GREATER MIAMI EXPRESSWAY

GMX PROCUREMENT/CONTRACT NO.:

_____

GMX WORK PROGRAM NO.:

_____

GMX PROJECT/SERVICE TITLE:

_____

_____

EXHIBIT ___
GENERAL SPECIFICATIONS FOR DESIGN-BUILD

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SECTION 1
DEFINITIONS AND TERMS

1-1 ***General.***

These General Specifications for Design-Build (General Specifications) replace Division I, General Requirements and Covenants, of the Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction (FDOT Standard Specifications) in its entirety. No reference to any portion of Division I of the FDOT Standard Specifications in any of the Contract Documents or in any other Division or Section of the FDOT Standard Specifications shall re-establish Division I or any portion thereof as part of an GMX contract. Any reference to Division I in Division II and Division III of the FDOT Standard Specifications, the Design-Build Firm must refer to Section 2 of these General Specifications for cross references of Sections amongst the documents.

Division II, Construction Details, and Division III, Materials, of the FDOT Standard Specifications and the Florida Department of Transportation Design Standards (FDOT Standard Indexes) are incorporated by reference and made a part of the Contract. Any reference in Division II or Division III of the FDOT Standard Specifications to Division I shall not apply. Any reference in the Contract Documents to the FDOT Standard Specifications shall be assumed to only mean Division II and Division III. However, the General Specifications always take precedence over Division II and Division III of the FDOT Standard Specifications.

The edition of the General Specifications included in the Solicitations Documents and the latest editions of Division II and Division III of the FDOT Standard Specifications, and the FDOT Standard Indexes in effect on the date of the release of the Request for Proposal (RFP) or as noted in the Plans shall govern.

For purposes of identifying the responsible party or decision-making entity, in the FDOT Standard Specifications, or other FDOT documents referenced or incorporated herein:

a) Wherever the words “Department”, “Department - State of Florida Department of Transportation”, “Department’s Contract Office at Tallahassee”, “FDOT”, appear; such references shall mean GMX.

b) Wherever the words, “Director”, “District Director”, “District Director of Operations”, “District Director of Production”, “Director Office of Construction”, “Director Office of Design”, “Director Office of Maintenance”, “Director Office of Materials”, “Secretary”, “Secretary of Transportation State of Florida”, or “State Treasurer” appear, such words shall be taken to mean the Executive Director of GMX or his or her duly authorized representative.

c) Wherever the words “Construction Permit Engineer”, “Chief Engineer”, “District Bituminous Engineer”, “District Concrete Engineer”, “District Construction Engineer”, “District Construction Training Engineer”, “District Consultant CEI Engineer”, “District Final Estimates Engineer”, “District Geotechnical Engineer”, “District Materials Engineer”, “District Materials Research Engineer”, “District Scheduling Engineer”, “District Structural Engineer”, “District Utility Engineer”, “Engineer”, “Resident Engineer”, “State Construction Engineer”, “State Estimates Engineer”, “State Materials Engineer”, “State Roadway Design Engineer”, “State Safety Engineer”, “State Specifications Engineer”, “State Structures Design Engineer”, or “State Traffic Operations Engineer” appear, such words shall be taken to mean the Director of Engineering or his or her duly authorized representative.

d) Wherever the FDOT Standard Specifications indicate a mailing address for a State office or agency, the office or agency and the address shown are hereby deleted and replaced by the following:

Greater Miami Expressway Agency
3790 Northwest 21st Street
Miami, Florida 33142

Any conflict or discrepancy identified by the Design-Build Firm that may exist between the FDOT Standard Specifications and other Contract Documents shall be brought to the attention of GMX by the Design-Build Firm as soon as identified. The Design-Build Firm shall be solely responsible for any consequences arising from any reliance by the Design-Build Firm on any such conflict or discrepancy without notifying GMX, as required above.

1-2 ***Abbreviations.***

AAN.....American Association of Nurserymen, Inc.
AASHTO .....American Association of State Highway and Transportation Officials
ACI.....American Concrete Institute
AGC .....The Associated General Contractors of America, Inc.
AGMA .....American Gear Manufacturers Association
AIA.....American Institute of Architects
AISI.....American Iron and Steel Institute
ANSI.....American National Standards Institute, Inc.
AREA .....American Railway Engineering Association
ASCE .....American Society of Civil Engineers
ASME.....American Society of Mechanical Engineers
ASTM.....American Society for Testing and Materials
AWG.....American Wire Gauge
AWPA.....American Wood Preservers Association
AWS .....American Welding Society
AWWA .....American Water Works Association
CRSI .....Concrete Reinforcing Steel Institute
EASA.....Electrical Apparatus Service Association
EPA.....Environmental Protection Agency of the United States Government
FDOT .....Florida Department of Transportation
FHWA.....Federal Highway Administration
FSS.....Federal Specifications and Standards
GMX .....Greater Miami Expressway Agency
IEEE .....Institute of Electrical and Electronics Engineers
IES .....Illuminating Engineering Society
IPCEA .....Insulated Power Cable Engineers Association
ISO.....International Organization for Standardization
MASH .....AASHTO Manual for Assessing Safety Hardware
MUTCD .....Manual on Uniform Traffic Control Devices
NEC .....National Electrical Code
NEMA.....National Electrical Manufacturers Association
NFPA .....National Fire Protection Association
NIST.....National Institute for Standards and Technology
NOAA.....National Oceanic and Atmospheric Administration
OSHA .....Occupational Safety and Health Administration
SAE.....Society of Automotive Engineers
SI .....International System of Units
SSPC.....Society of Protective Coatings
UL .....Underwriters' Laboratories

When any abbreviation is followed by a number or letter designation, or combination of numbers or letters, it is understood to designate a specification, test method, or other code or recommendation of the particular organization so shown.

1-3 ***Definitions.***

The following terms are intended to supplement those defined in other Contract Documents. When used in the Contract Documents, they have the meaning described. In case of a conflict with other documents, the provisions of Article 5-2, *Coordination of Contract Documents* shall be used.

Agency.
The Greater Miami Expressway Agency or GMX. GMX may also be referred to as the "Owner" in the Contract Documents.

Architect.
The Architect as defined in §481.203(3), Florida Statutes.

Architect of Record.
The Professional Architect or Architectural Firm registered in the State of Florida responsible for all architectural aspects of the Work.

Architecture.
The practice of architecture as defined in §481.203(6), Florida Statutes.

Article.
The numbered prime subdivision of a Section of these Specifications.

Bridge.
A structure, including supports, erected over a depression or over an obstruction such as water, highway or railway, or for elevated Roadway, for carrying traffic or other moving loads, and having a length, measured along the center of the Roadway, of more than twenty (20) feet between the inside faces of end supports. A multiple-span box culvert is considered a Bridge, where the length between the extreme ends of the openings exceeds twenty (20) feet.

Calendar Day.
Every day shown on the calendar, ending and beginning at midnight.

Conceptual Plans (Functional Plans).
The plans furnished by GMX and included in the Solicitation Documents depicting at a conceptual level the desired end product of the Work. The Conceptual Plans may include but are not limited to, roadway, structural, signing, landscape, lighting, drainage and Intelligent Transportation System (ITS) plans.

Construction.
The process of building, altering, repairing, improving or demolishing any structure or building, or other improvement of any kind as required by the Solicitation and Contract Documents.

Construction Engineering & Inspection Consultant (CE&I).
The firm employed by GMX to observe the progress and quality of the Work being performed by the Design-Build Firm. The CE&I is an authorized representative of the Engineer.

Contract.
The entire and integrated agreement between the parties thereunder which supersedes all prior negotiations, representations, or agreements, either written or verbal. The Contract Documents, as amended from time to time, form the Contract between GMX and the Design-Build Firm setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work and the basis of payment.

Contract Amount.
The authorized money payable by GMX to the Design-Build Firm for completion of the Work in accordance with the Contract Documents.

Contract Bond.
The security(ies) furnished by the Design-Build Firm and the Surety as a guaranty that the Design-Build Firm will fulfill the terms of the Contract in accordance with the Contract Documents and pay all legal debts pertaining to the Work.

Contract Claim (Claim).
A written demand submitted to GMX by the Design-Build Firm in compliance with the Contract Documents requirements seeking additional monetary compensation, time, or other adjustments to the Contract, and to which the entitlement or impact is accepted or disputed by the Agency.

Contract Documents.
The term "Contract Documents" includes but is not limited to: Advertisement, Solicitation Documents, Design-Build Firm's Proposals including Technical and Price Proposals, Executed Form of Contract, Contract Bond, Permits, Utility Work Schedules, all Specifications (as defined herein), Plans, Addenda, Notice to Proceed, and, as may be applicable, FDOT Roadway Design, Structures and Traffic Operations Standards, or other information mailed or otherwise transmitted to the prospective Proposers prior to the receipt of Proposals, Work Orders and Supplemental Agreements, as may be amended from time to time, which are all to be treated as one instrument whether or not set forth at length in the form of Contract. Refer to the order of precedence for the Contract Documents listed herein.

Contract Time.
The number of Calendar Days allowed for completion of the Work starting on the date of Notice to Proceed, including authorized time extensions.

Contractor.
See "Design-Build Firm".

Controlling Item of Work.
The activity(ies) or Work item(s) on the Critical Path of the Project Schedule having the least amount of total float.

Delay.
Any unanticipated event, action, force or factor which extends the Design-Build Firm's time of performance of any Controlling Item of Work under the Contract. The term "Delay" is intended to cover all such events, actions, forces or factors, whether styled "Delay", "disruption", "interference", "impediment", "hindrance", or otherwise, which are beyond the control of and not caused by the Design-Build Firm, or the Design-Build Firm's Subcontractors/ Subconsultants, materialmen, suppliers or other agents. This term does not include "Extra Work."

Design.
The analysis, calculations, and drawings, as prepared by the Design-Build Firm, which shall identify the Construction elements, the major Construction details, and information as noted within the Contract Documents.

Design-Build.
The combining of Design and Construction phases of Work for a project into a single contract.

Design Build Firm
The legal entity meeting the requirements established in Section 287.055, Florida Statutes. Such legal entity shall be the entity that enters into the Contract with GMX to perform the Work.

Design-Build Firm's Laboratory.
The independent laboratory, duly qualified to provide testing services in accordance with FDOT, Miami-Dade County, or other official organization requirements as detailed by the Contract Documents.

Design and Construction Criteria.
The criteria for Work to be provided by GMX to complete the Work as specified in the Solicitation Documents.

Engineer.
The Director of Engineering acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.

Engineer of Record.
The Professional Engineer or Engineering Firm registered in the State of Florida that performs the Design, and is responsible for the preparation of the Contract Plans and Specifications package, in compliance with the Design and Construction Criteria and Project Concept Report provided by GMX.

Equipment.
The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, and all other tools and apparatus necessary for the Construction and acceptable completion of the Work.

Executive Director.
The Executive Director of GMX acting directly or through an authorized representative.

Extra Work.
Any Work required to be performed for the Project which is not otherwise covered or included in the original Work of the existing Contract Documents, whether it be additional work, altered work, deleted work, or work caused by differing site conditions, or otherwise. This term does not include a "Delay".

FDOT Developmental Specification.
See "Specifications".

FDOT Standard Specifications.
See "Specifications".

Final Acceptance.
The written notice from GMX confirming that the entire Work contemplated by the Contract has been completed satisfactorily pursuant to the Contract Documents, as determined by GMX through a Final Inspection.

Final Inspection.
Initiated by written request from the Design-Build Firm, the inspection of the Work by GMX to confirm that all Work contemplated by the Contract Documents has been satisfactorily completed.

Florida Department of Transportation Design Standards (FDOT Standard Indexes).
The set of pre-approved drawings establishing acceptable engineering standards in the Design and Construction of projects on the State Highway System.

General Engineering Consultant.
The consultant under contract with GMX to act as its representative or designee for the management of the contracts related to the project.

General Specifications for Design-Build (General Specifications).
See "Specifications."

GMX.
See "Agency."

GMX System.
State Roads 112, 836, 874, 878 and 924, including all associated Right-of-Way.

Holidays.
For the specific purpose of the Contract, Holidays are the following non-working Calendar Days: Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and the Friday immediately following Thanksgiving Day, and the period of December 24 through January 2.

Inspector.
An authorized representative of the Engineer, assigned to make inspections of the Materials furnished and of the Work performed by the Design-Build Firm.

Invoice.
Set of documents, as required by the Contract Documents, submitted by the Design-Build Firm seeking compensation for the Work completed between the pre-established *Work Program Invoice Submittal Dates*.

Laboratory.
The Materials testing laboratory used by GMX or GMX's designated consultant.

Local Business.
As defined in the Solicitation Documents and Local Business Participation Policy.

Local Business Participation Requirement.
The requirement established in the Solicitation Documents or agreed to in the Contract Documents for Local Business participation for the Contract.

Materials.
Any substances to be incorporated in the Work under the Contract.

Milestone.
A scheduled event signifying the completion of a major deliverable or a set of related deliverables, which is a contractually mandated completion date, as defined in the Contract Documents, represented in the schedule by a zero duration activity.

Notice of Award.
A written notice given by GMX to announce the Successful Proposer for the Work.

Notice to Proceed.
A written notice given by GMX to the Design-Build Firm fixing the date on which the Contract Time will commence to run and on which the Design-Build Firm shall start to perform its obligations under the Contract Documents.

Original Contract Amount.
The money payable by GMX to the Design-Build Firm established for completion of the Work pursuant to the Contract Documents.

Original Contract Time.
The number of Calendar Days established by GMX for completion of the Work pursuant to the Contract Documents on the date of Notice to Proceed.

Owner.
See Agency.

Partial Acceptance.
Portion of the Work that is completed and accepted for use by GMX for the purpose for which it is intended prior to Final Acceptance.

Plans.
The signed and sealed drawings prepared by the Engineer of Record that are accepted and stamped "Released for Construction" by the Engineer. These plans, including reproductions thereof, may be component plans addressing specific areas of Construction (drainage, Roadway lighting, etc.) and shall show the location, character, dimensions, and details of the Work.

Preliminary Project Schedule.
The initial project schedule of anticipated major Milestones and their associated phasing with other activities, as required by the Solicitation Documents.

Price Proposal.
The sealed written offer of the Design-Build Firm providing the price for the Work, pursuant to the requirements of the Solicitation Documents.

Product Data.
Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Build Firm to illustrate Materials or Equipment for some portion of the Work.

Project Concept Report.
A document within the Solicitation Documents that depicts, at a conceptual level, the desired end product of the Work.

Project Schedule.
The schedule showing proposed or actual times of commencement and completion of the various activities of the Design and Construction of the Work in Critical Path Method (CPM) format reflecting the Contract Time.

Project Site.
The location of the Work as indicated in the Contract Documents.

Quality Control Consultant (QC Consultant).
An independent consultant, other than the Engineer or Architect of Record, hired by the Design-Build Firm and duly qualified to perform and comply with all Materials quality control related provisions of the Contract. The QC Consultant shall not be an employee of the Design-Build Firm. All test results provided by the QC Consultant shall be certified by a Professional Engineer employed by the QC Consultant.

Right-of-Way.
The land that GMX has title to, or right of use, for the road and its structures and appurtenances.

Roadbed.
The portion of the Roadway occupied by the Subgrade and Shoulders.

Roadway.
The portion of a highway within the limits of Construction.

Schedule of Values.
The breakdown of the lump sum items included in the Contract Amount and approved by the Engineer to be used as the basis for reviewing the Design-Build Firm's monthly Invoices.

Section.
A numbered division of the Specifications.

Shop Drawings.
All working, shop and erection drawings, diagrams, associated trade literature, calculations, illustrations, schedules, manuals, and similar documents submitted by the Design-Build Firm to illustrate and define some portion of the Work. The type of work includes both permanent and temporary works as appropriate to the project.

Small Business.
As defined in the Solicitation Documents and the Small Business Participation Policy.

Small Business Participation Requirement.
The requirement established in the Solicitation Documents or agreed to in the Contract Documents for Small Business participation for the Contract.

Special Event.
Any event, including but not limited to, a festival, fair, run or race, motorcade, parade, civic activity, cultural activity, charity or fund drive, sporting event, or similar activity.

Special Provisions.
See "Specifications".

Specialty Engineer.
A Professional Engineer registered in the State of Florida, other than the Engineer of Record or the subcontracted consultant, who undertakes the design and drawing preparation of components, systems, or installation methods and Equipment for specific temporary portions of the Work or for special items of the permanent works not fully detailed in the Plans and required to be furnished by the Design-Build Firm by the Contract Documents. The Work of the Specialty Engineer includes, but not limited to, pot bearing designs, non-standard expansion joints, MSE wall designs and other specialty items. The Specialty Engineer may also provide designs and details for items of the permanent work declared by GMX to be "minor" or "non-structural".

The Specialty Engineer may be an employee or officer of the Design-Build Firm or a fabricator, an employee or officer of an entity providing components to a fabricator, or an independent consultant or Subconsultant of the Design-Build Firm.

A Specialty Engineer shall be qualified in accordance with the Rules of the Florida Department of Transportation, and Chapter 14-75, Florida Administrative Code ("F.A.C."). Any corporation or partnership which offers engineering services must hold a current Certification of Authorization from the Florida State Board of Professional Engineers.

For items of Work not specifically covered by Chapter 14-75, F.A.C., a Specialty Engineer will be considered qualified if he/she has the following qualifications:

a) Registration as a Professional Engineer in the State of Florida; and

b) Education and experience necessary to perform the submitted design as required by the Florida Department of Business and Professional Regulation.

Specifications.
The directions, provisions, and requirements contained herein, setting out or relating to the method and manner of performing the Work, or to the quantities and qualities of Materials and labor to be furnished under the Contract.

a) **General Specifications:**
Specifications for Design-Build projects prepared by GMX entirely replacing Division I of the FDOT Standard Specifications.

b) **FDOT Developmental Specifications:**
A specification developed around a new process, procedure, or material prepared by FDOT that are made part of the Contract as an attachment to the Contract Documents.

c) **FDOT Standard Specifications:**
Division II and III of the FDOT Standard Specifications for Road and Bridge Construction edition in effect on the date of the Solicitation Documents, excluding Division I.

d) **Special Provisions**:
Specific clauses adopted by GMX that add to or revise the Standard Specifications or supplemental specifications, setting forth conditions varying from or additional to the Standard Specifications applicable to a specific project.

e) **Supplemental General Specifications:**
Additions and revisions prepared by GMX to the General Specifications.

f) **Supplemental Specifications:**
Additions and revisions to Divisions II and III of the FDOT Standard Specifications that are made part of the Contract as an attachment to the Contract Documents.

g) **Technical Special Provisions:**
Specifications of a technical nature prepared, signed, and sealed by an Engineer of Record, registered in the State of Florida other than the Engineer or his designee, which are made part of the Contract as an attachment to the Contract Documents.

h) **Workbook:**
Electronic, automated tool developed by the FDOT used to compile the latest modifications to the FDOT Standard Specifications

i) **FDOT Design Standards**
Design Standards for Design, Construction, Maintenance and Utility Operations on the State Highway System, edition in effect on the date of the Solicitation Documents.

State.
State of Florida.

Sub-article.
A headed and numbered subdivision of an Article of a Section of the Specifications.

Subconsultant.
A legal entity having a direct contract with the Design-Build Firm or with any other Subconsultant/Subcontractor for performance of a part of the Design of the Work.

Subcontractor.
A legal entity having a direct contract with the Design-Build Firm or with any other Subcontractor/Subconsultant for performance of a part of the Construction of the Work.

Subgrade.
The portion of the Roadbed immediately below the base course or pavement, including below the curb and gutter, valley gutter, shoulder and driveway pavement. The Subgrade limits ordinarily include those portions of the Roadbed shown in the Plans to be constructed to a design bearing value or to be otherwise specially treated. Where no limits are shown in the Plans, the Subgrade section extends to a depth of twelve (12) inches below the bottom of the base or pavement and outward to six (6) inches beyond the base, pavement, or curb and gutter.

Submittal.
A written or graphic document required by the Contract Documents to be submitted to GMX by the Design-Build Firm. Submittals may include drawings, Specifications, Project Schedules, cash flow projections and Schedules of Values, Shop Drawings, and samples.

Substructure.
All of that part of a Bridge structure below the Bridge seats, including the parapets, backwalls, and wingwalls of abutments.

Superintendent.
The Design-Build Firm's authorized representative in charge of the Work.

Superstructure.
The entire Bridge structure above the Substructure, including anchorage and anchor bolts, but excluding the parapets, backwalls, and wingwalls of abutments.

Supplemental Agreement.
A written agreement amongst the Design-Build Firm, GMX and the Surety, modifying the Contract within the limitations set forth in the Procurement Policy.

Supplemental Specifications.
See "Specifications".

Supplier.
A manufacturer, fabricator, distributor, materialman or vendor having direct contract with the Design-Build Firm or with any Subcontractor to furnish Materials or Equipment to be incorporated in the Work by the Design-Build Firm or any Subcontractor.

Surety or Surety Company.
The legal entity authorized to conduct business in the State of Florida, which is bound by the Contract Bond and Warranty Bond, with and for the Design-Build Firm and who agrees to be responsible for satisfactory performance of the Work by the Design-Build Firm and for payment of all debts pertaining to the Work.

Technical Special Provisions.
See "Specifications".

Unilateral Payment.
A payment of money made to the Design-Build Firm by GMX for sums GMX determines to be due to the Design-Build Firm for Extra Work. The Design-Build Firm, by acceptance of such payment, does not waive any rights the Design-Build Firm may otherwise have against GMX for payment of any additional sums the Design-Build Firm claims are due for the Extra Work.

Utility Relocation Schedule.
A document prepared by GMX and a Utility Operating Agency (UOA) that transmits to the Design-Build Firm and other Right-of-Way users the location, relocation, adjustment, installation, and/or protection of their facilities within the limits of the referenced GMX project.

Warranty Bond.
The security(ies) furnished by the Design-Build Firm and the Surety as a guaranty that the Design-Build Firm will fulfill the warranty terms of the Contract.

Work.
All labor, Materials, Equipment, engineering services and incidentals required to execute and complete the requirements of the Contract Documents, and all services and responsibilities prescribed or implied. The term "Work" shall also be deemed to include all Design and Construction services, and all incidental costs relating thereto.

Work Order.
A written order issued by the Engineer and accepted by the Design-Build Firm, covering minor changes to the Work (which are within the original scope of the Contract) and which are paid out of the contingency in the Contract.

Work Program Invoice Submittal Date.
Date pre-established by GMX to close the Invoice cycle on a monthly basis. This definition replaces the term "pay estimate cut-off date" wherever it appears in the Specifications.

Working Day.
Any Calendar Day on which the Design-Build Firm works or is expected to work in accordance with the approved Project Schedule.

END OF SECTION 1

SECTION 2
FORMS AND CROSS REFERENCES

2-1 ***Documents and Forms.***
The following documents and forms are referred to in these Specifications and shall be used throughout the life of the Contract:

a) *Procurement Policy*

b) *Small Business Participation Policy*

c) *Local Business Participation Policy*

d) *Escrowed Document Affidavit*

e) *Request for Authorization to Subcontract Work*

f) *Work Program Invoice Submittal Form*

g) *Invoice Tracking Form*

h) *Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant*

i) *Certification of Disbursement to Subcontractors/Subconsultants/Suppliers*

j) *Construction Compliance with Specifications and Plans*

k) *Contractor's/Consultant's Final Release and Affidavit*

l) *Work Program Invoice Checklist*

m) *Work Program Invoice Submittal Dates*

n) *Personnel Change Request Form*

o) *Small Business and/or Local Business Participation Statement*

p) *Subcontractor/Subconsultant Utilization Report*

q) *Sworn Statement on Public Entity Crimes and Debarment*

r) *Time Extensions Granted for Weather Days*

s) *Work Order*

t) *Warranty Bond*

u) *Project Filing Structure*

v) *Lane Closure Requirements and Procedures*

All forms and documents are available at *www.gmx-way.com* and GMX may update them from time to time. It is the Design-Build Firm's responsibility to use the currently posted documents while performing the Work under the Contract. Forms required to comply with the provisions of Divisions II and III of the FDOT Standard Specifications can be found at *www.dot.state.fl.us.*

2-2 ***Construction Project Administration Manual.***

GMX will administer the Work in accordance with the procedures established in the Construction Project Administration Manual (CPAM) in compliance with the Contract Documents and this General Specifications.

