### 90-02 NOTICE TO PROCEED

The notice to proceed shall state the date on which it is expected the Contractor will begin the construction and from which date Contract time will be charged. If no such date is stated in the notice to proceed, Contract time will start on the date the notice to proceed is issued. The Contractor shall begin the work to be performed under the Contract within ten (10) days of the date set by the Engineer in the written notice to proceed, but in any event the Contractor shall notify the Engineer at least 24 hours in advance of the time actual construction operations will begin.

### 90-03 PROSECUTION AND PROGRESS

Unless otherwise specified, the Contractor shall submit his progress schedule for the Engineer's approval within 10 days after the effective day of the notice to proceed. The Contractor's progress schedule, when approved by the Engineer, may be used to establish major construction operations and to check the progress of the work. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the plans and specifications within the time set forth in the contract.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the Engineer's request, submit a revised schedule for completion of the work within the Contract time and modify his operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the prosecution of the work be discontinued for any reason, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.

### 90-04 LIMITATION OF OPERATIONS

The Contractor shall control his operations and the operations of his Subcontractors and all suppliers so as to provide for the free and unobstructed movement of commerce in those areas adjacent to the work.

### 90-05 CHARACTER OF WORKERS, METHODS, AND EQUIPMENT

The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the Contract, plans, and specifications.





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All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

Any persons employed by the Contractor or by any Subcontractor who, in the opinion of the Engineer, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or Subcontractor employing such person, and shall not be employed again in any portion of the work without the approval of the Engineer.

Should the Contractor fail to remove such person or persons or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may suspend the work by written notice until compliance with such orders is ascertained.

All equipment which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet the requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the work shall be such that no injury to previously completed work, adjacent property, or existing facilities will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the Contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the Contract, plans and specifications.

When the Contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Engineer. If the Contractor desires to use a method or type of equipment other than specified in the Contract, he may request authority from the Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing the work in conformity with Contract requirements. If, after trial use on the substituted methods or equipment, the Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the Contract items involved or in Contract time as a result of authorizing a change in methods or equipment under this subsection.

### **90-06 TEMPORARY SUSPENSION OF THE WORK**

The Engineer shall have the authority to suspend the work wholly, or in part, for such period or periods as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the prosecution of the work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the Contract.

In the event that the Contractor is ordered by the Engineer, in writing, to suspend work for some unforeseen cause not otherwise provided for in the Contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown



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shall be computed from the effective date of the Engineer's order to suspend work to the effective date of the Engineer's order to resume the work. Claims for such compensation shall be filed with the Engineer within the time period stated in the Engineer's order to resume work. The Contractor shall submit with his claim information substantiating the amount shown on the claim. The Engineer will forward the Contractor's claim to the OWNER for consideration. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, for suspensions made at the request of the Contractor, or for any other delay provided for in the Contract, plans, or specifications.

If it should become necessary to suspend work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor become damaged in any way. He shall take every precaution to prevent damage or deterioration of the work performed and provide for normal drainage of the work. The Contractor shall erect temporary structures where necessary to provide for traffic on, to, or from the site.

### **90-07 DETERMINATION AND EXTENSION OF CONTRACT TIME**

The number of calendar or working days allowed for completion of the work shall be stated in the proposal and Contract and shall be known as the CONTRACT TIME.

Should the CONTRACT TIME require extension for reasons beyond the Contractor's control, it shall be adjusted as follows:

- (a) CONTRACT TIME based on WORKING DAYS shall be calculated weekly by the Engineer. The Engineer will furnish the Contractor a copy of his weekly statement of the number of working days charged against the CONTRACT TIME during the week and the number of working days currently specified for completion of the Contract (the original CONTRACT TIME plus the number of working days, if any, that have been included in approved CHANGE ORDERS, or SUPPLEMENTAL AGREEMENTS covering EXTRA WORK).