The policies and procedures of GMX shall always take precedence and be followed in the administration of the Work.

2-3 ***Cross References from Division II and Division III of the FDOT Standard Specifications.***

When Divisions II and III make reference to a Section, Article or Sub-article of Division I of the FDOT Standard Specifications, the Design-Build Firm shall refer to the table below for the correct reference to the General Specifications.

Divisions II or III	General Specifications	Divisions II or III	General Specifications	Divisions II or III	General Specifications	Divisions II or III	General Specifications
1-3	1-3, see Note 1	5-11	5-11	7-1.8	See Note 2	9-1.3.1	2.3
4-3	4-3	5-12.2	5-12.2.1	7-2.2	7-2.2	9-2.1.1	9-2.1
4-3.5	4-3.2	6	6	7-8.1	8-15.1	9-2.1.2	9-2.1
4-3.9	4-3.5	6-1	6-1	7-8.2	8-15.2	9-3.2	2.3
4-4	4-4	6-1.2.4	6-1.2.4	7-11.1	8-4.1	9-3.2.2	2.3
5	5	6-2.3	6-2.3	8-3	8-1, see Note 3	9-3.3	2.3
5-1	5-1	6-3	6-2.3	8-7	8-20.2	9-3.4	2.3
5-1.4	5-1.2	7-1.1	7-1	8-7.3.2	8-20.2	9-5	9-5
5-1.4.2	5-1.2.2	7-1.2	7-1.1	8-10	8-23	9-8	9-9
5-6	5-9.1.2	7-1.4	7-1.5	9	9		
5-10	5-10	7-1.7	7-1.4	9-1.3	2.3		

Note 1: With the exception of the definition for Major Item of Work, which does not apply to Design-Build

Note 2: Not part of General Specifications for Design-Build

Note 3: With the exception of the Disputes Review Board, not used by GMX

2-4 ***Method of Measurement, Basis of Payment, Plan Quantities and Partial Payments for Mobilization.***

Sub-articles under Divisions II and III of the FDOT Standard Specifications making reference to the *Method of Measurement, Basis of Payment and Plan Quantities* are superseded by the Schedule of Values.

When the Price Proposal includes a separate item for Mobilization and the Notice to Proceed has been issued, partial payments will be made in accordance with the following:

- For contracts of one hundred twenty (120) Calendar Days duration or less, partial payment will be made at fifty percent (50%) of the item per month for the first two (2) months.

- For contract durations ranging from one hundred twenty-one (121) to three hundred sixty-five (365) Calendar Days, partial payment will be made at twenty-five percent (25%) of the item per month for the first four (4) months.

- For contract durations over three hundred sixty-five (365) Calendar Days partial payments will be made at ten percent (10%) of the item per month for the first ten (10) months.

- In no event shall more than fifty percent (50%) of the item be paid prior to commencing Construction on the Project Site.

All other provisions under Sub-article 101-2.2, *Partial Payments*, of Division II of the FDOT Standard Specifications, and applicable supplements, shall apply.

2-5 ***Lane Closures.***

The Design-Build Firm shall comply with all the requirements of the *Lane Closure Requirements and Procedures*. A copy of this document and related exhibit can be found at the GMX website *www.gmx-way.com.*

END OF SECTION 2

SECTION 3
CONTRACT BOND AND PRE-DESIGN/CONSTRUCTION REQUIREMENTS

3-1 ***Contract Bond Requirements.***

3-1.1 General Requirements of the Bond:
Upon award, the Design-Build Firm shall furnish to GMX, and maintain in effect until the provisions of Article 9-12, *Warranty Bond* have been met, an acceptable Contract Bond for a sum at least equal to the amount of the Contract. The Design-Build Firm shall comply with the section in the Solicitation Documents entitled *Surety Companies Acceptable to GMX* and shall execute the Contract Bond form provided in the Solicitation Documents. Two (2) weeks after the Notice to Proceed, the Contractor must provide GMX with a certified copy of the recorded Bond, in accordance with section 255.05 (1)(b), Florida Statues.

3-1.2 Continued Acceptability of Surety:
In the event that the Surety executing the Contract Bond, although acceptable to GMX at the time of execution of the Contract, subsequently becomes insolvent or bankrupt, or becomes unreliable or otherwise unsatisfactory due to any cause that becomes apparent after GMX's initial approval of the Surety company, then GMX may require that the Design-Build Firm immediately replace the applicable Contract Bond with a similar bond drawn on a Surety company that is reliable and acceptable to GMX.

3-1.3 Default by Design-Build Firm:
In case of default on the part of the Design-Build Firm, GMX will charge against the Contract Bond all expenses for services incidental to ascertaining and collecting losses under the bond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.

3-1.4 Surety to Furnish Legal Defense:
The Surety company shall indemnify and provide defense for GMX when called upon to do so for all claims or suits against GMX arising out of the Contract. The approved Contract Amount, which amount shall be the original Contract Amount as may be increased or reduced by subsequent Supplemental Agreements, is the sole limitation of this indemnification.

3-1.5 Liability for Wrongful or Criminal Act by Design-Build Firm:
The Design-Build Firm and Surety executing the bond shall be liable to GMX in any civil action that might be instituted by GMX or any officer of GMX authorized in such cases, for double any amount in money or property GMX might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Design-Build Firm, or the Design-Build Firm's agent(s) or employee(s).

3-2 ***Pre-Design/Construction Conference.***
Subsequent to Contract execution, but before the Design-Build Firm begins Work, the Engineer will convene a pre-design/construction conference at a place the Engineer designates to go over the Work and the administration of the Contract. The Design-Build Firm, the Superintendent, Design Team Leader/Engineer of Record, Architect of Record, and the Project Manager shall attend this meeting, along with the Engineer and the various utility companies that will be involved with the Work. An officer authorized to contractually bind the Design-Build Firm must also attend the meeting.

a) In addition to the specific requirements identified throughout the Contract Documents for Submittals by the Design-Build Firm to the Engineer at the pre-design/construction conference, the Design-Build Firm shall also provide a written certification of the following:

1) Actual rate for items listed in Table 4-3.2.1;

2) Employee leave benefits, paid holidays, and retirement plan;

3) Policy for payment of per diem;

Items 1 thru 3 above must also be provided by all approved Subcontractors and FDOT Notice of Qualification Letters must be provided by all approved Subconsultants. For Subcontractors/Subconsultants requiring approval after the pre-design/construction conference, the Design-Build Firm shall follow the procedures outlined in Article 3-5, *Subcontracting or Assignment of Contracts*. All certifications must be executed by an officer or director of the Design-Build Firm/Subcontractor with authority to bind the Design-Build Firm/Subcontractor. Should the need for subsequent changes to the certified information arise, the Design-Build Firm shall certify them in writing to the Engineer.

b) A Quality Control Plan in accordance to Section 105, *Contractor Quality Control General Requirements*, of the FDOT Standard Specifications. Design-Build Firm shall submit to the Engineer for approval a certification from the proposed QC Consultant that no conflict of interest, as detailed in the Contract Documents, exists in their performance to comply with the provisions of Section 105, *Contractor Quality Control General Requirements*, of the FDOT Standard Specifications.

c) The list of supervisory personnel in accordance with Sub-article 5-8.1, *Design-Build Firm's Supervisory Personne***l**.

d) List of Design-Build Firm's representatives that will participate in the issue resolution process is detailed in Sub-article 5-12.12, *Hierarchy for Issue Resolution*.

3-3 ***Communications.***

Prior to the start of the Work, the Engineer will advise the Design-Build Firm as to how communications between GMX and the Design-Build Firm will be handled. Thereafter, whenever reference is made to required communication between the Design-Build Firm and GMX, such communication, to be given consideration, must be addressed in accordance with the approved procedure.

3-4 ***Audit and Examination of Contract Records and Proposal Records/Escrow of Proposal Documents.***

3-4.1 Audit and Examination of Contract Records and Proposal Records:

GMX reserves the right (at any time and from time to time, for any reason whatsoever) to review, audit, copy, examine and investigate in any manner, any Contract Records (as herein defined) or Proposal Records (as herein defined) of the Design-Build Firm, any Subconsultant, or any Subcontractor. The Design-Build Firm or any Subconsultant or Subcontractor agrees to comply with the provisions of this Article. Failure to provide reasonable access or comply with these requirements by the Design-Build Firm or any other entity hereto forenamed shall be considered a breach of the Contract.

Contract Records shall include, but are not limited to, all information, communications and data, whether in writing or stored on a computer, computer disks, microfilm, writings, working papers, drafts, computer printouts, field notes, charts or any other data compilations, books of account, photographs, videotapes and audio tapes, supporting documents, any other papers or preserved data related to the Contract or the Design-Build Firm's performance of the Contract determined necessary by GMX for any purpose.

Proposal Records shall include, but are not limited to, all information and data, whether in writing or stored on a computer, writings, working papers, computer printouts, charts or other data compilations that contain or reflect information, data or calculations used by a Design-Build Firm in determining labor, unit price (where applicable), or any other component of a Proposal submitted to GMX, and any information relating to the determination or application of Equipment rates, home and field overhead rates, related time schedules, labor rates, efficiency or productivity factors, arithmetic extensions, quotations from Subcontractors/ Subconsultants, truckers or Materials Suppliers, profit contingencies and any standard manuals in the industry that may be used by a Proposer in determining a Price Proposal.

If GMX requests access to or review of any Contract Records or Proposal Records and the Design-Build Firm refuses such access or review, the Design-Build Firm shall be in default under the Contract with GMX, and such refusal shall, without any other or additional actions, constitute grounds termination of the Contract. This provision shall not be limited in any manner by the existence of any Design-Build Firm claims or pending litigation relating to the Contract.

The Design-Build Firm shall preserve all Proposal Records and Contract Records for the entire term of the Contract. In order for GMX to release the Contract Bond as detailed in Article 9-12, *Warranty Bond*, Design-Build Firm shall deliver to the GMX records custodian an electronic copy of all Proposal Records and Contract Records along with a certification that all such records have been submitted. The Submittal shall be in compliance with the *Project Filing Structure*.

3-4.2 Escrowing of Documents:

Within five (5) Business Days of issuance of the Notice to Proceed, the Design-Build Firm shall submit to GMX, in sealed container(s), a legible copy of the Proposal Records and any supporting documentation used by the Design-Build Firm to prepare its Proposal (the "Escrowed Documents"). The container(s) shall be clearly marked “Escrowed Documents” and shall show on the face of the container(s) the Design-Build Firm's name, address, date of submittal and GMX Procurement/Contract and Work Program number(s). GMX will maintain the container(s) in a sealed condition.

In addition to the Escrowed Documents, the Design-Build Firm shall execute and submit the *Escrowed Documents Affidavit*, attached hereto and incorporated herein, signed under oath by the Design-Build Firm, listing each Escrowed Document submitted by author, date, nature and subject matter. By executing this affidavit, the Design-Build Firm waives the right to use, directly or indirectly, any Escrowed Document, other than the Escrowed Documents placed in escrow in the sealed container(s), in any dispute arising out of the Contract. Failure by the Design-Build Firm to provide the affidavit will be sufficient cause for GMX to nullify the award of the Contract to the Design-Build Firm.

Following execution of the Contract, GMX will hold the sealed container(s) and the original affidavit until the Design-Build Firm seeks an adjustment in time or money and files a claim or initiates any action against GMX, including mediation, arbitration or litigation. Such acts by the Design-Build Firm shall be sufficient grounds for GMX to open the sealed container(s). GMX reserves the right to reveal the contents of the sealed container(s) to consultants, experts and legal counsel retained by GMX to assist with claims evaluation and/or preparation to defend against the action brought by the Design-Build Firm. Confidentiality of the Escrowed Documents included in the sealed container(s) will be protected by GMX insofar as such protection does not conflict with the requirements of the Florida Public Records Act and Florida Sunshine laws.

Upon request by the Design-Build Firm and when the Design-Build Firm executes the *Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant* binding complete release of all actual and potential claims and potential causes of action directly or indirectly related to the Work, as submitted with the Final Pay Estimate, GMX will release the sealed container(s) to the Design-Build Firm.

The Design-Build Firm shall sign a receipt acknowledging that the sealed container(s) has/have been returned to the Design-Build Firm unopened.

3-5 ***Subcontracting or Assignment of Contracts.***

The Design-Build Firm shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or the rights or responsibilities therein, without written consent by GMX. Upon request, the Design-Build Firm must furnish GMX with a copy of any subcontract related to the Work. Subcontracting of any portion of the Work does not relieve the Design-Build Firm or the Surety of their respective liabilities under the Contract. GMX recognizes a Subcontractor/Subconsultant only in the capacity of an employee or agent of the Design-Build Firm, and the Engineer may require the Design-Build Firm to remove the Subcontractor/Subconsultant as in the case of an employee of the Design-Build Firm.

If during the Contract term, the Design-Build Firm wishes to modify the approved *Prime & Subcontractor/ Subconsultant Information Statement* form, the Design-Build Firm must provide a written request to the Engineer. The Design-Build Firm must ensure that a completed *Request for Authorization to Subcontract Work* form concurred by the Engineer is submitted to the Procurement Department for approval not less than ten (10) Calendar Days prior to Subcontractor/Subconsultant commencement of Work. If the Design-Build Firm subcontracts a portion of an item of the Schedule of Values, GMX will use only the subcontracted portion of the cost in determining the percentage of subcontracted Work.

GMX must notify the Design-Build Firm in writing within five (5) Business Days of receipt of the completed *Request for Authorization to Subcontract Work* form, that GMX does not approve the request. If such written notification is not provided within the established timeframe, the Design Build Firm may proceed with the subcontracting of the Work as identified in the submitted *Request for Authorization to Subcontract Work* form. For the purpose of meeting the requirement of this Article, GMX will not consider off site commercial production of Materials and manufactured component products that the Design-Build Firm purchases, or their transportation to the Project Site, as subcontracted Work.

Subcontractors:

The Design-Build Firm must submit the GMX form titled *Request for Authorization to Subcontract Work* for all first tier Subcontractors. For second tier and below Subcontractors the Design-Build Firm must submit the same form solely for the purpose of complying with Articles 7-11, *Small Business Participation Requirement*, and 7-12, *Local Business Participation Requirement.*

Subconsultants:

The Design-Build Firm must also submit the *Request for Authorization to Subcontract Work* for all first and second tier Subconsultants. For third tier and below Subconsultants the Design-Build Firm must submit the same form solely for the purpose of complying with Articles 7-11, *Small Business Participation Requirement*, and 7-12, *Local Business Participation Requirement.*

Equipment Rental Agreements:

Rental of Equipment with an operator is considered subcontracted Work and the provisions of this Article apply to such Work. However, if the Design-Build Firm rents Equipment and provides an operator from its own forces, the Work completed with such rental Equipment is considered Work performed by the Design-Build Firm.

All approved Subcontractors/Subconsultants as identified in the paragraphs above, shall be reported with the Design-Build Firm's monthly Invoice on the *Invoice Tracking Form*.

END OF SECTION 3

SECTION 4
ALTERATIONS TO WORK

4-1 ***Intent of Contract.***

The intent of the Contract is to bind the Design-Build Firm to furnish all engineering and all of its associated direct and indirect costs, construction, labor, Materials, Equipment, supervision, tools, transportation, and supplies required to complete the Work in accordance with the requirements of the Design and Construction Criteria, the Specifications, and the terms of the Contract Documents. The terms and conditions of this Contract are fixed price and fixed time. The Design-Build Firm's Price Proposal shall be a lump sum amount for the Work and is detailed in the Contract Documents.

The Design-Build Firm shall have all liability and responsibility for all unknowns and/or differing site conditions, including but not limited to any or all utilities, subsoil conditions, permits, etc. of any nature or kind, unless otherwise stated in the Contract. In the event that unforeseeable Work is provided for in the Contract, such Work shall be paid for in accordance with Article 4-3, *Alteration of Scope or of Character of Work.*

Because construction by others may be underway within or in the vicinity of the project during the Contract, the Design-Build Firm will be responsible for coordinating project operations with those operations of other contractors, as necessary.

4-2 ***Work not Covered by the General Specifications.***

Proposed Design, Construction and any contractual requirements not covered by these General Specifications may be covered by notes shown on the Conceptual Plans, or by requirements provided by the Contract Documents. The Design-Build Firm shall be responsible for developing the Technical Special Provisions and Plans for submittal and review by the Engineer. All these requirements of the Contact Documents shall be considered part of these Specifications.

4-3 ***Alteration of Scope or of Character of Work.***

4-3.1 General:

The Engineer reserves the right to make at any time prior to or during the progress of the Work such increases or decreases in quantities, whether a Significant Change as defined below, or not, and such alterations in the nature of the Design or in the type of Construction as may be found necessary or desirable by the Engineer. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety Bond. The Design-Build Firm agrees to perform the Work, as altered, the same as if it had been a part of the original Contract.

The term "Significant Change" applies when the Engineer determines that the character of the Work as altered differs materially in kind or nature from that involved or included in the Contract Documents. The determination of Significant Change will be at the sole discretion of the Engineer. Such determination by the Engineer shall be conclusive and not subject to challenge by the Design-Build Firm in any forum, except upon the Design-Build Firm establishing by clear and convincing proof that the determination by the Engineer was without any reasonable and good faith basis.

The Design-Build Firm shall secure the Engineer's written approval for all alterations. Approved alterations shall not be considered as a waiver of any conditions of the Contract Documents or release the Surety, nor shall they invalidate any of the provisions thereof. The Design-Build Firm agrees to perform the Work, as altered, the same as if it had been a part of the original Contract.

In the case where the Design-Build Firm and Engineer are not in agreement as to what is considered Extra Work, as defined herein, the Design-Build Firm shall follow the procedures outlined in Article 5-12, *Claims by Design-Build Firm* herein.

4-3.2 Extra Work:

4-3.2.1 Allowable Costs for Extra Work:

The monetary compensation provided for below constitutes full and complete payment for Extra Work and the Design-Build Firm shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such Extra Work beyond that expressly provided below.

a) **Labor and Burden:**

Except as otherwise addressed in Sub-article 4-3.2.3.1 below, the Design-Build Firm will receive payment for actual costs of direct labor and burden for Extra Work. Labor includes foremen actually engaged in the Work and will not include project supervisory personnel nor necessary on-site clerical staff. Bonuses to Design-Build Firm's employees shall not be included in the burden.

Payment for burden shall be limited solely to the following:

Table 4-3.2.1

Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Design-Build Firm's actual experience modification factor in effect at the time of the Extra Work
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual
*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).	

The certifications required pursuant to Article 3-2, *Pre-Design/Construction Conference*, are a condition precedent to any right of the Design-Build Firm to recover compensation for such costs. Failure to timely submit the certifications will constitute a full, complete, absolute, and irrevocable waiver by the Design-Build Firm of any right to recover such costs.

Compensation for project supervisory and clerical personnel, indirect costs, expenses, and profit is included under the provisions of Sub-article 4-3.2.1 (d) below or Sub-article 4-3.2.2, *Compensable Time due to Delays*, as applicable. Under no circumstances shall an officer or director of the Design-Build Firm, nor those persons who own more than one percent (1%) of the Design-Build Firm, be considered as project supervisory personnel, direct labor, or foremen hereunder.

b) **Materials and Supplies:**
For Materials accepted by the Engineer and used on the project, the Design-Build Firm will receive the actual cost of such Materials incorporated into the Work, including Design-Build Firm paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the Work, the Design-Build Firm will receive the actual cost of such supplies.

c) **Equipment:**
For any machinery or special equipment (other than small tools), including fuel and lubricant, the Design-Build Firm will receive one hundred percent (100%) of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the Work, and fifty percent (50%) of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the Project Site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the Extra Work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment", whichever is applicable, using all instructions and adjustments contained therein and as modified below.

Allowable Equipment Rates will be established as set out below:

1) Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 100%.

2) Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.

3) Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.

4) Standby Rate = Allowable Hourly Equipment Rate x 50%.

The Monthly Rate is the Basic Machine Rate plus any attachments. Standby rates will apply when Equipment is not in operation and is directed by the Engineer to standby at the Project Site when needed again to complete Work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight (8) or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight (8) hours. Standby payment will not be made on days that are not normally considered Working Days on the project.

GMX will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, GMX will pay for the time to perform this Work at the rate for standby equipment.

The Engineer may direct the Design-Build Firm to demobilize and remobilize Equipment when, at the Engineer's sole discretion, such actions will result in a more cost-effective alternative. GMX will compensate the Design-Build Firm for the costs associated with such directive.

d) **Indirect Costs, Expenses, and Profit:**
Compensation for all indirect costs, expenses, and profit of the Design-Build Firm, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office or otherwise, bond and insurance expenses, is expressly limited to (1), (2) and (3) below, as applicable:

1) Solely a mark-up of seventeen and a half percent (17.5%) on the payments in (A) through (C), above.

2) The Design-Build Firm will be allowed a markup of ten percent (10%) on the first Fifty Thousand Dollars ($50,000), a markup of five percent (5%) on the next Fifty Thousand Dollars ($50,000), and one percent (1%) on any remaining amount of the direct cost on all subcontracted Work directly related to the Extra Work. Any such mark-up will be paid only to the Design-Build Firm. GMX will not compensate the Design-Build Firm for Subcontractors/Subconsultants mark up. Compensation for Subcontractor/ Subconsultant Work must be done in compliance with Sub-article 4-3.2.3, *Subcontracted Work.*

3) Bond: The Design-Build Firm will receive compensation for actual costs for any premium needed to acquire additional bond for Extra Work but will be limited to one percent (1%) of the cost of the Extra Work. No compensation for bond premium will be allowed for Extra Work authorized through issuance of a Work Order via contingency funds. There will be no reimbursement for additional bond premium incurred by any Subcontractor.

4-3.2.2 Compensable Time due to Delays:
The Design-Build Firm shall be entitled to additional compensation and time extension due to a Delay only to the extent that Extra Work, or a directive given by the Engineer not involving Extra Work, affects the performance of a Controlling Item of Work and the Controlling Item of Work has been impacted such that it extends the completion of the project due to no fault of the Design-Build Firm.

All direct costs incurred to perform the Extra Work that caused the Delay will be compensated in the manner described in the previous Sub-article, 4-3.2.1, *Allowable Costs for Extra Work*. Indirect costs, expenses and profit will be solely compensated with the greater of either:

a) The provisions of Sub-articles 4-3.2.1 (d) (1), (2) and (3); or

b) The formula set forth below.

The formula is only applied after the first ten (10) cumulative Calendar Days of Delay, which do not include weather days, days used for performing Extra Work included in Supplemental Agreements, and days of suspended Work in accordance with the provisions of Sub-article 8-20.3, *Adjusting Contract Time*.

$$D = \frac{A \times C}{B}$$

Where:

A = Original Contract Amount
B = Original Contract Time
C = 8%
D = Average Overhead Per Day

In the event of a concurrent delay on more than one Controlling Item of Work, one or more of those Delays being caused by GMX and one or more being caused by the Design-Build Firm, the Design-Build Firm shall be entitled to a time extension for each day that a Controlling Item of Work is delayed by GMX but shall have no right to nor receive any monetary compensation.

4-3.2.3 S**ubcontracted Work**:
For Work performed by a Subcontractor, compensation for the Extra Work shall be solely limited to the provisions in Sub-article 4-3.2.1 (a), (b), (c) and (d)(1). The certifications required pursuant to Article 3-2, *Pre-Design/Construction Conference*, are a condition precedent to any right of the Design-Build Firm to recover compensation for Subcontractor costs. Failure to timely submit the certifications will constitute a full, complete, absolute and irrevocable waiver by the Design-Build Firm of any right to recover such costs. In addition, the Design-Build Firm compensation is expressly limited to the greater of the total provided in either 4-3.2.1 (d)(1), or 4-3.2.2, except that the Average Overhead Per-Day calculation is as follows:

$$Ds = \frac{A \times C}{B}$$

Where:

A = Original Contract Amount minus original subcontract amount(s)*
B = Original Contract Time
C = 8%
Ds = Average Overhead Per Day

* deduct Original Subcontract Amount(s) of Subcontractor(s) performing the Work.

4-3.2.3.1 Engineering Services:
For professional engineering services, GMX will compensate the Design-Build Firm in the following manner:

GMX will pay the lesser of the actual hourly rate for the approved personnel or the cap allowed for the job classification pursuant to the GMX Rate Schedule of Established Caps.

GMX will apply a multiplier (overhead, operating margin, Facilities Capital Cost of Money, direct expenses) to the labor cost using the current Consultant's Notice of Qualification letter issued by the Florida Department of Transportation (FDOT), and the Operating Margin table found in FDOT's Negotiation Handbook for Professional Services Contracts, in effect at the time of negotiation for the Extra Work.

Direct cost of such engineering services shall be prepared utilizing the current "Standard Scope and Staff Hour Estimation Handbook" developed jointly between the Florida Institute of Consulting Engineers (FICE) and the FDOT. Should the Design-Build Firm perform the professional engineering services, no markup will be allowed on the cost of such services.

The documentation required pursuant to Article 3-2, *Pre-Design/Construction Conference*, is a condition precedent to any right of the Design-Build Firm to recover compensation for Subconsultant costs. Failure to timely submit the documentation will constitute a full, complete, absolute and irrevocable waiver by the Design-Build Firm of any right to recover such costs.

4-3.2.4 Payment for Extra Work:

No later than thirty (30) Calendar Days after written directive by the Engineer to perform Extra Work, the Design-Build Firm shall submit a complete cost proposal to the Engineer. The Engineer will review the cost proposal within ten (10) Calendar Days after it is received and notify the Design-Build Firm if the cost proposal is accepted or rejected. Approval of the cost proposal by the Engineer will initiate the proper processing for payment via a Work Order or Supplemental Agreement, as may be applicable.

If the Design-Build Firm fails to submit a complete cost proposal within the thirty (30) Calendar Days, or in the event there is a disagreement between the Design-Build Firm and the Engineer regarding the costs incurred in completing the Extra Work, the Engineer will use its Engineer's estimate as basis of entitlement and GMX will issue a Unilateral Payment.

The Design-Build Firm, within ten (10) Calendar Days of receiving payment, shall certify in writing that the Unilateral Payment represents full compensation for the Extra Work or formally submit a Notice of Intent to Claim, as detailed in Sub-article 5-12.2, *Procedures to File a Notice of Claim*. Failure by the Design-Build Firm to submit the certification or a written Notice of Intent to Claim ten (10) Calendar Days after receiving payment through the Unilateral Payment will represent absolute and irrevocable waiver by the Design-Build Firm of any right to additional compensation or a time extension for such Extra Work.

4-3.3 No Waiver of Contract:

Changes made by the Engineer will not be considered to waive any of the provisions of the Contract, nor may the Design-Build Firm make any claim for loss of anticipated profits because of the changes or by reason of any variation between the approximate quantities included in the Solicitation Documents and quantities of Work actually performed. All Work shall be performed as directed by the Engineer and in accordance with the Contract Documents.

4-3.4 Conditions Requiring a Supplemental Agreement:

A Supplemental Agreement is required in instances including, but not limited to, clarification or amendment of the Work and/or Specifications, changes to the Contract Documents, to document and approve Extra Work, time extensions (other than days granted for inclement weather), or to settle documented Contract Claims.

A Supplemental Agreement may be used to expand the physical limits of the Work only to the extent necessary to make it functionally operational in accordance with the intent of the original Contract or as otherwise approved by the GMX Board. Performance of Work requiring a Supplemental Agreement without prior written authorization by the Engineer constitutes a full and complete waiver by the Design-Build Firm to be compensated for such Work.

The Engineer's written authorization will set forth sufficient information to allow the Work to begin. The Work activities, terms and conditions will be reduced to a written Supplemental Agreement form promptly thereafter. No payment will be made for the Work approved by the Engineer until a Supplemental Agreement has been executed in accordance with the Procurement Policy.

4-3.5 Cost Savings Initiative (CSI) Proposal:

4-3.5.1 Intent and Objective:

a) This Sub-article applies to any cost reduction proposal that the Design-Build Firm initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result (hereinafter referred to as a CSI). The Design-Build Firm shall submit a request to the Procurement Department for a CSI workshop after the issuance of Notice of Award and prior to the execution of the Contract to present the Design-Build Firm's proposed CSI(s) to GMX. The Design-Build Firm shall identify any CSI as such in order for GMX to evaluate it. GMX must approve the CSI prior to any implementation.

Prior to Contract execution, the Design-Build Firm shall adhere to the requirements of the Cone of Silence during the CSI process.

b) The Engineer will consider CSIs that would result in net savings to GMX by providing either: (i) a decrease in the cost of performance of the Contract; or (ii) a reduction in cost of ownership (hereinafter referred to as ancillary costs) of the Work provided by this Contract, regardless of acquisition costs.

CSIs must result in savings without impairing essential functions and characteristics such as safety, service life, reliability, economy of operation, ease of maintenance, aesthetics, and necessary standard design features. However, nothing herein prohibits the Design-Build Firm from submitting CSIs when the required functions and characteristics can be combined, reduced, or eliminated because they are nonessential or excessive. The Engineer will not recognize the Design-Build Firm's correction of plan errors, which result in a cost reduction, as a CSI.

c) The Engineer reserves the right to reject, at its sole discretion, any CSI submitted. The Engineer will not allow the substitution of another design alternate, on which the Design-Build Firm could have bid, that is detailed in the Plans for the one on which the Design-Build Firm has bid, under this Sub-article. Pending GMX's execution of a Supplemental Agreement implementing an approved CSI, the Design-Build Firm shall remain obligated to perform the Work in accordance with the terms of the existing Contract. If the CSI is approved by GMX, GMX may grant time extensions, at its sole discretion, to allow for the time required to develop and review the CSI. No time extensions will be granted in case a CSI is rejected by the Engineer or withdrawn by the Design-Build Firm. The Design-Build Firm will not be entitled to additional compensation for the preparation, submittal and reviews of a CSI, irrespective of the final outcome for the CSI.

1. The Engineer reserves the right to reject at its discretion any CSI submitted that proposes a change in the design of the pavement system or that would require additional Right-of-Way. Pending GMX's execution of a Supplemental Agreement implementing an approved CSI, the Design-Build Firm shall remain obligated to perform the Work in accordance with the terms of the existing Contract. GMX may grant time extensions to allow for the time required to develop and review a CSI.

2. The Engineer reserves the right to reject at its discretion any CSI submitted which is based on or related to a previously rejected Alternative Technical Concept proposal submitted during the Procurement Process.

d) For potential CSI's not discussed at the CSI workshop and that might arise during the course of the Contract, a concept meeting shall be required for the Design-Build Firm and GMX to discuss the potential CSI prior to its approval by GMX and implementation.

4-3.5.2 Subcontractors:

GMX encourages the Design-Build Firm to include the provisions of this Sub-article in Contracts with Subcontractors and to encourage submission of CSIs from Subcontractors through the Design-Build Firm. However, it is not mandatory to submit CSIs to the Engineer or to accept or transmit Subcontractor proposed CSIs to the Engineer.

4-3.5.3 Data Requirements:

At a minimum, the Design-Build Firm shall submit the following information with each CSI:

a) A detailed description of the difference between the existing Contract requirement and the proposed change, including any time extension request, and the comparative advantages and disadvantages;

b) Separate detailed cost estimates for both the existing Contract requirement and the proposed change. The estimate must be broken down by the Schedule of Values indicating quantity increases or decreases and added or deleted components. In preparing the estimates, the Design-Build Firm must include the costs of overhead, profit, and bond in the Submittal of the CSI. The Engineer will not allow any separate Pay Item(s) for the cost of overhead, profit, and bond;

c) Provide preliminary plan drawings in sufficient detail to describe the proposed changes;

d) An estimate of the effects the CSI would have on ancillary costs to GMX;

e) Engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if the Engineer accepts the CSI with a proposal as to how these changes can be accomplished and an assessment of their effect on other project elements. The Engineer may require that engineering analyses be performed by a prequalified Consultant in the applicable class of work. Support all design changes that result from the CSI with prints of drawings and computations signed and sealed by the Engineer of Record. Written documentation or drawings must be provided by the Design-Build Firm clearly delineating the responsibility of the Design-Build Firm's Engineer of Record;

f) The time by which the Engineer must approve the CSI to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule; and

g) A revised Project Schedule that would be followed upon approval of the CSI. This schedule would include Submittal dates and review time for the Engineer and peer reviews.

4-3.5.4 Processing Procedures:

No later than fourteen (14) Business Days after the proper submittal of a CSI pursuant to the procedures outlined herein, the Engineer shall respond in writing to the Contractor of which concepts are eligible for consideration in a CSI. This determination by the Engineer will not be construed as acceptance of the CSI.

The Design-Build Firm shall submit two (2) copies of each CSI to the Engineer. The Engineer will process CSIs expeditiously; however, GMX is not liable for any Delay in acting upon a CSI submitted pursuant to this Sub-article. The Design-Build Firm may withdraw, in whole or in part, a CSI not accepted by GMX within the period specified in the CSI. GMX is not liable for any CSI development cost in the case the Engineer rejects, or the Design-Build Firm withdraws the CSI.

The Engineer is the sole judge of the acceptability of a CSI and of the estimated net savings in Construction and ancillary costs from the adoption of all or any part of such CSI. In determining the estimated net savings, GMX reserves the right to disregard the Schedule of Values if, in the judgment of the Engineer, such values do not represent a fair measure of the value of Work to be performed or to be deleted.

Prior to approval, the Engineer may modify a CSI, with the concurrence of the Design-Build Firm, to make it acceptable. If any modification increases or decreases the net savings resulting from the CSI, the Engineer will determine the Design-Build Firm's fair share upon the basis of the CSI as modified and upon the final quantities.

The Engineer will compute the net savings by subtracting the revised total cost of all items affected by the CSI from the total cost of the same items as represented in the Contract.

Prior to approval of the CSI that initiates the Supplemental Agreement, the Design-Build Firm shall provide acceptable Contract quality plan sheets revised to show all details consistent with the CSI design.

4-3.5.5 Computations for Change in Contract Cost of Performance:

GMX will not pay the Design-Build Firm for CSI development and implementation costs. If the CSI is adopted, the Design-Build Firm's share of the net savings as defined hereinafter represents full compensation to the Design-Build Firm for the CSI.

The Engineer will not include its costs to process and implement a CSI in the estimate prepared by the Design Build Firm. However, GMX reserves the right; where it deems such action appropriate, to require the Design-Build Firm to pay GMX's cost of investigating and implementing a CSI as a condition of considering such CSI. When GMX imposes such a condition, the Design-Build Firm shall accept this condition in writing, authorizing GMX to deduct amounts payable to GMX from any monies due or that may become due to the Design-Build Firm under the Contract.

4-3.5.6 Computations for Ancillary Costs:

To determine any ancillary cost savings, the Design-Build Firm shall prepare separate estimates for ancillary costs of both the existing Contract requirement and the proposed change. The Design-Build Firm shall provide estimates that consist of an itemized breakdown of all costs and the basis for the data used in the estimate. Cost benefits to GMX include, but are not limited to, reduced costs of operation, maintenance or repair, and extended useful service life. Increased ancillary costs include the converse of such factors.

Compute ancillary costs as follows:

a) Calculate costs over a ten (10) year period on a uniform basis for each estimate;

b) If the difference in the estimates as approved by GMX indicates a savings, divide the resultant amount by ten (10) to arrive at the average annual net ancillary savings. GMX will share the average annual net ancillary savings as stipulated in Sub-article 4-3.5.8, *Sharing Arrangements*.

4-3.5.7 Conditions of Acceptance for Major Design Modifications of Category 2 Bridges:

A CSI that proposes major design modifications of a category 2 Bridge, as determined by the Engineer, shall have the following conditions of acceptance:

a) All Bridge plans relating to the CSI shall undergo an independent peer review conducted by a single independent engineering firm referred to, for the purposes of this Article, as the Independent Review Engineer who is not the originator of the CSI design, and is pre-qualified in accordance with Rule Chapter 14-75, F.A.C. The independent peer review is intended to be a comprehensive, thorough verification of the Bridge design in the CSI to ensure GMX, FDOT, FHWA and AASHTO criteria requirements, including Bridge load ratings, are met. The Independent Review Engineer's comments, along with the resolution of each comment, shall be submitted to GMX. The Independent Review Engineer shall sign and seal the Submittal cover letter stating that all comments have been adequately addressed and the design is in compliance with the GMX, FDOT, FHWA and AASHTO criteria requirements. If there are any unresolved comments, the Independent Review Engineer shall specifically list all unresolved issues in the signed and sealed cover letter.

b) The Design-Build Firm shall designate a primary engineer responsible for the CSI design and as such will be designated as the Design-Build Firm's Engineer of Record for the CSI design. GMX requires the Design-Build Firm's Engineer of Record to assume responsibility for design of the entire structure.

c) GMX reserves the right to conduct its own independent peer review of the documents prior to acceptance of the CSI. Any costs associated with this independent peer review will be deducted from the CSI savings prior to sharing such savings with the Design-Build Firm.

4-3.5.8 Sharing Arrangements:

If GMX approves a CSI, the Design-Build Firm will be entitled to share in both Construction savings and ancillary savings to the extent provided for in this Sub-article.

The Design-Build Firm shall receive fifty percent (50%) of the net reduction of the Contract Amount. The net reduction is the difference between the overall savings realized by the CSI and the allowable documented costs incurred by the Design-Build Firm and/or GMX in developing the CSI. Engineering costs incurred by the Design-Build Firm may only be applied to the overall savings for a maximum of twenty-five percent (25%) of the overall savings realized by the CSI and must not include markup by the Design-Build Firm.

When ancillary savings occur, GMX will provide the Design-Build Firm with twenty percent (20%) of the average annual net ancillary savings pursuant to Sub-article 4-3.5.6, *Computations for Ancillary Costs*.

4-3.5.9 Notice of Intellectual Property Interests and GMX's Future Rights to a CSI:

a) Notice of Intellectual Property Interests: The Design-Build Firm's CSI Submittal shall identify with specificity any and all forms of intellectual property rights that either the Design-Build Firm or any officer, shareholder, employee, consultant, or affiliate, of the Design-Build Firm, or any other entity who contributed in any measure to the substance of the Design-Build Firm's CSI development, have or may have that are in whole or in part implicated in the CSI. Such required intellectual property rights notice includes, but is not limited to, disclosure of any issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that, though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Design-Build Firm or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the CSI that are already on the FDOT's QPL or FDOT Standard Indexes or are otherwise generally known in the industry as being subject to patent or copyright protection.

b) GMX's Future Rights to the CSI: Notwithstanding Article 7-4, *Patented Devices, Materials and Processes,* or any other provision of the General Specifications, upon acceptance of a CSI, the Design-Build Firm hereby grants to GMX and its contractors, agents or assignees a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish.

4-3.6 Differing Site Conditions:

During the progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Design-Build Firm disturbs the conditions or performs the affected Work. Upon receipt of written notification of differing site conditions from the Design-Build Firm, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified by Supplemental Agreement.

The Engineer will notify the Design-Build Firm whether or not an adjustment of the Contract is warranted. The Engineer will not allow a Contract adjustment for a differing site condition unless the Design-Build Firm has provided the required written notice. The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other GMX or non-GMX projects on which the Design-Build Firm may be working.

4-3.7 Changes Affecting Utilities:

The Design-Build Firm shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Design-Build Firm, and the Design-Build Firm shall at the time of making the request for a change notify GMX in writing of any such potential impacts to utilities.

GMX approval of a Design-Build Firm-proposed change does not relieve the Design-Build Firm of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Design-Build Firm initiated changes in the design or Construction activities from those in the original Contract Specifications, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the utility plans, or joint project agreements, or utility relocation schedules.

4-4 *Unforeseeable Work.*

Unforeseeable Work is classified as Extra Work. Refer to Sub-article 4-3.2, *Extra Work*.

END OF SECTION 4

SECTION 5
CONTROL OF THE WORK

5-1 ***Plans and Working Documents.***

5.1.1 General:

The Conceptual Plans furnished by GMX in the Solicitation Documents consist of general drawings that provide a conceptual description of the contemplated Construction. The Design-Build Firm may use such Conceptual Plans in developing the Plans as detailed in Article 1.3, *Definitions,* and in conformance with all other Contract requirements.

The Plans shall be dated, stamped, and signed and sealed by the Engineer of Record and shall be transmitted to the Engineer in order to be stamped Released for Construction (RFC).

Grades shown in the Conceptual Plans provided as part of the Solicitation Documents are finished grades and B.M. Datum is North American Vertical Datum 1988 (NAVD 1988); National Geodetic Vertical Datum of 1929 (NGVD-1929); or other datum as noted on the Conceptual Plans.

Computed dimensions shall govern over scaled dimensions. Information provided in the Plans developed by the Design-Build Firm shall suffice to compute any and all dimensions eliminating the need for scaling. The Design-Build Firm shall not scale drawings for Construction.

No changes shall be made to any Released for Construction plans or drawings after its approval by GMX unless approved by the Engineer. Any requests for such alterations must be submitted in writing to GMX.

5-1.2 Shop Drawings:

5-1.2.1 Definitions:

Bracing:
Temporary structural member(s) placed between beams, girders, piles, columns, etc. to provide stability during Construction activities.

Construction Affecting Public Safety:
Construction that may jeopardize public safety including, but not limited to, structures spanning over Roadways open to traffic, pedestrian walkways, railroads, channels of navigable waterways and walls or other structure foundations located in embankments immediately adjacent to Roadways open to traffic. Construction Affecting Public Safety does not apply to those areas of the site under the Design-Build Firm's control and outside the limits of public access.

Falsework:
Temporary Construction Work used to support the permanent structure until it becomes self-supporting. Falsework includes, but is not limited to, steel or timber beams, girders, columns, piles, and foundations, and equipment including modular shoring frames, post shores, and adjustable horizontal shoring.

Formwork:
Structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials including, but not limited to, wood or metal sheets, battens, soldiers and walers, ties, forming systems such as stay-in-place metal forms, and supporting bolts, hangers, and brackets.

Formwork may be either permanent Formwork requiring a Shop Drawing Submittal such as stay-in-place metal or concrete forms, or may be temporary Formwork which requires certification by the Specialty Engineer for Construction Affecting Public Safety and for Major and Unusual Structures.

Major and Unusual Structures:
Bridges of complex geometry and/or complex design, including, but not limited to, the following types of structures:

a) Bridges with an individual span longer than three hundred (300) feet;

b) Structurally continuous Superstructures with spans over one hundred fifty (150) feet;

c) Steel box and plate girder Bridges;

d) Steel truss Bridges;

e) Concrete segmental and longitudinally post-tensioned continuous girder Bridges;

f) Cable stayed or suspension Bridges;

g) Curved girder Bridges;

h) Arch Bridges;

i) Tunnels;

j) Movable Bridges (specifically electrical and mechanical components);

k) Rehabilitation, widening, or lengthening of any of the above.

Permanent Works:
All the permanent structures and parts thereof required of the completed Work in accordance with the Contract.

Scaffolding:
An elevated work platform used to support workmen, Materials, and equipment, but not intended to support the structure.

Shop Drawings:
All working, shop and erection drawings, associated trade literature, calculations, schedules, manuals, and similar documents submitted by the Design-Build Firm to define some portion of the project Work. The type of work includes both permanent and temporary works as appropriate to the project.

Shoring:
A component of Falsework such as horizontal, vertical, or inclined support members. In this Sub-article, this term is interchangeable with Falsework.

Special Erection Equipment:
Equipment fabricated for Construction of structures specific to the Work, including, but not limited to, launching gantries, beam and winch equipment, form travelers, stability towers, strongbacks, erection trusses, and launching noses. Special Erection Equipment does not apply to commonly available Construction Equipment such as cranes.

Temporary Works:
Any temporary Construction Work necessary for the Construction of the Permanent Work. Temporary Work includes, but is not limited to, Falsework, Formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, and special erection equipment.

5-1.2.2 Work Items Requiring Shop Drawings:

In general, GMX requires Shop Drawings for items of Work not fully detailed in the Plans which require additional drawings and coordination prior to their Construction. GMX requires Shop Drawings for any structure items, including but not limited to, the following:

a) Bridge components not fully detailed in the Plans, i.e., segments, steel girder details, post-tensioning details, handrails, etc.;

b) Retaining wall systems;

c) Precast box culverts;

d) Non-standard lighting, signalization and signing structures and components;

e) Bulkheads, cofferdams, and lighting and signing structural items, along with the applicable foundations;

f) Drainage structures, attenuators, and other nonstructural items;

g) Building structures;

h) Design and structural details furnished by the Design-Build Firm in compliance with the Contract;

i) Special erection equipment;

j) Falsework and shoring;

k) Temporary Work affecting public safety.

For the purpose of Shop Drawing requirements, the following signing and lighting items are structural items:

a) Lighting: poles, bracket arms, frangible bases, and foundations.

b) Signing: mounting brackets for Bridge-mounted signs, overhead cantilever structures, overhead truss structures, overhead sequential sign structures, and multiple post sign supports, along with applicable foundations.

Additional clarification for certain types of Bridge structures is provided in Sub-article 5-1.2.8, *Additional Requirements for Shop Drawings for Bridges*. Other provisions of the Contract Documents may exempt the requirement for Shop Drawing Submittals. Review the Contract Documents to determine the Submittals required.

5-1.2.3 Schedule of Submittals:

The Design-Build Firm shall prepare and submit a schedule of Submittals in conformance with the processing requirements detailed in Sub-article 5-1.2.4, *Submission of Shop Drawings*, and identifying the Work for which Shop Drawings apply. For each scheduled Submittal, the Design-Build Firm shall define the type and approximate number of drawings or other documents that are included, and the scheduled Submittal date. The schedule of Submittals shall become part of the Project Schedule. The Design-Build Firm shall submit the schedule of Submittals to GMX within fifteen (15) Calendar Days after the Notice to Proceed and prior to the submission of any Shop Drawings.

5-1.2.4 Submission of Shop Drawings:

All Shop Drawings prepared by the Design-Build Firm or Design-Build Firm's agents shall be reviewed, dated, stamped, approved and signed by the Design-Build Firm and Engineer of Record prior to submission to the Engineer. The Design-Build Firm's and Engineer of Record's signed approval of drawings submitted shall confirm that the Design-Build Firm and Engineer of Record have verified the Work requirements, field measurements, Construction criteria, sequence of assembly and erection, access and clearances, catalog numbers and other similar data. The Design-Build Firm shall indicate, itemize, and explain all deviations in the Shop Drawings from the Plans, in the letter of transmittal to the Engineer. In the case where the Engineer of Record generates the Shop Drawings for the project, another engineer with the Engineer of Record's firm, not involved in the production of the Shop Drawing, will review and stamp the drawings per the requirements stated herein. Shop drawings shall not be submitted, processed reviewed, or approved until the component plan set for the particular item is stamped "Released for Construction".

The Design-Build Firm shall submit Shop Drawings to facilitate expeditious review because voluminous Submittals at one time may result in increased review time by the Engineer. In no case will the Engineer be liable for resulting Delays, added costs and related damages when the time required for review extends beyond the approximate times shown herein. Only the Engineer of Record's approval stamp (red ink) on Shop Drawings is valid and no Work shall be performed in advance of such approval. The Design-Build Firm shall not proceed with any Work prior to receipt of approved Shop Drawings.

Lack of compliance with the provisions of this Sub-article may, at the Engineer's discretion, be cause for rejecting such Submittal without review, and the cost of any Delay caused by such rejection shall be borne by the Design-Build Firm.

5-1.2.4.1 Submission Path for Shop Drawings and Specific Requirements:

All Shop Drawing Submittals shall be addressed to the Engineer. At the pre-design/construction conference GMX will notify the Design-Build Firm of any changes in the submittal path and GMX's red-ink review stamp will signify an officially reviewed Shop Drawing. It is the Design-Build Firm's responsibility to obtain the receipt stamp from the Engineer for the Submittal.