The Engineer shall base his weekly statement of CONTRACT TIME charges on the following considerations:

- (1) No time shall be charged for days on which the Contractor is unable to proceed with the principal item of work under construction at the time for at least 6 hours with the normal work force employed on such principal item. Should the normal work force be on a triple shift, 18 hours shall apply. Conditions beyond the Contractor's control such as strikes, lockouts, unusual delays in transportation, temporary suspension of the principal item of work under construction or temporary suspension of the entire work which have been ordered by the Engineer for reasons not the fault of the Contractor, shall not be charged against the CONTRACT TIME.
- (2) The Engineer will not make charges against the CONTRACT TIME prior to the effective date of the notice to proceed.
- (3) The Engineer will begin charges against the CONTRACT TIME on the first working day after the effective date of the notice to proceed.
- (4) The Engineer will not make charges against the CONTRACT TIME after the date of final acceptance as defined in the paragraph titled FINAL ACCEPTANCE of Subsection 60.





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portion of damages that will be incurred by the OWNER should the Contractor fail to complete the work in the time provided in his Contract.

The Contractor will not be charged with liquidated damages when delay in completion of the work is due to acts of the public enemy, acts of the OWNER, acts of another Contractor in the performance of a Contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, or freight embargoes.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the OWNER of any rights under the Contract.

### **90-09 CONTRACT DEFAULT**

The Contractor shall be considered in default of his Contract and such default will be considered as cause for the OWNER to terminate the Contract for any of the following reasons if the Contractor:

- (a) Fails to begin the work under the Contract within the time specified in the “Notice to Proceed”;  
or
- (b) Fails to perform the work or fails to provide sufficient workers, equipment or materials to assure completion of work in accordance with the terms of the Contract; or
- (c) Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable; or
- (d) Discontinues the prosecution of the work; or
- (e) Fails to resume work which has been discontinued within a reasonable time after notice to do so; or
- (f) Becomes insolvent or is declared bankrupt, or commits an act of bankruptcy or insolvency;  
or
- (g) Allows any final judgment to stand against him unsatisfied for a period of 10 days; or
- (h) Makes an assignment for the benefit of creditors; or
- (i) For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Engineer consider the Contractor in default of the Contract for any reason hereinbefore, he shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the construction in default and the OWNER's intentions to terminate the Contract.

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the OWNER will, upon written notification from the Engineer of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the work out of the hands of the Contractor. The OWNER may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said Contract according to the terms and provisions thereof,





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**SECTION 100 – MEASUREMENT AND PAYMENT**

**100-01 MEASUREMENT OF QUANTITIES**

All work completed under the Contract will be measured by the Engineer, or his authorized representatives, using United States Customary Units of Measurement.

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the Contract will be those methods generally recognized as conforming to good Engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the near dimensions shown on the plans or ordered in writing by the Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

Unless otherwise specified, all Contract items which are measured by the Linear Foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

In computing volumes of excavation, the average end area method or other acceptable methods will be used. Acceptability of another method will be decided by the Engineer.

The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fractions of inches.

The term “ton” will mean the short ton consisting of 2,000 pounds avoirdupois. All materials which are measured or proportioned by weights shall be weighed on accurate, approved scales by competent, qualified personnel at locations designated by the Engineer. If material is shipped by rail, the car weight may be accepted provided that only the actual weight of material is paid for. However, car weights will not be acceptable for materials to be passed through mixing plants. Trucks used to haul materials being paid for by weight shall be weighed empty daily at such times as the Engineer directs, and each truck shall bear the plainly legible identification mark.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity and all loads shall be leveled when the vehicles arrive at the point of delivery.

When requested by the Contractor and approved by the OWNER in writing, material specified to be measured by the Cubic Yard may be weighed and such weights will be converted to Cubic Yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.







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Scales “overweighing” (indicating more than correct weight) will not be permitted to operate, and all materials received subsequent to the last previous correct weighing-accuracy-test will be reduced by the percentage of error in excess of one-half of one percent.

In the event inspection reveals the scales have been “underweighing” (indicating less than correct weight) they shall be adjusted and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning, or payment, shall be included in the unit Contract prices for the various items of the project.

When the estimated quantities for a specific portion of the work are designated as the pay quantities in the Contract, they shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portion of the work shown on the plans are revised by the Engineer. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions.

### 100-02 SCOPE OF PAYMENT

The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials, for performing all work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof, subject to the provisions of the paragraph titled NO WAIVER OF LEGAL RIGHTS of Subsection 80.

When the “basis of payment” subsection of a technical specification requires that the Contract price (price bid) include compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other Contract item which may appear elsewhere in the Contract, plans, or specifications.