The Shop Drawings shall be re-submitted by the Design-Build Firm until approved by GMX. After approval, no changes shall be made without re-submission, and all changes or revisions made shall be clearly marked and dated. Working prints shall not be used until after approval and the date of approval is noted on the Shop Drawings.

In addition to the general requirements for the Submittal of Shop Drawings the Design-Build Firm shall comply with the following specific requirements:

a) **Temporary Works:** For Construction Affecting Public Safety, submit to the Engineer Shop Drawings and the applicable calculations for the design of special erection equipment, bracing, Falsework, scaffolding, etc. Ensure that each sheet of the Shop Drawings and the cover sheet of the applicable calculations is signed and sealed by the Specialty Engineer.

b) **Falsework Founded on Shallow Foundations:** When vertical displacement limits are provided in the Plans for Falsework founded on shallow foundations such as spread footings and mats, submit to the Engineer Shop Drawings and applicable calculations of the Falsework system including subsurface conditions and settlement estimates.

c) **Formwork and Scaffolding:** The Design-Build Firm is solely responsible for the safe installation and use of all Formwork and scaffolding. GMX does not require any Formwork or scaffolding submittals unless such Work would be classified as Construction Affecting Public Safety. For Formwork, scaffolding, or other temporary works affecting public safety, develop the required designs in accordance with the AASHTO Guide Design Specifications for Bridge Temporary Works, the AASHTO Construction Handbook for Bridge Temporary Works, and Chapter 11 of the Structures Design Guidelines (SDG) using wind loads specified in the SDG.

d) **Beam and Girder Temporary Bracing:** The Design-Build Firm is solely responsible for ensuring stability of beams and girders during all handling, storage, shipping, and erection. Adequately brace beams and girders to resist wind, weight of forms and other temporary loads, especially those eccentric to the vertical axis of the products, considering actual beam geometry and support conditions during all stages of erection and deck construction. Develop the required designs following the AASHTO Guide Design Specifications for Bridge Temporary Works and Construction Handbook for Bridge Temporary Works and the Contract Documents.

For Construction Affecting Public Safety, submit signed and sealed calculations for stability for all beams and girders.

For Construction Affecting Public Safety, when temporary bracing requirements are shown in the Plans, submit Plans and calculations signed and sealed by a Specialty Engineer for the design of temporary bracing members and connections based on the forces shown in the Plans. In addition, submit a written certification that Construction loads do not exceed the assumed loads shown in the Plans.

For Construction Affecting Public Safety, when temporary bracing requirements are not shown in the Plans or an alternate temporary bracing system is proposed, submit Plans and calculations signed and sealed by a Specialty Engineer including the stability analysis and design of temporary bracing members and connections.

e) **Erection Plan:** Submit, for the Engineer's review, an Erection Plan that meets the specific requirements of Sections 450, *Precast Prestressed Concrete Construction*, 452, *Precast Segmental Bridge Construction*, and 460, *Structural Steel and Miscellaneous Metals*, of the FDOT Standard Specifications, and this Article. Refer to Index 600 of the FDOT Standard Indexes for construction activities not permitted over traffic.

f) **Building Structures:** Submit working, shop and erection drawings, and all correspondence related to building structures to the Engineer of Record for review and approval. Send a copy of the transmittal to the Engineer.

g) **Other miscellaneous design and structural details furnished by the Design-Build Firm in compliance with the Contract**: Submit to the Engineer of Record shop drawings and applicable calculations. The shop drawings and applicable calculations must be signed and sealed by the Specialty Engineer.

5-1.2.4.2 Processing of Shop Drawings:

The Design Build Firm will forward all Submittals to the Engineer for review. Once the review process of the Submittal(s) has been completed Shop Drawings will be transmitted back to the Design-Build Firm.

The Design-Build Firm shall schedule the submission of Shop Drawings so that twenty-eight (28) Calendar Days are allowed for review by the Engineer for routine items and forty-five (45) Calendar Days are allowed for review by the Engineer of complex items unless otherwise determined by the Engineer during the review of the Schedule of Submittals. The review periods referenced herein shall begin on the day of receipt of the Submittal by the Engineer. The Design-Build Firm shall adjust in the Project Schedule updates the time required for review of a Shop Drawing in case of re-submittal(s).

5-1.2.5 Shop Drawing Submittal Requirements:

Shop Drawings must be submitted in the following manner:

a) Use the same units of measure as those used in the Plans;

b) Use sheets no larger than eleven inches (11") by seventeen inches (17") unless otherwise allowed by the Engineer;

c) Consecutively number each sheet in the Submittal series;

d) Indicate the total number in the series (i.e., 1 of 12);

e) Include seven (7) printed copies and when applicable, include calculations;

f) Include an electronic copy, and a letter of transmittal;

g) Include the Design-Build Firm's approval stamp with date and initials; and

h) Include the signature and seal of the Specialty Engineer or Design-Build Firm's Engineer of Record, as may be applicable.

Documents other than drawings, such as trade literature, catalogue information, calculations, and manuals must be bound and include a cover sheet that contains a table of contents. The bound documents must be organized and include information in accordance with this Sub-article.

Each sheet of the Shop Drawing must include a title block with the following information:

a) Complete GMX Work Program Number;

b) Bridge number, when applicable;

c) Drawing title and number;

d) Names of the fabricator or producer and the Design-Build Firm for which the Work is being done;

e) Initials of the person(s) responsible for the drawing;

f) Date on which the drawing was prepared; and

g) Location of the item(s) within the limits of the Work.

Each series of drawings shall indicate the Specification Section and page or drawing number of the Plans to which the submission applies, as well as reference the Schedule of Submittals. All Shop Drawing Submittals shall be neat, legible, and clean. Shop Drawings shall show the date of Submittal and each re-submittal and the name and number of the project, and name of the Design-Build Firm.

The Engineer may direct a re-submittal if the above Submittal requirements are not met.

5-1.2.6 Other Requirements for Shop Drawings:

5-1.2.6.1 Scope of Review by the Engineer and Responsibility for Accuracy of Shop Drawings Submittals:

Review by the Engineer is limited to general conformance with the requirements of the Contract Documents. Concurrence by the Engineer does not: a) relieve the Engineer of Record or the Design-Build Firm of their legal and contractual responsibilities, or b) constitute approval to deviate from the requirements of the Contract Documents. The Engineer will not review the Shop Drawings for the adequacy of the means, methods, techniques, sequences, and procedures proposed for Construction.

Concurrence by the Engineer of the Design-Build Firm's Shop Drawings Submittals shall not relieve the Design-Build Firm of any responsibility for accuracy of dimensions and details, or for conformity of dimensions and details. Submittal of the drawings confirms the Work requirements, units of measurement, field measurements, Construction criteria, sequence of assembly and erection, access and clearances, catalog numbers, and other similar data have been verified. The Design-Build Firm shall be responsible for agreement and conformity of Design-Build Firm's Shop Drawings with the approved Plans and Specifications.

5-1.2.6.2 Review of Shop Drawings for Construction Affecting Public Safety:

For Construction Affecting Public Safety, the Design-Build Firm must submit to the Engineer a Shop Drawing detailing the erection plan signed and sealed by the Specialty Engineer not less than four (4) weeks prior to erection commencing, as detailed in the Project Schedule.

The erection plan must include signed and sealed calculations and details for any Falsework, bracing or other connection(s) supporting the structural elements.

For Construction Work Affecting Public Safety, the Engineer of Record will perform an independent review. The review of these Shop Drawings by the Engineer will be limited to overall conformance and does not include a check for structural adequacy of the item to support the imposed loads, economy, efficiency or ease of Construction.

5.1.2.7 Avoidance of Conflict of Interest:

The Design Build Firm may not engage any engineer who participated in the development of the Conceptual Plans, the Design-Build Design and Construction Criteria, and/or the Design-Build Scope of Services.

5-1.2.8 Additional Requirements for Shop Drawings for Bridges:

5-1.2.8.1 Shop Drawings for Structural Steel and Miscellaneous Metals:

The Design-Build Firm must furnish Shop Drawings for structural steel and miscellaneous metals. Shop Drawings shall include all necessary information for the complete fabrication and erection of the metal work including, but not limited to, erection drawings, welding procedures, and other working plans, showing details, dimensions, and sizes of material.

5-1.2.8.2 Shop Drawings for Concrete Structures:

The Design-Build Firm must furnish Shop Drawings for non-cast-in-place concrete components and that are not otherwise exempted from Submittal requirements.

The Design-Build Firm must also furnish Shop Drawings for all details that are required for the effective prosecution of the concrete work and that are not included in the Contract Documents including, but not limited to: special erection equipment, masonry layout diagrams, and diagrams for bending reinforcing steel.

5-1.2.8.3 Shop Drawings for Major and Unusual Structures:

Prior to the submission of Shop Drawings for Major and Unusual Structures, the Design-Build Firm must submit within sixty (60) Calendar Days from the Notice to Proceed, an outline of the integration of the Major or Unusual Structure into the overall approach to the Work. The Submittal must include, but not be limited to, the following information:

a) The duration of the Work for the Construction of the structure(s) including Milestone dates.

b) The sequence of the overall Construction including the order in which the individual components are to be built, the sequence in which individual spans of girders or cantilevers are erected, and the sequence in which spans are to be made continuous.

c) The general location of any physical obstacles to Construction that might impose constraints or otherwise affect the Construction, and an outline of how to deal with such obstacles while building the structure(s). Examples of such obstacles might include road, rail, and waterway clearances, temporary diversions, transmission lines, utilities, property, and the Design-Build Firm's own Temporary Works.

d) The approximate location of any special lifting equipment in relation to the structure, including clearances required for the operation of the equipment that may include crane positions, operating radii, etc.

e) The approximate location of any temporary Falsework, and the conceptual outline of any special erection equipment. Provide the precise locations and details of attachments, fixing devices, loads, etc. in a later submitted Shop Drawing.

f) An outline of the handling, transportation, and storage of fabricated components, such as girders or concrete segments. Provide the precise details in later submitted Shop Drawing.

g) Any other information pertinent to the proposed scheme or intended approach.

Clearly and concisely present the above information on as few drawings as possible in order to provide an overall, integrated summary of the intended approach to the Work. The Engineer will use these drawings for information, review planning, and to assess the Design-Build Firm's approach in relation to the intent of the Plans.

The Engineer will complete the review of the proposed outline within twenty-eight (28) Calendar Days. The delivery to and receipt by the Engineer does not constitute acceptance or approval for Construction of the proposals shown thereon.

5-1.2.9 Modifications for Construction:

Where the Engineer allows the Design-Build Firm to make modifications to the permanent works for the purposes of expediting the Design-Build Firm's chosen Construction methods, the Design-Build Firm shall submit proposals to the Engineer for review prior to modifying the works. Such modifications will be reviewed through the Submittal and review of Shop Drawings process or a CSI. The Engineer's decision as to the distinction between a minor and a major modification and the disposition of a modification for construction proposal is final.

Minor modifications are those items that, in the opinion of the Engineer, do not significantly affect the quantity of Work, or the integrity or maintainability of the structure or its components. Examples of minor modifications may include adjusting concrete dimensions, substituting steel plate sizes, changing reinforcing bar size, and spacing, etc., all within the acceptable limits of the design.

Major modifications are any modifications that, in the opinion of the Engineer, significantly affect the quantity of Work, or the integrity or maintainability of the structure or its components. Examples of major modifications may include substituting alternative beam sizes and spacing, changing material strength or type, and the like.

The Design-Build Firm must submit signed and sealed revised sheets to the Engineer for any required revisions to the "Released for Construction" plans and obtain approval prior to submitting Shop Drawings.

5-1.2.10 Cost of Shop Drawings:

The Price Proposal shall include the cost of furnishing all Shop Drawings, Product Data and Samples. GMX will not pay the Design-Build Firm additional compensation for such submittals. Include the cost of furnishing shop and working drawings in the Price Proposal for the work requiring the shop and working drawings.

5-1.3 Shop Drawing Related Certifications:

5-1.3.1 Special Erection Equipment:

Prior to utilizing special erection equipment, the Design-Build Firm must ensure that the Specialty Engineer personally inspects the special erection equipment and certifies in writing to the Engineer that the equipment has been fabricated in accordance with the submitted Shop Drawings. In addition, after assembly, the Design-Build Firm must ensure that the Specialty Engineer certifies in writing to the Engineer, by observing the equipment in use, that it is being used as intended and in accordance with the Shop Drawings. In each case, the Design-Build Firm must ensure that the Specialty Engineer signs and seals the letter of certification.

5-1.3.2 Falsework and Shoring Requiring Shop Drawings:

After its erection or installation but prior to the application of any superimposed load, the Design-Build Firm must ensure that the Specialty Engineer personally inspects the Falsework and certifies to the Engineer in writing that the Falsework has been constructed in accordance with the Materials and details shown on the approved Shop Drawings. The Design-Build Firm must ensure that the Specialty Engineer signs and seals the letter of certification.

5-1.3.3 Temporary Formwork:

For Construction Affecting Public Safety and for Major and Unusual Structures, prior to the placement of any concrete, the Design-Build Firm must ensure that the Specialty Engineer inspects the Formwork and certifies to the Engineer in writing that the Formwork has been constructed to safely withstand the superimposed loads to which it will be subjected in accordance with the approved Shop Drawings. The Design-Build Firm must ensure that the Specialty Engineer signs and seals the letter of certification.

5-1.3.4 Erection of Items for Construction Affecting Public Safety:

At least two (2) weeks prior to beginning erection, conduct a pre-erection meeting with the Specialty Engineer and Engineer to review details of the erection plan.

After erection of the elements but prior to opening of the Roadway below the structure, the Design-Build Firm must ensure that a Specialty Engineer has personally inspected the erected member(s) and certify to the Engineer in writing that the structure has been erected in accordance with the Shop Drawing.

Perform daily inspections of the erected structural systems. For structures without temporary supports but with temporary girder bracing systems, perform inspections until all the diaphragms and cross frames are in place. For structures with temporary supports, perform inspections until the temporary supports are no longer needed as indicated in the erection plans. Provide written documentation of the inspections to the Engineer within twenty-four (24) hours of the inspection.

5-2 ***Coordination of Contract Documents.***

The Specifications, Conceptual Plans, Design and Construction Criteria and all supplementary documents are integral parts of the Contract; a requirement occurring in one is as binding as though occurring in all. In addition to the Work and Materials specifically identified as being included in the Design and Construction Criteria and any additional incidental Work not specifically mentioned, when so shown in the Conceptual Plans, or if indicated, or obvious and apparent, as being necessary for the proper completion of the Work will be considered by GMX as being included in the Contract Amount. Contract Documents referenced herein are GMX documents unless otherwise noted.

Notwithstanding the order of precedence below, in the event of a conflict among any manual or publication incorporated by reference in the Contract Documents, GMX shall have the right to determine, in its sole discretion, which provision applies regardless of the order of precedence of the documents in which such manuals or publications are referenced. The Design-Build Firm shall request in writing GMX's determination respecting the order of precedence involving the referenced provisions promptly upon becoming aware of any such conflict.

In case of conflict among Contract Documents, the governing order of the Contract Documents shall be as follows:

a) Supplemental Agreements;

b) Executed Contract (excluding exhibits listed separately herein);

c) Addenda (which pertain to the Contract Documents), in the event of conflicts in the addenda, the most recent addendum will govern;

d) Solicitation Documents (unless listed separately herein);

e) Supplemental General Specifications for Design-Build;

f) General Specifications for Design-Build;

g) Work Orders;

h) Design-Build Technical Specifications Package;

i) Release for Construction Plans;

j) Design-Build Firm’s Proposal (including documentation accompanying the Proposal and any post-Solicitation documentation submitted prior to the Notice of Award);

k) FDOT Road Design, Structures, and Traffic Operations Standards;

l) FDOT Developmental Specifications Divisions II and III;

m) Supplemental Specification Divisions II and III, FDOT Standard Specifications;

n) FDOT Standard Specifications Divisions II and III;

o) Executed Contract Bond.

5-3 ***Conformity of Work with Contract Documents.***

All Work performed and all Materials furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions, and Material requirements, including tolerances, as specified in the Contract Documents and the Plans prepared by the Design-Build Firm.

In the event the Engineer finds that the Design-Build Firm has used Materials or produced a finished product that is not within close conformity with the Contract Documents, but that is acceptable Work, the Engineer will make a determination if the Work will be accepted and remain in place. In this event, the Engineer will document the basis of acceptance by Contract modification which will provide for an appropriate adjustment in the Contract Amount, following the provisions of Sub-article 9-2.4, *Deviation from Contract Documents*.

In the event the Engineer finds that the Design-Build Firm has used Materials or produced a finished product that is not in close conformity with the Contract Documents and an inferior or unsatisfactory product has been produced, the Design-Build Firm shall remove and replace or otherwise correct the Work at no expense to GMX per Article 5-4, *Corrections for Construction Errors*.

For base and surface courses, GMX will allow the finished grade to vary as much as 0.1 foot from the grade shown in the Plans, provided that the Design-Build Firm's Work meets all templates and straightedge requirements and suitable transitions.

5-4 ***Corrections for Construction Errors.***

During the entire Construction operation, the Design-Build Firm shall maintain records of all deviations from the Plans and Specifications and shall submit those deviations to the Engineer. The Design-Build Firm must submit a copy of the pertinent sheet(s) in good condition with all changes in red, accurately plotted. The marked up prints should be submitted as a requirement for Final Acceptance. Preparation of the as-built drawings shall be the responsibility of the Design-Build Firm.

For Work that the Design-Build Firm constructs incorrectly or does not meet the requirements of the Contract Documents, the Design-Build Firm has the option to submit an acceptance proposal to the Engineer for review and disposition. The acceptance proposal shall describe the error or defect and either describe remedial action for its correction or propose a method for its acceptance.

In either case, the acceptance proposal shall address structural integrity, aesthetics, maintainability, and the impact on Contract Time. The Engineer will evaluate any such proposal as it relates to these criteria and also for its impact to Contract administration.

When the Engineer determines that a proposal compromises the integrity or maintainability of the defective Work, the Engineer will require the Design-Build Firm to perform a technical assessment. The Design-Build Firm must complete and submit the results of such assessment to the Engineer within the timeframe required by the Engineer. All corrective Work required pursuant to the assessment report as approved by the Engineer, as well as the costs incurred to prepare the assessment report, shall be solely at the expense of the Design-Build Firm.

The Design-Build Firm must not take any corrective action without the Engineer's approval.

The Design-Build Firm must carry out all approved corrective Construction measures at no expense to GMX. Notwithstanding any disposition of the compensation aspects of the defective Work, the Engineer's decision on the technical merits of a proposal is final.

5-5 ***Errors or Omissions in Contract Documents.***

The Design-Build Firm shall not take advantage of any apparent error or omissions which the Design-Build Firm discovers in the Contract Documents and shall immediately notify GMX of such discovery. The Engineer will make such corrections and interpretations as necessary to reflect the intent of the Contract Documents.

5-6 ***Orders and Instructions.***

The execution of the Contract is vested wholly in the Design-Build Firm. The orders, instructions, directions, or requests of GMX may come directly from GMX or the Engineer. The Design-Build Firm shall designate a Design-Build Project Manager complying with the provisions of the Contract Documents, to receive such instructions, directions, or requests.

The Engineer shall have the right to suspend the Work wholly or in part for such period or periods as may be deemed necessary due to failure on the part of the Design-Build Firm to carry out orders given to perform any or all provisions of the Contract. The Design-Build Firm shall not suspend the Work and shall not remove any Equipment, tools, lumber, or other Materials without the prior written permission of the Engineer.

The Engineer makes the final determination related to all questions, difficulties, and disputes, of whatever nature that may arise relative to the interpretation of the Contract Documents, Construction, prosecution, and fulfillment of the Contract, and as to the character, quality, amount, and value of any Work done, and Materials furnished, under or by reason of the Contract.

5-7 ***Layout of the Work.***

5-7.1 General:

Prior to commencing any Work, the Design-Build Firm shall verify the accuracy of all survey data provided by GMX. Any inaccuracies or errors discovered in the survey data shall immediately be brought to the attention of the Engineer in order that any adjustments required in the Design be implemented expeditiously and cost effectively.

Commencement by the Design-Build Firm of any survey-dependent Work shall be held as an acceptance of the survey data relevant thereto, after which time the Design-Build Firm shall have no claim against GMX resulting from alleged errors, omissions, or inaccuracies of the survey data.

5-7.2 Control Points.

All control points shall be established by the Design Build Firm. The Design-Build Firm shall preserve all reference points and benchmarks that GMX furnishes.

5-7.3 Furnishing of Stake Materials:

The Design-Build Firm shall furnish all stakes, templates, and other Materials necessary to establish and maintain the lines and grades necessary for control and Construction of the Work.

5-7.4 Layout of Work:

Using the control points, the Design-Build Firm shall establish all horizontal and vertical controls necessary to construct the Work in conformance with the Contract Documents. The Work shall be performed by a Florida Registered Land Surveyor and shall include performing all calculations required and setting all stakes needed. The Design-Build Firm shall also establish all horizontal and vertical controls necessary to perform utility Construction required to be performed by the Design-Build Firm.

5-7.5 Specific Staking Requirements:

When performing embankment Construction, the Design-Build Firm shall set stakes and/or establish control points providing station and grade information for all new Construction components (mainline, ramps, etc., as mutually agreed to by the Engineer and the Design-Build Firm). The Design-Build Firm shall use stakes and/or control points to cross reference location for all material testing and maintain stakes/control points for the duration of the Construction activities.

When performing new base Construction as part of the Work, the Design-Build Firm must set stakes to establish lines and grades for Subgrade, base, curb, and related items at intervals along the line of the Work no greater than fifty (50) feet on tangents and twenty-five (25) feet on curves. Set grade stakes at locations that the Engineer directs to facilitate checking of Subgrade, base, and pavement elevations in crossovers, intersections, and irregular shaped areas.

For Bridge Construction stakes and other controls, the Design-Build Firm must set references at sufficiently frequent intervals to ensure Construction of all components of a structure in accordance with the lines and grades shown in the Plans.

Where the Plans do not show a centerline or other survey control line for Construction of the Work (resurfacing, safety modifications, etc.), the Design-Build Firm must provide only such stakes as necessary for horizontal and vertical control of Work items.

For resurfacing and resurfacing-widening type projects, the Design-Build Firm must establish horizontal controls adequate to ensure that the asphalt mix added matches with the existing pavement. In tangent sections, the Design-Build Firm must set horizontal control points at one hundred (100) foot intervals by an instrument survey. In curb sections, the Design-Build Firm must set horizontal control points at twenty-five (25) feet intervals by locating and referencing the centerline of the existing pavement.

The Design-Build Firm must establish by an instrument survey, and mark on the surface of the finished pavement at twenty-five (25) feet intervals, the points necessary for striping of the finished Roadway. As an exception, for resurfacing and resurfacing/widening projects, the Design-Build Firm must establish these points in the same manner as used for horizontal control of paving operations.

The Design-Build Firm must mark the pavement with white paint. If performing striping, the Engineer may approve an alternate method for layout of striping provided that the Design-Build Firm achieves an alignment equal to or better than the alignment that would be achieved using an instrument survey.

For projects that include temporary or permanent striping of “no passing zones”, the Design-Build Firm must provide the location and length of these zones as shown in the Plans, except projects where the vertical or horizontal alignment is new or altered from pre-construction alignment. For projects that consist of new or altered vertical or horizontal alignment, the Design-Build Firm will provide the location and length of the “no passing zones” during Construction. For these projects, notify the Engineer not less than twenty-one (21) Calendar Days prior to beginning striping.

For all projects, the Design-Build Firm must set a station identification stake at each Right-of-Way line at one hundred (100) feet intervals and at all locations where a change in Right-of-Way width occurs. The Design-Build Firm must mark each of these stakes with painted numerals, of a size readable from the Roadway, corresponding to the project station at which it is located. As an exception to the above, for projects where plans do not show Right-of-Way lines, the Design-Build Firm must set station identification stakes at locations and intervals appropriate to the type of Work being done. For resurfacing and resurfacing/widening projects, the Design-Build Firm must set station identification stakes at two hundred (200) feet intervals. No Work shall commence until the Right-of-Way has been properly staked in the area where activities will be undertaken.

5-7.6 Record Requirements:

Adequate field notes and records shall be kept as layout Work is accomplished. These field notes and records shall be available for review by the Engineer as the Work progresses and copies shall be furnished to GMX on a monthly basis and at the time of completion of the Work. Any review of the Design-Build Firm's field notes or layout Work by the Engineer, and the acceptance of all or any part thereof, shall not relieve the Design-Build Firm of responsibility to achieve the lines, grades, and dimensions shown in the Contract Documents.

Prior to Final Acceptance, the Design-Build Firm shall mark in a permanent manner on the surface of the completed Work all new horizontal control points in addition to those originally furnished by GMX.

5-7.7 Payment:

The cost of performing the layout Work as described above shall be included in the Price Proposal. No additional compensation will be provided to the Design-Build Firm for compliance with the layout requirements.

5-8 *Design-Build Firm's Personnel.*

The Design-Build Firm shall ensure that all of its employees are competent, careful, and reliable. All workers shall have the skills and experience necessary to properly perform the Work as required by the Contract Documents. The Design-Build Firm must provide workmen engaged on special Work, or skilled work, with sufficient experience in such Work to perform it properly and satisfactorily and to properly and safely operate the Equipment involved.

If, in the opinion of the Engineer, any person employed by the Design-Build Firm is not qualified to perform the Work or is insubordinate, disorderly, disruptive, or is detrimental to the progress of the Work, such person shall be immediately removed from the Contract by the Design-Build Firm upon written direction from the Engineer. Such person shall not be employed again on the Contract without the written permission of the Engineer. If the Design-Build Firm fails to immediately remove such person, the Engineer may, at its sole discretion, withhold payments due, or which may become due, or may suspend the Work until the person is removed. The Design-Build Firm shall protect, defend, indemnify, and hold harmless GMX, its agents, officials and employees from any and all claims, actions, or suits arising from such removal, discharge, or suspension of a Design-Build Firm employee based on the direction of the Engineer.

The Design-Build Firm is prohibited, on the basis of conflict of interest, from utilizing a QC Consultant to perform the services detailed in Section 105, *Contractor Quality Control General Requirement,* of the FDOT Standard Specifications, during the Construction phase of the Work when the QC Consultant is under contract with GMX, or under a subcontract thereto, or to perform Work in any way pertaining to the Contract. The Design-Build Firm must submit the proposed QC Consultant pursuant to Article 3.2, *Pre-Design/Construction Conference*.

5-8.1 Design-Build Firm's Supervisory Personnel:

Unless otherwise specified in the Solicitation Documents, the Design-Build Firm's supervisory personnel shall at a minimum, consist of a Project Manager, Design Team Leader/Engineer of Record and a Superintendent with the following requirements. The requirements in the Solicitation Documents for the Contractor's supervisory personnel, shall take precedence. Regardless of the amount of Work sublet, the Design-Build Firm must have supervisory personnel throughout the duration of the Contract.

5-8.1.1 Design-Build Firm's Project Manager:

The Design-Build Firm shall maintain a competent Project Manager for the duration of the Contract regardless of the amount of Work sublet. The Project Manager assigned by the Design-Build Firm must be proficient with the English language and shall possess a Registered Professional Engineer license in the State of Florida and three (3) years of specific experience in construction management on limited access highway facilities or have a minimum of five (5) years of specific work experience providing construction management on limited access highway facilities.

The Project Manager shall be the point of contact for correspondence related to all project issues. The Project Manager shall attend all weekly, monthly and project meetings deemed necessary by the Engineer. The Project Manager shall have full authority to receive and execute instructions and/or orders from the Engineer, including promptly supplying any Materials, tools, Equipment, labor, and incidentals that may be required.

5-8.1.2 Design-Build Firm's Design Team Leader/Engineer of Record

The Design-Build Firm shall designate a Design Team Leader/Engineer of Record responsible for all design production and coordination. The Design Team Leader/Engineer of Record must be proficient with the English language, and shall possess a Registered Professional Engineer License in the State of Florida and a minimum of five (5) years specific experience in design for limited access highway facilities. The Design Team Leader/Engineer of Record may also serve as the Engineer of Record for construction documents within their specific area of technical expertise.

5-8.1.3 Design-Build Firm's Superintendent:

Regardless of the amount of Work sublet, the Contractor must have a competent Superintendent on the Project site at all times while Work is in progress to act as the Design-Build Firm's agent. The Superintendent shall be thoroughly experienced in the types of Work being performed, proficient with the English language, and have full authority to receive and execute instructions and/or orders from the Engineer, including promptly supplying any Materials, tools, Equipment, labor, and incidentals that may be required. The Design-Build Firm shall submit a resume of the proposed Superintendent's experience to the Engineer for review after the Notice of Award and prior to the pre-design/construction conference. The presence of the Design-Build Firm's Superintendent, and at least one (1) other responsible person (in case of double and extended shifts) who speaks and understands English, is a mandatory requirement even when only subcontracted work is underway.

5-8.2 List of Supervisory Personnel:

Prior to commencement of Work, the Design-Build Firm shall submit a written list of supervisory personnel assigned to the Contract for the Engineer's review including, but not limited to, the positions outlined in Contract Documents, along with their resumes. The Engineer's acceptance of any supervisory personnel may be revoked on the basis of reasonable objection after due investigation, in which case the Design-Build Firm shall submit an acceptable substitute in the manner described herein. Whether initially approved or as a substitute, the Design-Build Firm shall not assign supervisory personnel to the project if the Engineer has a reasonable objection.

Acceptance by the Engineer of any such supervisory personnel shall not constitute a waiver of any right of GMX to reject defective Work through the Engineer. Any changes in the indicated personnel shall be subject to review and approval by the Engineer. The list of supervisory personnel shall name a qualified employee who shall provide scheduling direction for the entire project.

5-8.3 Supervision for Emergencies:

The Design-Build Firm must provide a responsible person, proficient with the English language, and who is available at or reasonably near the worksite on a twenty-four (24) hour basis, seven (7) days a week. The Design-Build Firm must designate this person as the point of contact for emergencies and in cases that require immediate action to maintain traffic or to resolve any other problem that might arise. The Design-Build Firm must submit, by certified mail, the phone numbers and names of personnel designated to be contacted in cases of emergencies, along with a description of the project location, to the Florida Highway Patrol and all other local law enforcement agencies. The Design-Build Firm must provide the Engineer with a copy of the certified mail receipt.

5-8.4 Changes to Design-Build Firm's Key Personnel:

The Design-Build Firm shall not replace approved personnel or add personnel without prior written approval from GMX. The Design-Build Firm shall observe industry standards and ethics when proposing individuals currently utilized on other projects.

GMX's acceptance of any substituted personnel may be revoked on the basis of reasonable objection after due investigation, in which case the Design-Build Firm shall submit an acceptable substitute. Acceptance by GMX of any such personnel shall not constitute a waiver of any right of GMX to reject defective Work. GMX reserves the right to reject at any time personnel who are deemed unacceptable, technically or financially, or who have previously performed unsatisfactory Work for GMX.

The Design-Build Firm shall submit to the Engineer any changes of personnel with the following documents:

a) Personnel Change Request Form;

b) A current resume;

c) Documentation demonstrating the personnel possesses the required technical qualifications and experience to perform the Work for which is being proposed.

The Design Build Firm shall ensure that GMX receives for approval a complete package, as described above, with the Engineer's concurrence not less than ten (10) Calendar Days prior to the proposed personnel commencement of Work.

GMX must notify the Design-Build Firm in writing within five (5) Business Days of receipt of the above documentation that GMX does not approve the request. If such written notification is not provided within the established timeframe, the Design Build Firm may proceed with the proposed personnel. GMX approval shall be documented through the *Personnel Change Request Form*. The Design-Build Firm shall maintain throughout the term of the Contract, proposed personnel and staff that meets the minimum training and experience required by the Contract Documents.

5-8.5 Supervisory Documentation:

The Design-Build Firm shall document various supervisory functions needed to administer the Work. The reports and forms required for the various supervisory functions must conform in general to GMX prescribed form(s) or the CPAM.

5-9 *General Inspection Requirements.*

5-9.1 Cooperation by Design-Build Firm:

The Design-Build Firm must not perform Work or furnish Materials without obtaining inspection by the Engineer.

The Design-Build Firm shall provide the Engineer safe means of access for ascertaining whether the Work performed, and Materials used are in accordance with the requirements and intent of the Contract Documents.

If the Engineer so requests, the Design-Build Firm shall, at any time before Final Acceptance of the Work, remove or uncover such portions of the finished Work as may be directed. After examination, the Design-Build Firm shall restore the uncovered portions of the Work to the standard required by the Contract Documents.

If the exposed or examined Work is determined to be unacceptable, the cost of uncovering and/or removal and replacement of the covering or making good of the parts removed shall be at the Design-Build Firm's expense.

The Design-Build Firm shall revise and upgrade both Construction and testing procedures to prevent a recurrence of the conditions that contributed to the unacceptable Work. If the exposed or examined Work is determined to be acceptable, the cost of uncovering and/or removal and replacement of the covering or making good of the parts removed shall be paid for as Extra Work.

The Design-Build Firm shall give the Engineer twenty-four (24) hours advance notice whenever the Design-Build Firm intends to perform Work during other than normal daylight hours. On such occasions, the Design-Build Firm's Superintendent and sufficient workmen shall be present to undertake the Work in a satisfactory manner. No additional compensation will be made to the Design-Build Firm for Work performed during such other than normal daylight hours work periods.

5-9.1.1 Observation of the Work:

The Engineer shall have free access to the Materials and the Work at all times for measuring or observing the same, and the Design-Build Firm shall afford all necessary facilities and assistance for so doing. Notwithstanding the provisions of this Sub-article, it is understood the Engineer will not provide direct supervision of the Design-Build Firm's employees. The Engineer may appoint such assistants and representatives as deemed necessary. These assistants and representatives are authorized to observe all Work done and all Materials furnished. Such observation may extend to all or any part of the Work and to the manufacture, preparation, or fabrication of the Materials to be used. Such assistants and representatives are not authorized to revoke, alter, or waive any requirement of the Contract Documents. Rather, they are authorized to call to the attention of the Design-Build Firm any failure of the Work or Materials to meet the Contract Documents. The assistants and representatives may reject Materials or suspend the Work until any questions at issue can be referred to and decided by the Engineer. The Engineer will immediately notify the Design-Build Firm in writing of any such suspension of the Work, stating in detail the reasons for the suspension. The presence of the Engineer's assistants and representatives in no way lessens the responsibility of the Design-Build Firm.

5-9.1.2 Examination of the Work:

If the Contract Documents, laws, ordinances, rules, regulations, or orders require the Work to be inspected, tested, or approved by an entity other than the Design-Build Firm, the Design-Build Firm shall give the Engineer timely notice of readiness, therefore.

The Design-Build Firm shall furnish the Engineer the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials, and/or such other applicable organizations as may be required by law, or the Contract Documents.

If any portion of the Work is covered without the required inspection, testing and written approval by the Engineer if requested by the Engineer, such portion of the Work must be uncovered for the required inspection, testing and approval at the Design-Build Firm's sole expense.

The payment of any compensation, irrespective of its character or form, or the giving of any gratuity, or the granting of any valuable favor, directly or indirectly, by the Design-Build Firm to any GMX representative, is strictly prohibited, and any such act on the part of the Design-Build Firm will constitute a violation of the Contract and immediate grounds for termination of the Contract.

5-9.2 Failure of Engineer to Reject Work During Construction:
If the Engineer should fail to reject defective Work or Materials, whether from lack of discovery of such defect or for any other reason, such failure to reject will not prevent the Engineer from later rejecting defective Work or Materials when such defective Work or Material is discovered, or obligate GMX to provide Final Acceptance of the defective Work or Materials. The Design-Build Firm is not entitled to compensation for losses suffered due to any necessary removals or repairs of such defects.

5-9.3 Failure to Remove and Replace Defective Materials and Work:
If, within the time frame indicated in writing by the Engineer, the Design-Build Firm fails or refuses to remove and replace any defective Materials used or defective Work performed, or fails or refuses to make necessary repairs in an acceptable manner, GMX shall have the right to repair or replace, or have repaired or replaced, the unacceptable or defective Materials or Work. Costs incurred by GMX for repairs or replacements shall be offset from moneys due, or which may become due, to the Design-Build Firm, or may be charged against the Design-Build Firm's Contract Bond.

5-9.4 Inspection by Federal Government:
When the United States Government pays a portion of the cost of Construction, its representatives may inspect the Work as they deem necessary. However, such inspection will in no way make the Federal Government a party to the Contract.

5-10 ***Final Inspection.***

5-10.1 Maintenance until Acceptance:
The Design-Build Firm shall maintain all Work until the Work is completed and accepted by GMX as evidenced by written Final Acceptance in accordance with Article 5-11, *Final Acceptance*.

5-10.2 Inspection for Acceptance:
When, in the opinion of the Design-Build Firm, all Materials have been furnished, all Work has been performed, and the Construction contemplated by the Contract has been satisfactorily completed for the Work or a portion of the Work, the Design-Build Firm shall request to the Engineer that GMX performs an inspection of the Work.

The inspection will be made within seven (7) Calendar Days of notification from the Design-Build Firm to determine the status of completion for the purposes of issuance of either Partial Acceptance or Final Acceptance.

In the case of an inspection for Partial Acceptance, if the Engineer considers that a portion of the Work is complete, the Engineer will prepare written notice of Partial Acceptance which shall fix the date of completion for that portion of the Work and deliver it to the Design-Build Firm.

In the case for an inspection for Final Acceptance, if the Engineer finds that all the Work has been satisfactorily completed, GMX will consider such inspection as the Final Inspection and issue a notice in accordance with Article 5-11, *Final Acceptance*.

If any or all of the Work is found to be unsatisfactory, the Engineer will detail in writing the remedial Work required to achieve Partial/Final Acceptance. The Design-Build Firm shall immediately perform such remedial Work and subsequent inspections will be made on the remedial Work until the Engineer accepts all the Work. At the time of delivery of a certificate of Partial Acceptance, the Engineer will deliver to the Design-Build Firm a written recommendation as to division of responsibilities pending final payment between GMX and Design-Build Firm with respect to security, operation, safety, maintenance, utilities, insurance and warranties and guarantees for the accepted portion of the Work.

Until Final Acceptance of the Work in accordance with Article 5-11, *Final Acceptance*, the Design-Build Firm shall replace or repair any damage to the portion of Work that has received Partial Acceptance.

5-10.3 Partial Acceptance:
At the Engineer's sole discretion, the Engineer may accept any portion of the Work under the provisions of Sub-article 5-10.2, *Inspection for Acceptance*.

5-11 *Final Acceptance.*
When the entire Work contemplated by the Contract Documents has been satisfactorily completed, as determined by the Engineer, GMX will issue a written Notice of Final Acceptance to the Design-Build Firm.

In the event outstanding items related to Final acceptance are not completed within the designated time specified in the Notice of Final Acceptance, GMX reserves the right to complete outstanding items and deduct any and all associated costs from the Final payment.

5-12 *Claims by Design-Build Firm.*

5-12.1 General:
When the Design-Build Firm deems that compensation or a time extension is due beyond that agreed to by GMX, whether due to Delay, Extra Work, breach of Contract, or for Work to be completed in accordance with Article 4-3, *Alteration of Scope or of Character of Work*, and the Engineer is in disagreement, or for any other cause, the Design-Build Firm shall follow the procedures set forth herein for preservation, presentation and resolution of the claim or dispute. Failure by the Design-Build Firm to follow any of the steps described herein, and/or provide all the information required in the specified timeframe(s) shall constitute a full, complete, absolute and irrevocable waiver by the Design-Build Firm of any right to bring an action against GMX, and no court shall have jurisdiction to hear any complaint where the provisions in this Article have not been followed.

5-12.2 Procedures to File a Notice of Claim:

5-12.2.1 Notice of Intent to File a Claim (NOI):
The Design-Build Firm shall submit a NOI in the following manner:

a) Within ten (10) Calendar Days of the Design-Build Firm identifying a potential claim, and before starting to Work on the item(s) on dispute, the Design-Build Firm shall submit to the Engineer a written NOI;

b) At a minimum, the NOI shall include the reason(s) for the potential claim, explaining whether the claim is for additional compensation and/or time extension;

c) Submit the NOI to the Engineer via either Certified US Mail or hand deliver with a dated written acknowledgement from the Engineer of having received the NOI.

If such NOI is not provided timely to the Engineer and the Engineer is not afforded the opportunity to keep account of actual labor, Material, Equipment, and time for the Work in dispute, the Design-Build Firm waives all rights to additional compensation and/or a time extension for such claim. Proper submission of the NOI by the Design-Build Firm and the Engineer's ability to maintain account of the labor, Materials and Equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim.

For any claim or part of a claim that pertains solely to final estimate quantities disputes, the Design-Build Firm shall submit within sixty (60) Calendar Days of receipt of GMX's final estimates, a claim in full compliance with both Sub-article 5-12.3, *Content of Written Claim,* and Sub-article 5-12.4, *Certificate of Claim,* as to such final estimate claim dispute issues. Immediately following submission of a NOI, the Design-Build Firm shall comply with the requirements detailed in Sub-articles 5-12.2.2, *Claims for Additional Compensation*, and/or 5-12.2.3, *Claim for Time Extension*.

5-12.2.2 Claims for Additional Compensation:

Following the submission of a NOI for additional compensation, the Design-Build Firm shall notify the Engineer when the Work that is the subject of the NOI has been completed. The Design-Build Firm shall submit complete documentation regarding the claim to the Engineer, as detailed in Sub-articles 5-12.3, *Content of Written Claim*, and 5-12.4, *Certificate of Claim*, and in compliance with the provisions of Sub-article 4-3.2.1, *Allowable Costs for Extra Work,* within sixty (60) Calendar Days after the completion of the Work related to the claim.

Failure by Design-Build Firm to submit all documentation to the Engineer as required above will constitute absolute and irrevocable waiver by the Design-Build Firm of any right to additional compensation for Work that is the subject of the NOI.

5-12.2.3 Claim for Time Extension:

When the Design-Build Firm deems that a time extension is due as detailed in the NOI, the Design-Build Firm shall:

a) Submit a written preliminary request for time extension pursuant to Sub-article 8-20.3.4, *Time Extension Requests* within five (5) Calendar Days after commencement of Work related to the claim for time extension.

b) Submit a request for Contract Time extension pursuant to Sub-article 8-20.3.4, *Time Extension Requests*, within thirty (30) Calendar Days after the completion of the Work related to the claim for time extension or elimination of the impacts affecting the normal prosecution of the Work, as applicable. The Submittal of the claim for a time extension shall follow the requirements of Sub-articles 5-12.3, *Content of Written Claim*, and 5-12.4, *Certificate of Claim*.

There shall be no entitlement to any time extension for any impacts, whatsoever, that are not to a Controlling Item of Work. In the instance of an impact to a Controlling Item of Work the provisions detailed under Sub-article 4-3.2.2, *Compensable Time due to Delays*, shall apply.

Failure by Design-Build Firm to submit all documentation to the Engineer as required above will constitute absolute and irrevocable waiver by the Design-Build Firm of any right to additional compensation and/or time extension for Work that is the subject of the NOI.

5-12.3 Content of Written Claim:

For each submitted NOI, as a condition precedent to the Design-Build Firm being entitled to additional compensation or a time extension under the contract for any claim, the Design-Build Firm shall submit a certified written claim to GMX which, at a minimum, will include the following:

a) The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident; and

b) A detailed factual statement of the claim providing all dates, locations, and items of Work affected; and

c) Identification of all pertinent documents and the substance of any material verbal communications relating to such claim and the name of the persons making such material verbal communications;

d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;

e) The amount of additional compensation sought, and a breakdown of the amount sought in accordance with Sub-article 4-3.2.1, *Allowable Costs for Extra Work*; and

f) A detailed compilation of the specific dates and the exact number of Calendar Days sought for a time extension and the basis for entitlement for each day of time extension sought in accordance with Sub-article 4-3.2.2, *Compensable Time due to Delays*.

5-12.4 Certificate of Claim:

When submitting any claim, the Design-Build Firm shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Design-Build Firm's best knowledge and belief, and that the amount of the claim accurately reflects what the Design-Build Firm in good faith believes to be GMX's liability. Such certification shall be made by an officer or director of the Design-Build Firm with the authority to bind the Design-Build Firm.

5-12.5 Action on Claim:

GMX will respond within forty-five (45) Calendar Days of receipt of a complete claim submitted by the Design-Build Firm. Failure by GMX to respond to a claim within forty-five (45) Calendar Days after receipt of a complete claim in compliance with Sub-articles 5-12.2, *Procedures to File a Notice of Claim*, 5-12.3, *Content of a Written Claim,* and 5-12.4, *Certificate of Claim*, constitutes a denial of the claim by GMX. If GMX finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, through a Supplemental Agreement. If GMX finds the claim not to be valid GMX shall notify the Design-Build Firm in writing.

The Design-Build Firm shall not file a complaint against GMX and no court shall have jurisdiction to hear any complaint on any claim, or a part thereof, until after Final Acceptance by GMX of all Contract Work or denial of the claim as described herein, whichever occurs last. Further, when filing a complaint against GMX, the Design-Build Firm shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time extension sought in the Design-Build Firm's written claim. Any court proceeding shall be limited solely to the bases of entitlement and the amount of compensation and/or time extension sought, to those matters contained in the Design-Build Firm's written claim. The Design-Build Firm shall not be precluded from withdrawing or reducing the amount of any compensation or time extension in the Design-Build Firm's written claim.

Conditions precedent to the Design-Build Firm bringing any court action against GMX to resolve any disputes under the Contract are:

a) The Design-Build Firm must have filed a timely claim in accordance with all provisions of this Article 5-12, *Claims by Design-Build Firm*; and

b) The Design-Build Firm shall have retained all records related to the claim sufficient for GMX to conduct an audit of the claim pursuant Sub-article 5-12.11, *Auditing of Claims*; and

c) The Design-Build Firm must have first participated in pre-suit mediation wherein GMX and the Design-Build Firm shall select a mutually agreed-upon mediator and participate in mediation. All costs of mediation shall be borne by the Design-Build Firm, unless otherwise agreed upon by GMX.

5-12.6 Mandatory Claim Records:

After submission of a NOI to file a claim for additional compensation or time extension, the Design-Build Firm must keep daily records of all labor, material and equipment costs incurred for operations affected by the Extra Work or Delay. These daily records must identify each operation affected by the Extra Work and the specific locations where Work is affected by the Extra Work or Delay. The Design-Build Firm shall provide the Engineer, at no cost to GMX, a copy of the Design-Build Firm's daily records pertaining to the NOI on a weekly basis from the start of NOI's subject Work being performed.

5-12.7 Acceleration of the Work:

GMX shall have no liability for any constructive acceleration of the Work, and the Design-Build Firm may not use constructive acceleration as a basis for a claim for additional compensation. If the Engineer gives written direction for the Design-Build Firm to accelerate its efforts, such direction and compensation, if warranted, will be formalized through a Supplemental Agreement.

5-12.8 Non-Recoverable Items:

The parties agree that for any claim GMX will not have liability for the following items of damages or expense:

a) Loss of profit, incentives, or bonuses;

b) Any claim for other than Extra Work or Delay;

c) Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;

d) Acceleration costs and expenses, except where GMX has expressly and specifically directed the Design-Build Firm in writing "to accelerate at GMX's expense"; nor

e) Claims preparation expenses.

5-12.9 Exclusive Remedies:

Notwithstanding any other provision of this Contract, the parties agree that GMX shall have no liability to the Design-Build Firm for expenses, costs, or items of damages other than those which are specifically identified as payable under Article 5-12, *Claims by Design-Build Firm*. In the event any legal action for additional compensation, whether on account of Delay, Extra Work, breach of Contract or otherwise, the Design-Build Firm agrees that GMX's liability will be limited to those items which are specifically identified as payable pursuant Article 5-12, *Claims by Design-Build Firm*.