### 100-03 COMPENSATION FOR ALTERED QUANTITIES

When the accepted quantities of work vary from the quantities in the proposal, the Contractor shall accept as payment in full, so far as Contract items are concerned, payment at the original Contract price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in the paragraph titled ALTERATION OF WORK AND QUANTITIES of Subsection 50 will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from his unbalanced allocation of overhead and profit among the Contract items, or from any other cause.

### 100-04 PAYMENT FOR OMITTED ITEMS

As specified in the paragraph titled OMITTED ITEMS of Subsection 50, the Engineer shall have the right to omit from the work (order nonperformance) any Contract item, except major Contract items, in the best interest of the OWNER.









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It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities or work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the Engineer to be a part of the final quantity for the item of work in question.

No partial payment shall bind the OWNER to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in the paragraph titled FINAL PAYMENT of this subsection.

### 100-07 PAYMENT FOR MATERIALS ON HAND

Partial payments, for projects which do not utilize the OWNER'S tax-exempt status, may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the Contract, plans, and specifications and are delivered to acceptable sites on the OWNER's property or at other sites in the vicinity that are acceptable to the OWNER. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- (a) The material has been stored or stockpiled in a manner acceptable to the Engineer at or on an approved site.
- (b) The Contractor has furnished the Engineer with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- (c) The Contractor has furnished the Engineer with satisfactory evidence that the material and transportation costs have been paid.
- (d) The Contractor has furnished the OWNER legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.
- (e) The Contractor has furnished the OWNER evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

It is understood and agreed that the transfer of title and the OWNER's payment for such stored or stockpiled materials shall in no way relieve the Contractor of his responsibility for furnishing and placing such materials in accordance with the requirements of the Contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the Contract price for such materials or the Contract price for the Contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this subsection.

### 100-08 CONTRACT CLOSE-OUT

Subsequent to the final acceptance of this project by the Engineer, the following requirements must be satisfied by the Contractor before final payment can be made.



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- (a) The Contractor must publicly advertise the NOTICE OF COMPLETION furnished by the Engineer in accordance with Title 39, Code of Alabama, 1975.
- (b) The Contractor must execute copies of CONTRACTOR'S AFFIDAVIT OF PAYMENT OF CLAIMS AND DEBTS on the form furnished by the Engineer.
- (c) The Contractor must have his surety execute copies of CONSENT OF SURETY TO FINAL PAYMENT on the form furnished by the Engineer.
- (d) The Contractor must furnish a letter on his letterhead acknowledging that acceptance of final payment by the Contractor constitutes a waiver of all claims, present or future, in connection with this project.
- (e) The Contractor must furnish a written guarantee on his letterhead covering all defects in material and workmanship for a period of one (1) year commencing on the date of final acceptance.
- (f) If any purchased items have been incorporated in the work, the Contractor must furnish a letter on his letterhead assigning those warranties to the OWNER. Copies of said warranties shall be bound in one binder and submitted along with the letter assignment.
- (g) The Contractor must keep track of "as built" information and at the contract closeout provide one complete set of reproducible "as builds" covering all earthwork, utility routing, structural, mechanical, and electrical aspects of the work, including wiring schematics.

### **100-09 WITHHOLDING FOR CLAIMS AND LITIGATION**

If at the time of Contract close-out, the project is subject to a claim or the Contractor is involved in litigation concerning the project, the OWNER reserves the right to:

- (a) Refuse to close out the Contract retaining all monies unpaid until such time as all claims are dropped and litigation is resolved, or
- (b) Refuse to close out the Contract, retaining enough money to cover the total of all outstanding claims and amounts claimed by litigation until such time as all claims are dropped and litigation is resolved, or
- (c) Require the Contractor to post a letter of credit to each individual claimant or litigant and satisfactory to the claimant or litigant. Once such letters of credit have been posted and the OWNER is in receipt of written agreement from each individual claimant or litigant, the OWNER will proceed with Contract close-out and release of retainage in the normal manner.