5-12.10 Settlement Discussions:

The content of any discussions or meetings between GMX and the Design-Build Firm to settle or resolve any claims submitted by the Design-Build Firm shall be inadmissible in any court proceeding brought by the Design-Build Firm against GMX.

5-12.11 Auditing of Claims:

All claims filed pursuant to this Contract shall be subject to audit at any time following the filing of the claim, whether or not such claim is subject of pending court proceedings. The audit may be performed, at GMX's sole discretion, by employees of GMX or by any independent auditor appointed by GMX, or both. The audit may begin after ten (10) Calendar Days written notice to the Design-Build Firm, Subcontractors, Subconsultants and Suppliers.

The Design-Build Firm, Subcontractor, Subconsultant or Supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Design-Build Firm, Subcontractor, Subconsultant or Supplier must retain sufficient records, and provide full and reasonable access to such records, to allow GMX's auditors to verify the claim.

Failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Design-Build Firm submitting a written claim, GMX shall have the right to request and receive, and the Design-Build Firm shall have the affirmative obligation to provide to GMX, copies of any and all documents in the possession of the Design-Build Firm or its Subcontractors, Subconsultants, materialmen or Suppliers as may be deemed relevant by GMX in its review of the basis, validity or value of the Design-Build Firm's claim.

Without limiting the generality of the foregoing, the Design-Build Firm, Subcontractors, Subconsultants and Suppliers shall upon written request of GMX make available to GMX's auditors, or upon GMX's written request for copies provide electronic copies at no cost to GMX or hardcopies at GMX's expense, any, or all of the following documents:

a) Daily time sheets and foreman's and/or Superintendent's daily reports and diaries;

b) Insurance, welfare, and benefits records;

c) Payroll register;

d) Earnings records;

e) Payroll tax return;

f) Material invoices, purchase orders, and all Material and supply acquisition contracts;

g) Material cost distribution worksheet;

h) Equipment records (list of company owned, rented or other equipment used);

i) Vendor rental agreements and subcontractor invoices;

j) Subcontractor payment certificates;

k) Canceled checks for the project, including, payroll and vendors;

l) Job cost report;

m) Job payroll ledger;

n) General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;

o) Cash disbursements journal;

p) Financial statements for all years reflecting the operations on this project;

q) Income tax returns for all years reflecting the operations on the project;

r) All documents which reflect the Design-Build Firm's actual profit and overhead during the years the Contract was being performed and for each of the five (5) years prior to the commencement of the Contract;

s) All documents related to the preparation of the Design-Build Firm's Price Proposal including the final calculations on which the Price Proposal was based;

t) All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;

u) Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, Materials, equipment, Subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

5-12.12 Hierarchy for Issue Resolution:

In order to properly and expeditiously resolve all matters related to the Contract, whether technical or administrative in nature, GMX has established the hierarchy to be followed. The Design-Build Firm shall direct all matters to the Construction Engineering & Inspection (CE&I) Consultant for the project.

If the matter cannot be resolved at this level the CE&I consultant shall elevate the matter to the General Engineering Consultant (GEC) whom shall in turn elevate to GMX if necessary. The Executive Director, if the issue has escalated to his/her level, will have final authority on all decisions.

Each level of hierarchy shall have a maximum of three (3) Working Days to address and respond to all matters raised to its level. However, resolution of any matter is not confined to this timeframe. All matters shall be submitted in writing, regardless of level of hierarchy, and shall include any available supporting documentation.

The Design-Build Firm shall provide a similar hierarchy for their organization to which GMX may escalate matters, with personnel of similar levels of responsibility. This list shall be provided at the pre-design/construction conference.

END OF SECTION 5

SECTION 6
CONTROL OF MATERIALS

6-1 ***Acceptance Criteria.***

6-1.1 General:

Acceptance of Materials is based on the criteria detailed in this Section. The Design-Build Firm shall use only Materials in the Work that meet the requirements of these Specifications.

6-1.2 Sampling and Testing:

The Engineer may inspect and test any Materials at points of production, distribution, and use. Materials are accepted following the provisions detailed in Divisions II and III of the FDOT Standard Specifications. The Design-Build Firm must use GMX's material samples tracking system (GMX Material Tracking System) to assign an identification number for all material samples.

The Design-Build Firm must use the FDOT's Sampling, Testing and Reporting Guide (STRG), published by the FDOT's State Materials Office, to obtain information related to the type of testing required for the different Materials used for the project. The Design-Build Firm shall include the results of the test in the GMX Material Tracking System and identify whether the material meets the requirements of the applicable Specifications.

Immediately after completion of the material testing, the Design-Build Firm must restore the condition of any site from which material has been removed for sampling purposes to the pre-sampled conditions. The restoration of the site must be done with Materials used in the initial Construction at no additional cost to GMX. The Design-Build Firm must ensure that sufficient material for sampling and testing is delivered to the location where it will be used, as described in the Contract Documents, at no expense to GMX.

The Engineer will use an independent Laboratory for verification, resolution, and miscellaneous testing as needed. In case of resolution testing, Design-Build Firm must coordinate with the Engineer to ensure that the GMX's independent Laboratory is used.

6-1.2.1 Pretest by Manufacturer:

The Design-Build Firm must submit manufacturer's certifications to the Engineer for qualification and use on the project. Testing will be as specified in the Contract Documents. The Engineer may require the Design-Build Firm to submit manufacturer's samples of Materials for independent verification purposes.

6-1.2.2 Point of Production Test:

The Design-Build Firm must test the Materials during production as specified in the Contract Documents. The Engineer may at its sole discretion, and at GMX's expense, perform Quality Assurance inspections and Material certifications for plant Material or off-site manufactured items. Prior to the utilization of the Material, the Design-Build Firm is responsible for submitting to the Engineer proof of qualification under the FDOT Quality Control Acceptance Program as detailed in Article 105-3 *Quality Control Program* of the FDOT Standard Specifications.

The Design-Build Firm must provide the Engineer with free entry at all times to such parts of the plant that concern the manufacturer or production of the Materials ordered, and bear all costs incurred in providing all reasonable facilities to assist the Engineer in determining whether the Material furnished meets the requirements of the Specifications. The Engineer is not obligated to make an inspection of Materials at the source of supply.

The Engineer may retest Materials that has been tested and accepted at the source of supply, after they have been delivered to the project. The Engineer will reject all Materials that, when retested, do not meet the requirements of the Specifications. The Design-Build Firm is fully responsible for supplying satisfactory Materials.

6-1.2.3 Point of Distribution Test:
The Design-Build Firm must test the material at distribution facilities as specified in the Contract Documents.

6-1.2.4 Point of Use Test:
The Design-Build Firm must test the Material immediately following placement as specified in the Contract Documents. After delivery to the project, the Engineer may require the retesting of Materials that have been tested and accepted at the source of supply or may require the testing of Materials that are to be accepted by producer certification. The Engineer may reject all Materials that, when retested, do not meet the requirements of the Contract Documents.

6-1.3 Certification of Materials:
The Design-Build Firm must not incorporate any manufactured products or Materials into the project without approval from the Engineer. Design-Build Firm will not be paid for Materials that are not accompanied by a certification from the producer. Certification letters, to be submitted prior to the placement or utilization of the Materials, shall include, at a minimum, the following requirements:

a) Written on the manufacturer's or producer's letterhead;

b) Include GMX Work Program Number;

c) Include Material description, batch number and tests result for the Material to be used in the project;

d) State name and position of the legally responsible individual providing the certification;

e) Have a date that is current with the shelf life of the product, when applicable;

f) Include the statement "This product meets the requirements of the Contract Documents as detailed in (include applicable *Section/Article/Sub-article*)";

g) Be signed and notarized.

6-1.3.1 Qualified Products List:
The Product Evaluation Section in the FDOT's State Specifications and Estimates Office publishes and maintains a Qualified Products List (QPL). The items in the list have basic approval and are generally acceptable to GMX. However, the Design-Build Firm is advised that products on the QPL are still subject to final approval and acceptance by the Engineer.

The Design-Build Firm must furnish to the Engineer for approval, producer certifications for all products listed on the QPL intended for use in the project following the provisions of Sub-article 6-1.3, *Certification of Materials*. The Design-Build Firm shall make no claim for additional compensation or extension of Contract Time to replace an item on the QPL that is rejected by GMX, or that has been removed from the QPL, subsequent to execution of the Contract.

6-1.3.2 Approved Products List:

The FDOT's State Traffic Engineering Office publishes and maintains the Approved Products List (APL) of Traffic Control Signal Devices. Traffic Monitoring Site Equipment and Materials are also included on the APL. The items in the list have basic approval and are generally acceptable to GMX. However, the Design-Build Firm is advised that products on the APL are still subject to final approval and acceptance by the Engineer.

The Design-Build Firm must furnish to the Engineer for approval, producer certifications for all products listed on the APL intended for use in the project following the provisions of Sub-article 6-1.3, *Certification of Materials*. The Design-Build Firm shall make no claim for additional compensation or extension of Contract Time to replace an item on the APL that is rejected by GMX, or that has been removed from the APL, subsequent to execution of the Contract.

6-1.4 Design-Build Firm Installation Certification:

The Design-Build Firm shall submit to the Engineer all applicable installation certifications in compliance with the manufacturer's requirements.

6-1.5 Designation of a Specific Material or Equipment as a Criterion ("Or Equal" Clause):

Reference in the Contract Documents to any proprietary article, device, product, material or fixture, or any form or type of Construction, by name, make, or catalog number, with or without the words "or equal", establishes a standard of quality and is not intended to limit the use of equivalent items. The Design-Build Firm may submit for approval, and if approved, may use any article, device, product, material or fixture, or any form or type of Construction, that the Engineer determines in writing to be equivalent for the purpose intended.

6-2 *Additional Requirements.*

6-2.1 General:

The Specifications may refer to other documented authorities for additional requirements. When specified, meet the requirements as defined in such references.

6-2.2 Test Methods:

Methods of sampling and testing materials are to be made in accordance with the most recent version of the FDOT - Florida Sampling and Testing Methods (Florida Methods) in effect at the time of testing. If a Florida Method does not exist for a particular test, perform the test in accordance with the method specified in the Contract Documents.

6-2.3 Construction Aggregates:

Aggregates used on GMX projects must be in accordance with Rule Chapter 14-103, F.A.C.

6-3 *Storage of Materials and Samples.*

6-3.1 Method of Storage:

The Design-Build Firm must store Materials in such a manner as to preserve their quality and fitness for incorporation in the Work; to facilitate ease of inspection; and to minimize noise impacts. Detailed Specifications concerning the storage of specific Materials are prescribed in the Contract Documents. The Engineer may reject Materials not stored in conformance with this Article.

6-3.2 Use of Right-of-Way for Storage:

If the Engineer allows, the Design-Build Firm may use a portion of the Right-of-Way for storage of Materials or for placing the Design-Build Firm's plant and equipment. The Design-Build Firm may use only the portion of the Right-of-Way that is outside the clear zone, which is the portion not required for public vehicular or pedestrian travel.

When used, the Design-Build Firm must restore the Right-of-Way to pre-construction condition at no cost to GMX or as otherwise specified in the Contract Documents. GMX will not compensate the Design-Build Firm for any required storage space.

6-3.3 Responsibility for Stored Materials:
The protection of stored Materials is the Design-Build Firm's responsibility. GMX is not liable for any loss of Materials, by theft or otherwise, or for any damage to the stored Materials.

6-3.4 Storage Facilities For Samples:
The Design-Build Firm must provide facilities for storage of Material samples as described in the Contract Documents.

6-4 ***Scales for Weighing Materials.***

6-4.1 Applicable Regulations:
When determining the weight of material, the Design-Build Firm must use scales meeting the requirements of Chapter 531, Florida Statutes, pertaining to specifications, tolerances, and regulations, as administered by the Bureau of Weights and Measures of the Florida Department of Agriculture.

6-4.2 Base for Scales:
The Design-Build Firm must place such scales on a substantial horizontal base to provide adequate support and rigidity and to maintain the level of the scales.

6-4.3 Protection and Maintenance:
The Design-Build Firm must maintain all scale parts in proper condition as to level and vertical alignment, and fully protect them against contamination by dust, dirt, and other matter that might affect their operation.

6-5 ***Defective Materials.***

Materials not meeting the requirements of these Specifications will be considered defective and will be rejected by the Engineer whether in place or not. The Design-Build Firm must remove all rejected material immediately from the site of the Work and from the project's storage areas, at no expense to GMX.

The Design-Build Firm must not use material that has been rejected unless the Engineer has approved its use for a different application. Upon failure to comply promptly with any order of the Engineer made under the provisions of this Article, the Engineer will have the defective Material removed and replaced and will deduct the cost of removal and replacement from any moneys due or to become due the Design-Build Firm.

As an exception to the above, the Design-Build Firm may submit an engineering and/or laboratory analysis, as approved by the Engineer, to evaluate the effect of defective Materials already in place. A Specialty Engineer shall perform such analysis and submit to the Engineer of Record for approval. The engineering analysis must be completed, and the report must be submitted to the Engineer within thirty (30) Calendar Days from the date the Material was deemed defective, or other time frame as approved by the Engineer. The report must be signed and sealed by the Specialty Engineer or Engineer of Record, as applicable. The Engineer will determine the final disposition of the Material after review of the information submitted by the Design-Build Firm. No additional monetary compensation or time extension will be granted for the impact of any such analysis or review. The Design-Build Firm must not proceed with any remedial Work involving defective Material prior to written approval by the Engineer.

6-6 ***Unfit, Hazardous and Dangerous Materials.***

The Design-Build Firm must not use any Material that, after approval and/or placement, may in any way become unfit for use.

The Design-Build Firm must not use Materials containing any substance that has been determined to be hazardous by the State of Florida Department of Environmental Protection or the U.S. Department of Environmental Protection. The Design-Build Firm must provide workplaces free from hazards and to comply with occupational safety and health standards, as determined by the U.S. Department of Labor Occupational Safety and Health Administration.

6-7 ***Minimum Warranty Provisions.***

6-7.1 Warranty:

The Design-Build Firm shall provide a warranty covering workmanship and Materials for all Roadway and structural features except for elements which provide their own manufacturers' warranty equal to or above the minimum required warranty periods stated within the Contract Documents. Such warranty will be guaranteed by the Contract Bond unless substituted by a Warranty Bond in the amount of ten percent (10%) of the Contract Amount. The Warranty Bond must include a list of all warranted items.

The minimum warranty period for all structural items is five (5) years, and three (3) years for all Roadway items. Structural items include, but are not limited to, Bridges, Bridge culverts, buildings, canopies, high mast light towers, overhead and cantilever sign assemblies, gantries, mast arm assemblies, Bridge mounted sign assemblies, and any steel pole fifty feet (50') or greater in height. The Design-Build Firm shall assume responsibility for the performance of all associated warranty Work for the proposed warranty period. The warranty period begins at Final Acceptance.

GMX will conduct an inspection of the warranted items as deemed necessary by GMX. GMX will provide the Design-Build Firm and the Surety an inspection report on the warranty items with the noted deficiencies, as may be applicable. No later than thirty (30) Calendar Days after receiving the inspection report from GMX, the Design-Build Firm must review and provide written comments to the report. Once the Design-Build Firm and GMX have agreed to the deficient items that require remediation, the Design-Build Firm must provide a remediation schedule for the warranted items that require such Work.

During the warranty period, the Design-Build Firm may monitor the Work using nondestructive procedures. The Design-Build Firm shall not conduct any coring, milling or other destructive procedures without prior approval by GMX.

If a measured distress value, as provided Sub-article 6-7.2, *Warranty Criteria*, indicates remedial action is required, the Design-Build Firm shall begin remedial Work within forty-five (45) Calendar Days from the day the distress is identified. For any warranted item deemed by GMX as an immediate danger to the traveling public, the Design-Build Firm shall begin remedial Work immediately, but no more than within seventy-two (72) hours from notification. GMX will determine the allowable duration for the completion of the remedial Work.

In the event remedial action is necessary and forensic information is required to determine the source of the distress, then GMX may direct the Design-Build Firm to investigate using appropriate methods including, but not limited to, destructive techniques. The Design-Build Firm shall obtain approval from GMX prior to starting any forensic activities. All forensic activities shall be at no additional cost to GMX, and GMX will not be responsible for damages to the warranted features as a result of any forensic activities conducted by the Design-Build Firm.

At the end of the warranty period, the Engineer will release the Design-Build Firm from further warranty Work and responsibility, provided all previous warranty Work and remedial Work, if any, have been completed.

6-7.2 Warranty Criteria:

The warranty criteria detailed in Division II and Division III of the FDOT Standard Specifications, unless specifically supplemented by GMX, shall apply.

6-7.3 Warranty Work:

During the warranty period, the Design-Build Firm shall perform all necessary remedial Work at no cost to GMX. All remedial Work as authorized in writing by GMX shall be performed in accordance with the terms and conditions of the Contract. Approval by GMX to start remedial Work will not be issued prior to receiving a certificate of insurance with the same limits of coverage under the Contract and a Contract Bond for no less than the value, as determined by GMX, of the remedial Work and all costs associated with the completion of the remedial Work.

If remedial Work necessitates a corrective action to the pavement markings, adjacent lane(s), Roadway shoulders, or any other elements, the Design-Build Firm shall perform these corrective actions using similar or better products and Materials to match existing conditions at no additional cost to GMX.

The Design-Build Firm shall provide Maintenance of Traffic, in accordance with the criteria established in the Contract, during the remedial Work period(s) at no additional cost to GMX. The Design-Build Firm must abide by the latest lane closure restrictions for all remedial Work through coordination with GMX. Notification of any required lane closures for remedial Work shall be made to GMX no later than fourteen (14) Calendar Days in advance unless a hazardous condition to the public has been identified whereby an emergency lane closure will be approved with a shorter notice. The Design-Build Firm shall obtain all required permits, at no additional cost to GMX, prior to performing any remedial warranty Work.

The Design-Build Firm has the first option to perform all remedial Work. If, in the opinion of GMX, the item showing distress poses an immediate danger to the traveling public and the Design-Build Firm cannot, or will not, begin remedial Work within seventy-two (72) hours, GMX has the authority to have the remedial Work performed by other forces. The Design-Build Firm shall be responsible for all incurred costs of the Work performed by other forces. Remedial Work performed by other forces does not alter any of the requirements, responsibilities or obligations of the warranty, and the Design-Build Firm shall witness the completion of such repair Work by others.

The Design-Build Firm shall complete all remedial Work to the satisfaction of GMX. Approval of remedial Work does not relieve the Design-Build Firm from the provisions of the warranty.

GMX is entitled to reimbursement from the Design-Build Firm and/or the Surety for all expenses it incurs due to review, coordination, inspection and management of activities under warranty Work.

END OF SECTION 6

SECTION 7
CONTRACT REQUIREMENTS

7-1 ***General.***

The Design-Build Firm shall comply with all Federal, State, and local laws and regulations which control the action or operation of those engaged or employed in the Work or which affect Materials used.

The Design-Build Firm shall comply with the safety regulations promulgated by the State of Florida Department of Labor and Employment Security, pay particular attention to Occupational Safety and Health Administration (OSHA), comply with Chapter 403, Florida Statutes, regarding control of air pollution and that portion of the State of Florida, Department of Environmental Protection's rules in the F.A.C. pertaining to open burning in land clearing operations. Where Work or structures included in the Contract are in "Navigable Waters of the U.S", (reference 33 of the Code of Federal Regulations, Part 329); "Waters of the U.S.", (reference 33 of the Code of Federal Regulations, Part 323 and 328); or "Waters of the State", (reference Part 4, Chapters 253 and 373 of the Florida Statutes and Section 62-340 of the F.A.C.); the Design-Build Firm shall comply with the regulatory provisions of Section 404 of the Federal Clean Water Act of 1977; Sections 9 and 10 of the Federal River and Harbor Act of 1899; Chapters 161, Florida Statutes; and the rules and regulations of any local authority having jurisdiction over such waters.

Comply with Part IV, Chapter 378, Florida Statutes, regarding land reclamation and Rule Chapters 62C-36 and 62C-39, F.A.C. Submit the Notice of Intent to Mine to:

Department of Environmental Protection
Bureau of Mine Reclamation
Collins Building
2051 East Dirac Drive
Tallahassee, Florida 32310-3760

With a copy to:

Greater Miami Expressway Agency
3790 Northwest 21st Street
Miami, Florida 33142
Attn: Director of Engineering

The Design-Build Firm shall obtain certification from the Construction Industry Licensing Board as required by Chapter 489, Part I, Florida Statutes, regardless of exemptions allowed by Section 489.103, Florida Statutes prior to removing underground pollutant storage tanks. The Design-Build Firm shall dispose of tanks and pollutants in accordance with the requirements and regulations of any Federal, State, or local, agency having jurisdiction.

The Design-Build Firm shall indemnify, defend and save harmless GMX and all of its officers, agents and employees, in the amount of the Contract against any claims or liability arising from or based on the violation of any such laws by the Design-Build Firm or its Subcontractors, Subconsultants and Suppliers.

The Design-Build Firm shall comply with all environmental permits, including measures identified in the National Pollutant Discharge Elimination System (NPDES), Stormwater Pollution Prevention Plan (SWPPP) and Sediment and Erosion Control Plan (SECP) for the Work. The Design-Build Firm shall use the SWPPP Construction Inspection Form provided by the permitting agency to report all inspection findings and to document all corrective actions taken as a result of the inspection. Sign each inspection report and submit it weekly to the Engineer.

The "State of Florida Department of Environmental Protection (DEP) Generic Permit for Stormwater Discharge from Large and Small Construction Activities" applies to this Contract. In accordance with the requirements of the DEP generic permit, the Design-Build Firm must accept responsibility for the following:

a) Preparation, execution, and submission of DEP Generic Permit Notice of Intent (NOI) and payment of associated fee(s)

b) Preparation and submission of Erosion Control Plan as outlined in Section 104, *Prevention, Control, and Abatement of Erosion and Water Pollution* of the FDOT Standard Specifications.

c) Any SWPPP modifications

d) Performing inspections using a qualified inspector

e) Completion of SWPPP construction inspection reports

f) Executing associated certification forms provided by the Engineer

g) Preparation, execution, and submission of Notice of Termination (NOT) of the DEP Generic Permit coverage.

The Design-Build Firm shall obtain and comply with all provisions of all required Dredge Permits, or required Dredge and Fill Permits, issued by various governmental agencies in conjunction with the Work. The Design-Build Firm shall construct dikes prior to filling submerged land and maintain the dikes throughout the filling period.

The Design-Build Firm shall exert every reasonable and diligent effort to ensure that all labor employed by the Design-Build Firm and its Subcontractors for Work on the project work harmoniously and compatibly with all labor used by other building and construction contractors now or hereafter on the site of the Work covered by this Contract. The Design-Build Firm shall include this provision in all subcontracts and require all Subcontractors to include it in their subcontracts with others. However, the Design-Build Firm must not interpret or enforce this provision so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article I, Section 6, of the Florida Constitution. Comply with Chapter 556, Florida Statutes during the performance of excavation or demolition operations.

7-1.1 Plant Quarantine Regulations:

The U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services have issued quarantine regulations pertaining to control of the nematodes of citrus, Rule Chapter 5B-44, F.A.C., and other plant pests. Contact the local (or other available) representatives of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, and the Division of Plant Industry of the Florida Department of Agriculture and Consumer Services to ascertain all current restrictions regarding plant pests that are imposed by these agencies. Keep advised of current quarantine boundary lines throughout the Construction period. These restrictions may affect operations in connection with such items as clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, and other items which might involve the movement of Materials containing plant pests across quarantine lines.

The Design-Build Firm shall obtain quarantine regulations and related information from the following:

Animal and Plant Health Inspection Service
U.S. Department of Agriculture
3029 Lake Alfred Road
Winter Haven, Florida 33881

Director, Division of Plant Industry
Florida Department of Agriculture and Consumer Services
Post Office Box 147100
Gainesville, Florida 32614-7100

7-1.2 Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds:
The Design-Build Firm shall not introduce, or release prohibited aquatic plants, plant pests, or noxious weeds into the project limits as a result of clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, or other such activities. The Design-Build Firm shall immediately notify the Engineer upon discovery of all prohibited aquatic plants, plant pests, or noxious weeds within the project limits. The Design-Build Firm shall not move prohibited aquatic plants, plant pests, or noxious weeds within the project limits or to locations outside of the project limits without the Engineer's permission.

The Design-Build Firm shall maintain all borrow material brought onto the Project Site free of prohibited aquatic plants, plant pests, noxious weeds, and their reproductive parts. Refer to Rule Chapter 16C-52 and Rule Chapter 5B-57, F.A.C. for the definition of prohibited aquatic plants, plant pests, and noxious weeds. The Design-Build Firm shall furnish the Engineer, prior to incorporation into the project, with a certification from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stating that the sod, hay, straw, and mulch Materials are free of noxious weeds, including Tropical Soda Apple.

7-1.3 Occupational Safety and Health Administration (OSHA) Requirements:
The Design-Build Firm shall take precautions necessary for the protection of life, health, and general occupational welfare of all persons (including employees of both the Design-Build Firm and the Engineer) until the Work of the project has been completed and accepted by GMX.

The Design-Build Firm (and any Subcontractor/Subconsultant) shall not require any person employed in performance of the Work of the project to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under the safety and health standards, set forth in Title 29, CFR Part 1926, including any subsequent revisions and/or updates.

7-1.4 Insecticides and Herbicides:
The Design-Build Firm shall contact the Local County Extension Office for a list of approved Insecticides or Herbicides and shall only use products registered with the Florida Department of Agriculture for use in the State of Florida. The use of restricted products is prohibited. The Design-Build Firm shall not use any products in the sulfonylurea family of chemicals. Herbicide application by broadcast spraying is not allowed.

The Design-Build Firm shall procure any necessary licenses, pay all charges and fees, and give all notices necessary for lawful performance of the Work and ensure that all employees applying insecticides and herbicides possess a current Florida Department of Agriculture Commercial Applicator license with the categories of licensure in Right-of-Way Pest Control and Aquatic Pest Control and ensure that all insecticides and herbicides are applied in accordance with Chapter 5E-9, F.A.C. Submit a copy of current certificates, upon request, to GMX.

The Design-Build Firm shall comply with all regulations and permits issued by any regulatory agency within whose jurisdiction Work is being performed and post all permit placards in a protected, conspicuous location at the worksite.

The Design-Build Firm shall acquire any permits required for Work performed on the rights-of-way within the jurisdiction of National Forests in Florida and contact the Local National Forest Ranger District, or the United States Department of Agriculture (USDA) office, for the proper permits and subsequent approval.

The Design-Build Firm shall acquire all permits required for aquatic plant control as outlined in Rule Chapter 62C-20, F.A.C., Rules of the Florida Department of Environmental Protection and contact the Regional Field Office of Bureau of Protection for proper permits and subsequent approval. If application of synthetic oregano-auxin herbicide is necessary, the Design-Build Firm shall meet the requirements of Rule Chapter 5E-2, F.A.C.

The Design-Build Firm shall maintain all permits and adhere to all labeling instructions until Work is accepted by GMX.

If damage to desirable vegetation occurs as a result of herbicide use, GMX will monitor the impacted vegetation to determine if damage is temporary or permanent. If the damage is determined to be permanent, the Design-Build Firm must replace damaged vegetation at no expense to GMX.

7-1.5 Compliance with Federal Endangered Species Act:

The Federal Endangered Species Act requires that GMX investigate the potential impact to threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If GMX's investigation identifies that there is a potential impact to a protected, threatened or an endangered species, GMX will make a biological assessment to determine what measures are necessary to mitigate such impact.

When mitigation measures and/or special conditions are necessary, these measures and conditions will be addressed on the plans or in permits as identified in Sub-article 7-2.1 *General.*

In addition, in cases where certain protected, threatened, or endangered species are found or appear within close proximity to the project boundaries, GMX has adopted FDOT's guidelines that will apply when interaction with certain species occurs, absent of any special mitigation measures or permit conditions otherwise identified for the project.

These guidelines are posted at the following URL address:
http://www.dot.state.fl.us/programmanagement/Implemented/URLinSpecs/files/endangeredwildlifeguidelines.pdf

The Design-Build Firm shall take responsibility to obtain this information and take all actions and precautions necessary to comply with the conditions of the latest guidelines during all project activities.

7-2 *Permits and Licenses.*

7-2.1 General:

GMX, at its expense, may acquire the necessary permits and/or licenses required by Federal, State, and/or local regulatory agencies prior to letting; however, if GMX has not acquired any or all of the necessary permits and/or licenses, or if the applicable regulatory agency requires the Design-Build Firm to procure the permit or license, the Design-Build Firm shall acquire such permit or license, pay all charges and fees, and give all necessary notices. Once the permits and licenses are obtained, implementation and compliance with the conditions and requirements of the permits and/or licenses is the sole cost and responsibility of the Design-Build Firm.

If applicable, the Design-Build Firm shall apply for a building permit upon receipt of the Notice to Proceed and pay the fees for the building permit, plans review and inspections. When applicable, plan reviews and inspections may also be required by the State Fire Marshall.

Prior to building Construction or renovation, the Design-Build Firm shall provide to the Engineer copies of current registrations or certifications issued by the Florida Construction Industry Licensing Board in accordance with Florida Statutes, for the appropriate category of Construction, even if previously submitted.

No additional Contract Time will be granted to obtain the required permits or licenses or for coordination with any agency.

The Design-Build Firm shall acquire any modifications or revisions to an original permit when the Design-Build Firm requires such modifications or revisions to complete the Construction operations specified in the Contract Documents and within the Right-of-Way limits. Any required modifications to permits obtained by GMX that may result from changes that the Design-Build Firm proposes to this project, either prior or after the award of the project, shall become the sole responsibility of the Design-Build Firm.

The Design-Build Firm shall acquire all permits for Work performed outside the Right-of-Way or easements for the project.

In carrying out the Work in the Contract, when under the jurisdiction of any environmental regulatory agency, the Design-Build Firm shall comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to Construction activities of all permits issued to GMX as though such conditions were issued to the Design-Build Firm. Post all permit placards in a protected location at the worksite.

In case of a discrepancy between any permit condition and the Contract Documents, the more stringent condition shall prevail.

7-2.2 Work or Structures in Navigable Waters of the U.S., Waters of the U.S., and Waters of the State:

In general, one (1) or more governmental agencies will exercise regulatory authority over Work or structures, including related Construction operations, in: all tidal areas (Channel ward of the mean high water lines on the Atlantic and Gulf Coast); in the ocean and gulf waters to the outer limits of the continental shelf; in all rivers, streams, and lakes to the ordinary high water line; in marshes and shallows that are periodically inundated and normally characterized by aquatic vegetation capable of growth and reproduction; in all artificially created channels and canals used for recreational, navigational, or other purposes that are connected to navigable waters; and, in all tributaries of navigable waters up to their headwaters.

Whenever the Work under or incidental to the Contract requires structures or dredge/fill/construction activities in "Navigable Waters of the U.S.", "Waters of the U.S.", and "Waters of the State", the appropriate Federal, State, county, and/or local regulatory agencies may require the Design-Build Firm to obtain a permit.

For such dredge/fill/construction specified in the Contract Documents to be accomplished within the limits of the project, or for any dredge/fill/construction within the limits of GMX-furnished borrow areas, the Design-Build Firm shall procure the necessary permits.

No Construction debris shall be disposed of into the water.

7-2.2.1 Surface Water Management Systems for Water Management Districts:

As a condition precedent to Final Acceptance, the Design-Build Firm must submit to the Engineer three copies of as-built drawings verifying the as-built conditions for all installed and constructed surface water management systems. The as-built drawings and survey must satisfy all the requirements and special conditions listed in the Water Management District's Environmental Resource Permit (ERP) and any applicable local permit.

The as-built drawings and survey must be signed and sealed by an appropriately licensed professional registered in the State of Florida. If the ERP does not contain specific requirements, the Design-Build Firm must provide as-built drawings with the following information as a minimum:

a) Discharge structures: structure identification number, type, locations (latitude and longitude), dimensions and elevations of all, including weirs, bleeders, orifices, gates, pumps, pipes, and oil and grease skimmers.

b) Side bank and underdrain filters, or exfiltration trenches: locations, dimensions, and elevations of all, including clean-outs, pipes, connections to control structures and points of discharge to receiving waters.

c) Storage areas for treatment and attenuation: storage area identification number, dimensions, elevations, contours, or cross-sections of all, sufficient to determine stage-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems.

d) System grading: dimensions, elevations, contours, final grades, or cross-sections to determine contributing drainage areas, flow directions and conveyance of runoff to the system discharge points.

e) Conveyance: dimensions, elevations, contours, final grades, or cross-sections of systems utilized to divert off-site runoff around or through the new system.

f) Water levels: existing water elevations and the date determined.

g) Benchmarks: location and description {minimum of one (1) per major water control structure}.

7-2.2.2 Bridge Clearances for Projects under the Authority of a U.S. Coast Guard Permit:
As a condition precedent to Final Acceptance, the Design-Build Firm must submit to the Engineer a certified survey verifying the as-built clearances described in the U.S. Coast Guard Owner's Certification of Bridge Completion. The survey must be signed and sealed by an appropriately licensed professional registered in the State of Florida.

7-2.2.3 Projects Under the Authority of a U.S. Army Corps of Engineers Permit:
As a condition precedent to Final Acceptance, the Design-Build Firm must submit to the Engineer three copies of as-built drawings and a certified survey verifying the as-built conditions. The as-built drawings and survey must satisfy all of the requirements and special conditions listed in the U.S. Army Corps of Engineers permit. The as-built drawings and survey must be signed and sealed by an appropriately licensed professional registered in the State of Florida.

7-3 *Indemnification/Insurance.*

7-3.1 Indemnification:

Design-Build Firm's indemnification obligations to GMX, and others defined in this Sub-article as "GMX Indemnified Parties", are not limited, contained or capped by the limits provided to GMX and GMX Indemnified Parties pursuant to Section 768.28, Florida Statutes or any other sovereign immunity limitations afforded by Florida or any other applicable law.

GMX Indemnified Parties are hereby defined as GMX, all of GMX's Officers, Agents, Employees, and Successors, as well as the Florida Department of Transportation (FDOT) in its capacity as titleholder of certain portions of the GMX System, and all of FDOT's officers, agents, employees, and successors.

The Design-Build Firm shall be required to indemnify the Indemnified Parties from any claim, loss, damage, cost, charge, judgment or expense, to the extent arising out of any negligence, recklessness, or intentionally wrongful conduct by the Design-Build Firm, its agents, employees, or Subcontractors/Subconsultants during the performance of the Contract, whether direct or indirect, and whether to any person or property to which the GMX Indemnified Parties may be subject.

The Design-Build Firm's obligation to indemnify the GMX Indemnified Parties shall be triggered by GMX's notice of claim for indemnification to the Design-Build Firm. The Design-Build Firm's inability to evaluate liability or its evaluation of liability shall not excuse the Design-Build Firm's duty to indemnify within seven (7) Calendar Days after such notice by GMX is given by registered mail.

Only an adjudication of judgment after the highest appeal is exhausted specifically finding GMX solely negligent shall excuse performance of this provision by the Design-Build Firm with respect to indemnification of GMX.

The Design-Build Firm shall pay all costs and fees related to this obligation and its enforcement by GMX. GMX's failure to notify the Design-Build Firm of a claim shall not release the Design-Build Firm of the above duty to indemnify.

It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries, bodily injury or property damage pursuant to the terms or provisions of the Contract.

The Design-Build Firm guarantees the payment of all just claims for Materials, supplies, tools, or labor and other just claims against it in connection with the Contract.

The parties agree that the Contract Amount includes consideration for the Design-Build Firm's indemnity agreements.

7-3.2 Insurance:
Please refer to the Contract Documents.

7-4 ***Patented Devices, Materials and Processes.***

Payments to the Design-Build Firm are understood to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved with the Work. Whenever the Design-Build Firm is required or desires to use any design, device, material, or process covered by letters of patent or copyright, the right for such use shall be provided by suitable legal agreement with the patentee or owner of the copyright. The Design-Build Firm must submit a copy of such agreement to GMX. However, whether or not such agreement is made or filed, the Design-Build Firm and its Surety, in all cases, shall indemnify, defend and save harmless GMX and all of its officers, agents and employees, from any and all claims for infringement by reason of the use of any such patented design, device, material or process, on the Work, and shall indemnify GMX and all of its officers, agents and employees for any costs, expenses and damages which GMX may be obligated to pay by reason of any such infringement, at any time during the Work or after completion and Final Acceptance by GMX.

The Design-Build Firm shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. The Design-Build Firm shall indemnify and hold GMX harmless from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from incorporation in the Work of any such invention, design, process, product or device.

7-5 ***Design-Build Firm's Responsibility for Third Party Claims, Suits, Damages, etc.***

The Design-Build Firm guarantees the payment of all just claims for Materials, supplies, tools, Equipment, or labor and other just claims against it or any Subcontractor or Subconsultant, in connection with the Contract. GMX's Final Acceptance and payment does not release the Design-Build Firm's Contract Bond until all such claims are paid or released.

7-6 ***Independent Design-Build Firm.***

7-6.1 Acting as an Independent Design-Build Firm:

The Design-Build Firm hereby declares that it is engaged in an independent business and agrees that in the performance of this Contract it shall act as an independent Design-Build Firm and not as an employee of GMX. The Design-Build Firm has and retains full control of all the employment, compensation, and discharge of all employees of the Design-Build Firm assisting in its performance of the Work. The Design-Build Firm shall be fully responsible for the services performed under the Contract and all matters related to payment of its employees including compliance with Social Security, withholding tax, workers' compensation, immigration law and all other laws and regulations governing such matters. The Design-Build Firm shall be responsible for its own acts and those of its agents, independent contractors, and employees during the term of the Contract. Except as specifically provided, and as an independent Design-Build Firm, the Design-Build Firm shall be solely responsible for determining means and methods for performing the Work described in the Contract Documents.

7-6.2 Full and Complete Payment:

The payment made to the Design-Build Firm pursuant to the requirements of the Contract Amount, shall be full and complete compensation to which the Design-Build Firm is entitled. GMX shall not make any federal or state tax withholdings on behalf of the Design-Build Firm. GMX shall not be required to pay any workers' compensation insurance on behalf of the Design-Build Firm. The Design-Build Firm agrees to indemnify GMX for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which GMX may be required to make on behalf of the Design-Build Firm or any employee or independent contractor of the Design-Build Firm for Work performed under the Contract.

7-6.3 No Authority to Act on GMX's Behalf:

Except as GMX may specify in writing, the Design-Build Firm shall have no authority, express or implied, to act on behalf of GMX in any capacity whatsoever, as an agent or otherwise. The Design-Build Firm shall have no authority, express or implied, to bind GMX or its members, agents or employees, to any obligation whatsoever, unless expressly provided in the Contract.

7-7 ***Source of Forest Products.***

The Design-Build Firm must comply with Section 255.2575, Florida Statutes and where price and quality are equal, and when available, the Design-Build Firm will use only timber, timber piling, or other forest products that are produced and manufactured in the State of Florida.

7-8 ***Regulations of Air Pollution.***

7-8.1 General:

The Design-Build Firm must perform all Work in accordance with all Federal, State, and local laws and regulations regarding air pollution and burning. In particular, pay attention to Rule Chapters 62-210 and 62-256, Rules of the Department of Environmental Protection, F.A.C., and to any part of the State Implementation Plan applicable to the project. See also Sub-article 110-9.2 of the FDOT Standard Specifications regarding burning of debris.

7-8.2 Dust Control:
The Design-Build Firm must ensure that excessive dust is not transported beyond the limits of Construction in populated areas. The Design-Build Firm may control dust for embankments or other cleared/unsurfaced areas by applying water as directed by the Engineer. When included in the Contract Documents, must install mulch, seed, sod, or temporary paving as early as practical. The Design-Build Firm must control dust during the storage and handling of dusty Materials by wetting, covering, or other means as approved by the Engineer.

7-8.3 Asphalt Material:
The Design-Build Firm must use only emulsified asphalt, unless otherwise stated in the Contract Documents and allowed by Chapter 62-210, Rules of the Department of Environmental Protection, F.A.C., as amended from time to time. The Design-Build Firm must store and handle asphalt Materials and components so as to minimize unnecessary release of hydrocarbon vapors.

7-8.4 Asphalt Plants:
The Design-Build Firm must operate and maintain asphalt plants in accordance with Chapter 62-210, Rules of the Department of Environmental Protection, F.A.C. as amended from time to time. The Design-Build Firm must provide the plant site with a valid permit as required under Chapter 17-2, F.A.C., prior to start of Work.

7-9 ***Wage Rates.***
The Design-Build Firm must comply with all applicable Federal Wage Rate requirements. When applicable to the Contract, the Design-Build Firm shall submit to the Engineer's office, by the tenth (10th) of each month, the original Monthly Summary of Wage Rates, including those of all Subcontractors. The Design-Build Firm shall review the Monthly Summaries of Wage Rates for completeness before submitting them to the Engineer. Design-Build Firm shall include this provision in all subcontracts entered into pursuant to this Contract.

7-10 ***Equal Employment Opportunities.***
See Solicitation Documents.

7-11 ***Small Business Participation Requirement.***

7-11.1 Small Business (SB) Participation Requirement:
The Design-Build Firm shall meet a certain percentage of Small Business (SB) Participation Requirement as specified in the Contract (the "SB Participation Requirement").

This requirement is met by utilization of firms certified pursuant to the following programs of ***Miami-Dade County*** or ***Miami Dade Public Schools (M-DCPS)*** as may be required for the Services:

7-11.1.1 Miami-Dade County Certifications:

- Small Business Enterprise - Architectural & Engineering (SBE/AE); or
- Small Business Enterprise – Construction (SBE/CONS); or
- Small Business Enterprise - Goods and Services (SBE/GS).

7-11-1.2 Miami Dade Public Schools (M-DCPS) Certifications:

- Micro Business Enterprise - Architecture & Engineering Program
- Micro Business Enterprise – Professional Services (Non-A/E)

- Micro Business Enterprise – Good and Services
- Micro Business Enterprise – Construction Services Program
- Small Business Enterprise - Architecture & Engineering Program
- Small Business Enterprise – Professional Services (Non-A/E)
- Small Business Enterprise – Goods and Services
- Small Business Enterprise – Construction Services Program

In order to count toward the SB Participation Requirement, the Work provided by the Small Business (SB) must be in the areas of expertise for which the SB is certified for under the applicable program, and be considered a Commercially Useful Function, as defined in the Small Business Participation Policy, as may be amended, and is incorporated herein by reference. The latest version of the Small Business Participation Policy may be found in the GMX website at *www.gmx-way.com*.

The Design-Build Firm is required to meet the commitment made to each Small Business as documented in the *Small Business and/or Local Business Participation Statement* completed for each approved Small Business. Any deviation from these commitments shall be pre-approved in writing by GMX.

The Design-Build Firm, when certified as a SB, may self-perform one hundred percent (100%) of the SB Participation Requirement.

The Design-Build Firm shall not utilize the same firms to meet both the Small Business Participation Requirement and the Local Business Participation Requirement.

Failure to comply with the SB Participation Requirement shall be a default under the Contract. The Design-Build Firm agrees to be bound by the provisions of the Small Business Participation Policy, as may be amended and incorporated herein, including, but not limited to the Sections entitled *Sanctions for Contractual Violations,* and *Prompt Payment*.

It is the Design-Build Firm's responsibility to promptly notify the Procurement Department with a copy to the Engineer in the event the Design-Build Firm and/or a Subcontractor graduates from the Small Business Program as defined by Miami-Dade County or Miami Dade Public Schools (M-DCPS). It is at GMX's sole discretion to allow the graduated firm to complete the Contract and count towards satisfaction of the Small Business Participation Requirement.

GMX will notify the Design-Build Firm in writing of its decision.

7-11.2 Request to Replace/Add Small Business:

The Design-Build Firm shall obtain prior approval by GMX in the event they wish to request changes to an approved *Small Business and/or Local Business Participation Statement*, including but not limited to:

a) Graduation from the SB Program;

b) Substitution of a SB Subcontractor/Subconsultant;

c) Removal of a SB Subcontractor/Subconsultant;

d) Addition of a SB Subcontractor/Subconsultant;

e) Reduction of scope/committed amount to a SB Subcontractor/Subconsultant;

e) For other justifiable reasons.

As may be applicable, the Design-Build Firm must:

a) Contact in writing the Procurement Department, with a copy to the Engineer to address the issue as soon as possible after the Design-Build Firm becomes aware of any such issue. The written notification must include a justification for the requested change and be accompanied, as may be applicable, by any required documentation;

b) Submit a *Request for Authorization to Subcontract Work* along with all required documentation therein;

c) Submit documentation of the Design-Build Firm's efforts to locate a qualified Subcontractor/ Subconsultant certified under the SB Program, including, but not limited to, contacting possible SB's in writing or by phone, and assisting qualified Subcontractor(s)/Subconsultant(s) to become certified under the SB Program, if applicable.

All requests for changes shall be submitted to the Engineer for concurrence. The Design Build Firm must ensure that a completed *Request for Authorization to Subcontract Work form* is submitted to the Procurement Department for GMX approval not less than ten (10) Calendar Days prior to the commencement of the requested change.

GMX must notify the Design-Build Firm in writing within five (5) Business Days of receipt of the above documentation that GMX does not approve the request. If such written notification is not provided within the established timeframe, the Design Build Firm may proceed with the proposed change. GMX approval shall be documented through the *Request for Authorization to Subcontract Work* form.

In the event that the Design-Build Firm is unable to secure a replacement SB Subcontractor/Subconsultant certified under the SB Program to perform the required Work, and has properly documented the efforts as outlined above, GMX, at its sole discretion, may re-negotiate the SB Participation Requirement for outstanding Work under the Contract.

GMX will not authorize any removals or substitutions of any SB Subcontractor/Subconsultant that has been submitted as part of the Contract unless there has been a change in the Work pursuant to the requirements of the Contract Documents, or for circumstances beyond the control of the Design-Build Firm as determined by GMX.

7-11.3 Recalculation of SB Participation Requirement:

When Extra Work is added to the Contract through a Supplemental Agreement(s), or a Work Order is issued to be paid out of the Contingency fund, GMX will analyze the particulars of the added Work to determine, at its sole discretion, the Design-Build Firm's ability to include SB participation for that added Work.

In the event the Design-Build Firm is assigned Work that are considered specialized and as such do not permit for utilization of SB's, and therefore potentially hinder the Design-Build Firm's ability to meet the SB Participation Requirement, the Design-Build Firm shall immediately notify GMX in writing. Such notification shall include sufficient information to support the inability to utilize SB's.
GMX shall acknowledge in writing receipt and understanding of the notification.

If GMX determines that the Design-Build Firm cannot include SB participation for the added Work, GMX shall exclude the dollar amount for such portion of the Work from the SB Participation Requirement calculation without prejudice to the Design-Build Firm.

A similar evaluation will be performed by GMX in the event Work is deleted from the original scope of the project.

It is the Design-Build Firm's responsibility at the time the Work is added or deleted to request the recalculation of the SB Participation Requirement.

7-11.4 Tracking and Enforceability of the SB Participation Requirement:

The SB Participation Requirement shall be based upon the total dollar amount paid out to the Design-Build Firm at the close out of the Contract inclusive of all approved Contingency funds and any Supplemental Agreements but excluding Insurance and Contract Bond premiums and any amounts approved by GMX pursuant to Sub-article 7-11.3, *Recalculation of SB Participation Requirement.*

GMX shall monitor the Design-Build Firm's progress in meeting the SB Participation Requirement as part of the monthly invoice review and approval. Both the *Invoice Tracking Form* submitted with each monthly invoice; the *Subcontractor/Subconsultant Utilization Report* and the currently approved Project Schedule will be evaluated to determine the Design-Build Firm's progress and ability to comply with the SB Participation Requirement.