### **100-10 FINAL PAYMENT**

When the Contract work has been accepted in accordance with the requirements of the paragraph titled FINAL ACCEPTANCE of Subsection 60, and the paragraph titled Contract CLOSE-OUT above, the Engineer will prepare the final estimate of the items of work actually performed. The Contractor shall approve the Engineer's final estimate or advise the Engineer of his objections to the final estimate, which are based on disputes in measurements or computations of the final quantities to be paid under the Contract, as amended by change order or supplemental agreement. The Contractor and Engineer shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the Engineer's final estimate. If, after such 30-day period, a dispute still exists, the Contractor





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Subcontractors and Sub-Subcontractors, etc. Contractor will cooperate fully and will cause all Related Parties and all of Contractor's subcontractors (including those entering into Lump Sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time, whenever requested, in an expeditious manner, any and all such information, materials and data.

Owner's agent or its authorized representative shall have access to the Contractor's facilities, shall have access to the Subcontractor's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with this article.

If an audit inspection or examination in accordance with this article, discloses overcharges (of any nature) by the Contractor to the Owner in excess of one percent (1%) of the total Contract billings, the actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Contractor.



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**CONSTRUCTION SPECIFICATIONS**

**DIVISION V**

All items shall be constructed in accordance with the ALDOT Standard Specifications for Highway Construction, 2022 Edition unless otherwise modified within this section or included within the Special Provisions or General Provisions.

Any time the Construction Specifications say “ALDOT”, the “State”, the “Department”, etc., it shall be understood to mean the Alabama State Port Authority.

Delete Division 100, Sections 101-111.

# **APPENDIX A**





## FY2021 Transportation Demonstration Program Grant (TDP)

### Grant Contract Provisions

#### **Compliance with Federal Law, Regulations and Executive Orders**

This is an acknowledgement that MARAD financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, MARAD policies, procedures, and directives.

#### **Davis- Bacon Act & Copeland Anti-kickback Act**

(A) **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 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 29 CFR 5.5; 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 29 CFR Part 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 classifications and wage rates conformed under paragraph (a)(1)(ii) of 29 CFR 5.5 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:

(i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(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, Employment Standards Administration, 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 29 CFR 5.5, 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.

(V)(a) The contracting officer shall require that any class of laborers or mechanics 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 therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) 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, Employment Standards Administration, 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 with 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)(v) (B) or (C) of 29 CFR 5.5, 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.

**If a wage determination is required for this project, please contact Megan Amacker at 251-441-7261 or [megan.amacker@alports.com](mailto:megan.amacker@alports.com)**

(B) **Withholding** - The ASPA 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 ASPA 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.

(C) **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 certified payrolls to the ASPA for transmission to MARAD. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

The first certified payroll is to be received by the Engineer within one week from the start of the work for the Contractor and/or subcontractor(s). The three week period is to allow for processing and review of the certified payrolls by the prime contractor. Subsequent certified payrolls shall be submitted on a weekly basis thereafter. Certified payroll submissions not meeting the above time requirements will be considered delinquent.

When weekly certified payrolls are delinquent as defined above, the Engineer is to provide the Contractor a first written notice of delinquent certified payrolls by certified mail or other method which establishes the date the first notice was received by the Contractor, with a copy by regular mail to the offending subcontractor. The notice informs the Contractor that payment for work is suspended as of the date the certified payrolls became delinquent for the work items of the offending Contractor(s). When the pay estimate is generated, the statement "Items withheld-Delinquent payrolls" shall be entered in the comments area. In addition, the notice shall state that if certified payrolls remain delinquent after 30 calendar days from receipt of the first notice, noncompliance damages will be assessed retroactive to the

date the Contractor received the first notice. The damages will be assessed on a calendar day basis until complete and accurate certified payrolls are submitted and are current.

The notification sequence previously described would be as follows:

- (i) Notice is to be signed by the Engineer and delivered by certified mail or other method which establishes the date received by the prime contractor. The region coordinator for prevailing wage is to be copied on the first notice to the prime contractor. The region coordinator for prevailing wage and the C&T Division's prevailing wage compliance specialist are to be copied on the second notice to the prime contractor.
- (ii) Prior to generating an estimate on which payment is being withheld or deducted, the following statement will be entered in the comment box: "Items withheld – Delinquent payroll".
- (iii) See Table 1 Schedule of Non-Compliance Damages

**Table 1 Schedule of Non-Compliance Damages**

| Contract/Subcontract/P.O./Invoice Amount <sup>a</sup> | Non-compliance damages per calendar day |
|---|---|
| \$0 to 49,999   | \$200                                   |
| 50,000 to 99,999                                      | 400                                     |
| 100,000 to 499,999                                    | 600                                     |
| 500,000 to 999,999                                    | 900                                     |
| 1,000,000 to 1,999,999                                | 1,300                                   |
| 2,000,000 to 4,999,999                                | 1,550                                   |
| 5,000,000 to 9,999,999                                | 2,650                                   |
| 10,000,000 and above                                  | 3,000                                   |

(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:

- (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
  - (ii) 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;
  - (iii) 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.
- (III) 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 29 CFR 5.5.

(IV) 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 231 of title 31 of the United States Code.

(III) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of 29 CFR 5.5 available for inspection, copying, or transcription by authorized representatives of the U.S. Department of Homeland Security 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.

(D) **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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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's 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.

(E) **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.

(F) **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Maritime Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(G) **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.

(H) **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.

(I) **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 Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(J) **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.

### **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, and as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements MARAD may issue.

### **Equal Employment Opportunity**

The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements MARAD may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements MARAD may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements MARAD may issue.



The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by MARAD, modified only if necessary to identify the affected parties.

#### **Suspension and Debarment 2 CFR 200.214**

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower-tier transaction it enters into.

This certification is a material representation of fact relied upon by Alabama State Port Authority. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available Alabama State Port Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **Lobbying** *(Any project over \$100,000)*

No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

#### **Drug Free Workplace**

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**Contract Work Hours and Safety Standards** *(Contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers)*

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 (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 for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages** - The ASPA 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 Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**Clean Air** *(Contracts of amounts in excess of \$100,000)*

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to MARAD and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by HUD.

**Clean Water** *(Contracts of amounts in excess of \$100,000)*

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to HUD and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by HUD.

**Copeland "Anti-Kickback" Act** *(Contracts in excess of \$2,000 for construction or repair)*

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract. 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 HUD.

**Texting while Driving**

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this term B.4, "**Motor Vehicles**" means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this term B.4, "**Driving**" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this term B.4, "**Text messaging**" means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this term B.4, the "**Government**" includes the United States Government and State, local, and tribal governments at all levels.

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

- (1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—
  - (i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or
  - (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- (2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—
  - (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
  - (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Subawards and Contracts.* To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

#### **Disadvantaged Business Enterprises**

(A) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The ASPA's overall goal for DBE participation is **7.68%**. **A separate contract goal of 7.68% been established for this procurement.** The contractor is required to make a good faith effort to use DBE's to the maximum extent practicable. As a demonstration of these good faith efforts, each bidder must submit, concurrent with and accompanying their sealed bid, Forms 1 and 2 included in the appendix of the project specifications. Forms 1 and 2 must address the following:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

Bidders must present the information required above as a matter of responsiveness.

The successful bidder/offeror will be required to report with each request for payment its DBE participation obtained through race-neutral means throughout the period of performance.

(B) The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these

requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ASPA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(C) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the ASPA. In addition, is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

(D) The contractor must promptly notify ASPA, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of ASPA.

### **Cargo Preference - Use of United States-Flag Vessels**

The contractor agrees:

(A) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(B) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the ASPA (through the contractor in the case of a subcontractor's bill-of-lading.)

(C) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### **Freedom of Information**

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(A) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor, or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(B) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by MARAD.

#### **Section 504 of the Rehabilitation Act of 1973.**

Pursuant to Section 504 (Public Law 93-112), the Parties agree that no otherwise qualified disabled individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract.

#### **Federal Funding Accountability and Transparency Act**

Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A.

#### **Buy America**

For the purpose of the award, the Project is “a project for infrastructure.” The Recipient acknowledges that iron, steel, manufactured products, and construction materials used in the Project are subject to the domestic content procurement preference in that award term and this agreement is not a waiver of that preference. (b) If the Recipient uses iron, steel, manufactured products, and construction materials incorporated into the project that are not produced in the United States in violation of the award. The USDOT may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under article 15 and 2 C.F.R. 200.339–200.340. (c) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

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

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

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in [2 CFR part 184](#).

#### **Foreign Market Restrictions**

The Recipient shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

#### **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. 200.216 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.

**Trafficking in persons 2 CFR Part 175**

This contract is covered by 2 CFR Part 175. A person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or subrecipient may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.
- iv. MARAD, as the Federal awarding agency, may unilaterally terminate this award, without penalty.