Prompt submittals of all required documentation pursuant to the events described in above Sub-article 7-11.2, *Request to Replace/Add Small Business,* and Sub-article 7-11.3, *Recalculation of SB Participation Requirement* are required to ensure that GMX properly evaluates the Design-Build Firm's satisfaction of the SB Participation Requirement.

If during a Contract Performance Evaluation, it is determined by GMX that the Design-Build Firm's progress is insufficient in meeting the SB Participation Requirement, pursuant to the Project Schedule and the *Subcontractor/Subconsultant Utilization Report,* the Design-Build Firm shall provide GMX for review and approval a written justification for such deviation. In addition, the Design-Build Firm shall provide a plan outlining how the Design-Build Firm intends to meet the SB Participation Requirement for the remainder of the Contract.

A Contract Performance Evaluation will be performed at Contract close out, and if it is determined by GMX that the Design-Build Firm's failure to comply with the SB Participation Requirement is unjustified, the Design-Build Firm acknowledges that is in breach of the Contract. Any such failure will result in the unjust enrichment of the Design-Build Firm and will cause a detriment to GMX.

As such, damages arising from such breach cannot be calculated with any degree of certainty, and accordingly, it is hereby agreed that the Design-Build Firm shall pay to GMX, as liquidated damages and not as a penalty, the percentage of the SB Participation Requirement not met, multiplied by the dollar amount paid by GMX to the Design-Build Firm throughout the Contract, but in no event it shall exceed Four Hundred Fifty Thousand Dollars ($450,000.00). In this event, GMX shall retain any amounts withheld or due to be withheld from the Design-Build Firm.

7-11.5 Contractual Violations:

Some of the contractual violations that may result in the imposition of the sanctions listed herein include, but are not limited to, the following:

a) A Small Business serving as a conduit for work designated to a Small Business, but which is being performed by a non-Small Business firm;

b) A Design-Build Firm not meeting the Small Business Requirement on its Contract;

c) Not retaining certification under the SB Program while performing work designated for a Small Business;

d) Termination of the Small Business's subcontract, or work stoppage of the Small Business without prior approval from GMX, as detailed herein;

e) Reduction of the work of a Small Business without prior approval from GMX;

f) Modifications to the terms and/or prices of payment to a Small Business without prior approval from GMX;

g) Unjustified failure to enter into a written subcontract with a Small Business after listing them on the *Small Business and/or Local Business Participation Statement*;

h) Failure of payment to the Small Business on a timely manner pursuant to the requirements of the Small Business Participation Policy.

7-11.6 Sanctions for Contractual Violations:

Notwithstanding any other penalties or sanctions provided by law and/or described herein, the Design-Build Firm's violation of or failure to comply with the SB Participation Requirement may result in the imposition of one (1) or more of the following sanctions:

a) Suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;

b) Work stoppage;

c) Termination, suspension, or cancellation of the Contract in whole or part.

In the event the Design-Build Firm or a SB attempts to comply with the SB Participation Requirements through fraud, misrepresentation, or material misstatement, GMX shall, whenever practical, terminate the Contract.

In addition, and as a further sanction, GMX may impose any of the above-stated sanctions on any other GMX contract the Design-Build Firm and/or Small Business may have with GMX. GMX may also remove the Design-Build Firm and/or Small Business from any other GMX contract they may be participating in as a subcontractor. In each instance the Design-Build Firm or Small Business shall be responsible for all direct and indirect costs associated with such termination or cancellation of the Contract including attorney's fees and costs.

In addition to any already applied sanction, the Design-Build Firm's eligibility to receive any future contracts from GMX may be conditioned upon the Design-Build Firm making up the deficit in Small Business participation of this Contract in future contracts, as detailed in the Small Business Participation Policy. The foregoing obligation shall be in addition to any SB requirement otherwise applicable to any future contract.

7-12 *Local Business Participation Requirement.*

7-12.1 Local Business (LB) Participation Requirement:

The Design-Build Firm shall meet a certain percentage of Local Business (LB) Participation Requirement as specified in the Contract (the "LB Participation Requirement").

This requirement is met by utilization of firms certified pursuant to Local Business Participation Policy, as may be amended, and incorporated herein by reference. The latest version of the Local Business Participation Policy may be found in the GMX website at *www.gmx-way.com*.

The Design-Build Firm is required to meet the commitment made to each Local Business as documented in the *Small Business and/or Local Business Participation Statement* completed for each approved Local Business. Any deviation from these commitments shall be pre-approved in writing by GMX.

The Design-Build Firm, when certified as a LB, may only self-perform fifty percent (50%) of the LB Participation Requirement. The remaining fifty percent (50%) if not the full required LB Participation Requirement percentage shall be met by subcontracting Work to certified LB's as detailed herein. Once the fifty percent (50%) LB Participation Requirement has been met by LB's in the manner required herein; the Design-Build Firm may self-perform more than fifty percent (50%) to exceed the LB Participation Requirement.

The Design-Build Firm shall not utilize the same firms to meet both the Small Business Participation Requirement and the Local Business Participation Requirement.

Failure to comply with the LB Participation Requirement shall be a default under the Contract. The Design-Build Firm agrees to be bound by the Local Business Participation Policy, as may be amended, and the requirements of the Contract in the compliance of the LB Participation Requirement.

It is the Design-Build Firm's responsibility to promptly notify the Procurement Department with a copy to the Engineer in the event that the LB Certification of the Design-Build Firm and/or a Subcontractor expires and is not renewed by GMX. It is at GMX's sole discretion to allow the Work performed by any such non-certified firm(s) to be completed or to continue to count toward the LB Participation Requirement for a period not to exceed twelve (12) months from the time the certification expires. However, no new Work may be assigned to the non-certified firm for purposes of counting toward compliance of the LB Participation Requirement. GMX will notify the Design-Build Firm in writing of its decision.

Should GMX approve an extension of the Contract, Work performed by the non-certified firm shall no longer be counted toward the LB Participation Requirement.

7-12.2 Request to Replace/Add Local Business:

The Design-Build Firm shall obtain prior approval by GMX in the event they wish to request changes to an approved *Small Business and/or Local Business Participation Statement,* or other changes including but not limited to:

(a) Non-renewal of Certification;

(b) Substitution of a LB Subcontractor/Subconsultant;

(c) Removal of a LB Subcontractor/Subconsultant;

(d) Addition of a LB Subcontractor/Subconsultant;

(e) Reduction of scope/committed amount to a LB Subcontractor/Subconsultant; or

(f) For other justifiable reasons.

As may be applicable the Design-Build Firm must:

a) Contact in writing the Procurement Department, with a copy to the Engineer to address the issue as soon as possible after the Design-Build Firm becomes aware of any such issue. The written notification must include a justification for the requested change and be accompanied, as may be applicable, by any required documentation;

b) Submit a *Request for Authorization to Subcontract Work* along with all required documentation therein;

c) Submit documentation of the Design-Build Firm's efforts to locate a qualified Subcontractor/ Subconsultant certified under the MDX LB Program, including, but not limited to, contacting possible LB's in writing or by phone, and assisting qualified Subcontractor(s)/Subconsultant(s) to become certified under the GMX LB Program, if applicable.

All requests for changes shall be submitted to the Engineer for concurrence. The Design Build Firm must ensure that a completed *Request for Authorization to Subcontract Work form* is submitted to the Procurement Department for GMX approval not less than ten (10) Calendar Days prior to the commencement of the requested change.

GMX must notify the Design-Build Firm in writing within five (5) Business Days of receipt of the above documentation that GMX does not approve the request. If such written notification is not provided within the established timeframe, the Design Build Firm may proceed with the proposed change. GMX approval shall be documented through the *Request for Authorization to Subcontract Work* form.

In the event that the Design-Build Firm is unable to secure a replacement LB Subcontractor/Subconsultant certified under the LB Program to perform the required Work, and has properly documented the efforts as outlined above, GMX, at its sole discretion, may re-negotiate the LB Participation Requirement for outstanding Work under the Contract.

GMX will not authorize any removals or substitutions of any LB Subcontractor/Subconsultant that has been submitted as part of the Contract unless there has been a change in the Work pursuant to the requirements of the Contract Documents, or for circumstances beyond the control of the Design-Build Firm as determined by GMX.

7-12.3 Recalculation of LB Participation Requirement:

When Extra Work is added to the Contract through a Supplemental Agreement(s), or a Work Order is issued to be paid out of the Contingency fund, GMX will analyze the particulars of the added Work to determine, at its sole discretion, the Design-Build Firm's ability to include LB participation for that added Work. If GMX determines that the Design-Build Firm cannot include LB participation in the added Work, GMX shall exclude the dollar amount for such portion of the Work from the LB Participation Requirement calculation without prejudice to the Design-Build Firm.

In the event the Design-Build Firm is assigned Work that are considered specialized and as such do not permit for utilization of SB's, and therefore potentially hinder the Design-Build Firm's ability to meet the SB Participation Requirement, the Design-Build Firm shall immediately notify GMX in writing. Such notification shall include sufficient information to support the inability to utilize SB's. GMX shall acknowledge in writing receipt and understanding of the notification.

A similar evaluation will be performed by GMX in the event Work is deleted from the original scope of the project.

It is the Design-Build Firm's responsibility at the time the Work is added or deleted to request the recalculation of the LB Participation Requirement.

7-12.4 Tracking and Enforceability of the LB Participation Requirement:

The LB Participation Requirement shall be based upon the total dollar amount paid out to the Design-Build Firm at the close out of the Contract inclusive of all approved Contingency funds and any Supplemental Agreements but excluding Insurance and Contract Bond premiums and any amounts approved by GMX pursuant to Sub-article 7-12.3, *Recalculation of LB Participation Requirement.*

GMX shall monitor the Design-Build Firm's progress in meeting the LB Participation Requirement as part of the monthly invoice review and approval. Both the *Invoice Tracking Form* submitted with each monthly invoice; the *Subcontractor/Subconsultant Utilization Report;* and the currently approved Project Schedule will be evaluated to determine the Design-Build Firm's progress and ability to comply with the LB Participation Requirement.

Prompt submittals of all required documentation pursuant to the events described in above Sub-article 7-12.2 *Request to Replace/Add Local Business,* and Sub-article 7-12.3, *Recalculation of LB Participation Requirement* are required to ensure that GMX properly evaluates the Design-Build Firm's satisfaction of the LB Participation Requirement.

If during a Contract Performance Evaluation, it is determined by GMX that the Design-Build Firm's progress is insufficient in meeting the LB Participation Requirement, pursuant to the Project Schedule and the *Subcontractor/Subconsultant Utilization Report,* the Design-Build Firm shall provide GMX for review and approval a written justification for such deviation. In addition, the Design-Build Firm shall provide a plan outlining how the Design-Build Firm intends to meet the LB Participation Requirement for the remainder of the Contract.

A Contract Performance Evaluation will be performed at Contract close out, and if it is determined by GMX that the Design-Build Firm's failure to comply with the LB Participation Requirement is unjustified, the Design-Build Firm acknowledges that is in breach of the Contract. Any such failure will result in the unjust enrichment of the Design-Build Firm and will cause a detriment to GMX.

As such, damages arising from such breach cannot be calculated with any degree of certainty, and accordingly, it is hereby agreed that the Design-Build Firm shall pay to GMX, as liquidated damages and not as a penalty, the percentage of the LB Participation Requirement not met, multiplied by the dollar amount paid by GMX to the Design-Build Firm throughout the Contract, but in no event it shall exceed Four Hundred Fifty Thousand Dollars ($450,000.00). In this event, GMX shall retain any amounts withheld or due to be withheld from the Design-Build Firm.

7-12.5 Contractual Violations:

Some of the contractual violations that may result in the imposition of the sanctions listed herein include, but are not limited to, the following:

a) A Local Business serving as a conduit for work designated to a Local Business, but which is being performed by a non-Local Business firm;

b) A Design-Build Firm not meeting the Local Business Requirement on its Contract;

c) Not retaining certification under the LB Program while performing work designated for a Local Business;

d) Termination of the Local Business's subcontract, or work stoppage of the Local Business without prior approval from GMX, as detailed herein;

e) Reduction of the work of a Local Business without prior approval from GMX;

f) Modifications to the terms and/or prices of payment to a Local Business without prior approval from GMX;

g) Unjustified failure to enter into a written subcontract with a Local Business after listing them on the *Small Business and/or Local Business Participation Statement*;

h) Failure of payment to the Local Business on a timely manner.

7-12.6 Sanctions for Contractual Violations:

Notwithstanding any other penalties or sanctions provided by law and/or described herein, the Design-Build Firm's violation of or failure to comply with the LB Participation Requirements may result in the imposition of one (1) or more of the following sanctions:

a) Suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;

b) Work stoppage;

c) Termination, suspension, or cancellation of the Contract in whole or part.

In the event the Design-Build Firm or a LB attempts to comply with the LB Participation Requirements through fraud, misrepresentation, or material misstatement, GMX shall, whenever practical, terminate the Contract.

In addition, and as a further sanction, GMX may impose any of the above-stated sanctions on any other GMX contract the Design-Build Firm and/or Local Business may have with GMX. GMX may also remove the Design-Build Firm and/or Local Business from any other GMX contract they may be participating in as a subcontractor. In each instance the Design-Build Firm or Local Business shall be responsible for all direct and indirect costs associated with such termination or cancellation of the Contract including attorney's fees and costs.

In addition to any already applied sanction, the Design-Build Firm's eligibility to receive any future contracts from GMX may be conditioned upon the Design-Build Firm making up the deficit in Local Business participation of this Contract in future contracts, as detailed in the Local Business Participation Policy.

The foregoing obligation shall be in addition to any LB requirement otherwise applicable to any future contract.

7-13 ***Available Funds.***

GMX will not, during any fiscal year, expend money, incur any liability, or enter into any contract that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for expenditure during such fiscal year. If GMX enters into such a contract, verbal or written, in violation of this Article such contract is null and void, and GMX will not make any payments thereon.

GMX will require a statement from GMX's Chief Financial Officer or designee that funds are available prior to entering into any such contract or other binding commitment of funds.

Nothing herein contained prevents GMX from executing contracts for a period exceeding one (1) year, but GMX will make such contracts executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

7-14 ***Public Records.***

The Design-Build Firm shall enable reasonable and convenient access to all documents, papers, letters, or other material to any person making a request for such documents pursuant to the provisions of Chapter 119, Florida Statutes, for documents made or received by the Design-Build Firm in conjunction with the Contract. Failure to promptly afford such access may be grounds for immediate unilateral cancellation of the Contract by GMX and the Design-Build Firm shall indemnify GMX against any costs or penalties GMX may incur as a result of the Design-Build Firm's failure to comply with or impediment to GMX being able to comply with the provisions of Chapter 119, Florida Statutes. Upon receipt of any public records request, the Design-Build Firm shall immediately notify GMX and secure prior written consent and coordination of response to the request before releasing such records.

Coordination for Public Records Requests is as follows:

Greater Miami Expressway Agency (GMX)
Public Records Custodian
3790 NW 21st Street Miami, Florida 33142
305-637-3277 ext. 2000
publicrecords@gmx-way.com

All documents related to the Contract, as detailed herein, must be provided in accordance with Article 3-4, *Audit and Examination of Contract Records and Proposal Records/Escrow of Proposal Documents.*

No additional compensation will be made to the Design-Build Firm for responding to a public records request, other than as may be recoverable pursuant to Chapter 119, Florida Statutes.

7-15 ***Ownership of Documents.***

All tracings, Plans, Specifications, maps and/or reports prepared or obtained under the Contract Documents shall be considered works made for hire and shall become property of GMX without restriction or limitation on their use, and shall be made available upon request to the Engineer at any time.

The Design-Build Firm shall therefore agree not to publish, copyright or patent any of the data furnished in compliance with the Contract. The Engineer shall have the right to visit the offices of the Design-Build Firm for review of the Work and the drawings of the project at any time. The Design-Build Firm shall not be liable for use by the Engineer of said tracings, Plans, Specifications, documents, studies, or other data for any purpose other than that intended by the terms of the Contract Documents.

7-16 ***Pre-Settlement and Pre-Judgment Interest.***

The Design-Build Firm shall be entitled to pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to GMX's receipt of a certified written claim in full compliance with Article 5-12, *Claims by Design-Build Firm*, whether determined by a settlement or a final ruling in formal proceedings.

GMX shall pay to the Design-Build Firm simple interest calculated at the Prime Rate {as reported by the Wall Street Journal as the base rate on corporate loans posted by at least seventy-five percent (75%) of the nation's thirty (30) largest banks} as of the sixtieth (60^{th}) Calendar Day following GMX's receipt of a certified written claim in full compliance with Article 5-12, *Claims by Design-Build Firm*. Such interest to accrue beginning ninety (90) Calendar Days following GMX's receipt of a certified written claim in full compliance with Article 5-12, *Claims by Design-Build Firm*, and ending on the date of final settlement or formal ruling.

7-17 ***Personal Liability of Public Officials.***

In carrying out any of the provisions of the Contract or in exercising any power or authority granted to GMX, there shall be no liability on behalf of any employee, officer or official of GMX for which such individual is responsible, either personally or as officials or representatives of GMX. It is understood that in all such matters such individuals act solely as agents and representatives of GMX.

7-18 ***Prevailing Party Attorney's Fees.***

If any dispute regarding Design-Build Firm claims arising hereunder or relating to the Contract (and the Design-Build Firm's Work hereunder) results in litigation, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees and costs including costs and expenses of expert witnesses.

In order for the Design-Build Firm to be the prevailing party, the Design-Build Firm must receive an adjusted judgment or adjusted award equal to at least eighty percent (80%) of its contested claims filed with GMX, failing which GMX will be deemed the prevailing party in such litigation.

For purposes of determining whether the judgment of award is eighty percent (80%) or more of the contested claims, "adjusted award" or "adjusted judgment" shall mean the amount designated in the award or final judgment as compensation to the Design-Build Firm for its claims (exclusive of interest, cost, or expenses), less:

a) Any amount awarded to GMX (exclusive of interest, costs, or expenses) on claims asserted by GMX against the Design-Build Firm in connection with the Contract; and

b) Any amount offered in settlement prior to initiation of Design-Build Firm litigation (exclusive of interest, cost, or expense)

The term "contested claim" or "claims" shall mean the initial written claim(s) submitted to GMX by the Design-Build Firm (disputed by GMX) which have not otherwise been resolved through ordinary close-out procedures of the Contract prior to the initiation of litigation. Design-Build Firm claims or portions thereof which GMX agreed to pay or offered to pay prior to initiation of litigation shall not be deemed contested claims for purposes of this provision.

If the Design-Build Firm submits a modified, amended or substituted claim after its original claim and such modified, amended or substituted claim(s) is for an amount greater than the prior claim(s), the higher amount shall be the claim(s) for purposes of determining whether the award is at least eighty percent (80%) of the Design-Build Firm's claim(s).

Attorneys' fees and costs awarded to the prevailing party shall mean reasonable fees and costs incurred in connection with and measured from the date a claim is initially submitted to GMX through and including trial, appeal, and collection.

In the circumstance where an original claim is subsequently modified, amended or a substituted claim is filed therefore, fees and costs shall accrue from the date of the first written claim submitted, regardless of whether such original claim amount is ultimately used in determining if the judgment or award is at least eighty percent (80%) of the cumulative claims.

The term "litigation" shall include mediation proceedings but shall not include arbitration.

As a condition precedent to litigation, the Design-Build Firm shall have first submitted its claim (together with supporting documentation) to GMX, and GMX shall have had sixty (60) Calendar Days thereafter within which to respond thereto.

The purpose of this provision is to discourage frivolous or overstated claims and, as a result thereof, GMX and the Design-Build Firm agree that neither party shall avail itself of Section 768.79, Florida Statutes, as amended from time to time, or any other like statute or rule involving offers of settlement or offers of judgment, it being understood and agreed that the purpose of such statute or rule are being served by this provision.

Should this provision be judged unenforceable or illegal, in whole or in substantial part, by a court of competent jurisdiction, this provision shall be void in its entirety and each party shall bear its own attorneys' fees and costs.

END OF SECTION 7

SECTION 8
DESIGN-BUILD FIRM'S RESPONSIBILITIES FOR THE PROSECUTION OF THE WORK

8-1 ***Prosecution of Work.***

8-1.1 Compliance with Time Requirements:

The Design-Build Firm shall commence Work in accordance with the Notice to Proceed and pursue Work in conformance with the approved Project Schedule and shall provide sufficient labor, Materials and Equipment to ensure the completion of the Work within the Contract Time. If the Design-Build Firm fails to furnish sufficient resources to ensure the progress of the Work in accordance with the approved Project Schedule, GMX may withhold any payments which are, or may become due to the Design-Build Firm or may suspend the Work until such deficiencies are corrected.

8-1.2 Submission of Project Schedule:

The Design-Build Firm must submit to the Engineer for approval a cost loaded Critical Path Method (CPM) Project Schedule within thirty (30) Calendar Days after execution of the Contract or at the pre-design/construction conference, whichever is earlier. The Project Schedule shall not exceed time limits stated in the Contract Documents and, once approved by the Engineer, shall be updated on a monthly basis, and revised at appropriate intervals (in coordination with the Engineer) as required by the conditions of the Work, and shall provide for expeditious and practicable execution of the Work.

The Engineer will provide to the Design-Build Firm comments to the Project Schedule within fifteen (15) Calendar Days of its Submittal. The Design-Build Firm shall address the comments and submit a revised Project Schedule, reflecting the Schedule of Values, for approval by the Engineer within the following fifteen (15) Calendar Days. Once the Project Schedule has been approved it will become the baseline Project Schedule against which to measure the progress of the Work. By approval of the schedule, the Engineer does not endorse or otherwise certify the validity or accuracy of the activity durations or sequencing of activities.

Approval of the Project Schedule will be dependent upon inclusion of, but shall not be limited to the following:

a) Notice to Proceed and Contract Time in accordance with the Contract Documents;

b) Satisfactorily identifying activities of Work broken down by logical phases and reflecting the complexity of the Work and constrained activities;

c) Beginning Work date; and activities duration {not exceeding thirty (30) Calendar Days unless approved by the Engineer} in conformance with the scope of Work and established Contract Time;

d) Activities for procurement, fabrication, and delivery of Materials;

e) Review time for Shop Drawings and Submittals;

f) Milestone activities, as may be required by the Contract Documents;

g) Sufficient time for inspections at plants or remote locations as may be required;

h) The order and interdependence of activities and the sequence in which the Work will be accomplished;

i) Sufficient time for proper coordination with utility owners having facilities within the Project limits;

j) Any utility adjustments included in the Contract Documents;

k) Phases in MOT plans;

l) Identify non-workdays, including Holidays.

Failure to include any element of Work or any activity relating to utility Work will not relieve the Design-Build Firm from completing all Work within the Contract Time, notwithstanding GMX's approval of the Project Schedule. The Design-Build Firm shall cooperate with the Engineer in scheduling and performing the Design-Build Firm's Work in a manner that avoids conflict, Delay or interference with the work of other contractors, projects, or operations within or adjacent to the GMX System.

The Design-Build Firm must submit to the Engineer all baseline, revised baseline, and monthly progress updates of the Project Schedule in the following formats:

a) An electronic version on a CD ROM or USB Drive Primavera (P6) project files using the Primavera Project Management (latest version) "Export Option" menu selection; and

b) A hard copy matching the P6 file in eleven inches (11") by seventeen inches (17") paper.

8-1.2.1 Project Schedule Updates:

The Engineer will convene a regular monthly Project Schedule update meeting at which the Design-Build Firm's Project Manager is required to attend. These monthly meetings will be held in advance of the Project Schedule update Submittal Deadline so that job progress will coincide with the monthly Invoice. At this meeting, the Design-Build Firm shall provide an updated Project Schedule reflecting actual start dates, actual finish dates, changes in sequences and Calendar Days remaining. Current schedule, job progress, impacts to Project Schedule, and projections will be among the priority items addressed at the meeting. If the Contract duration changes as a result of approved time extensions, the Project Schedule shall be adjusted accordingly.

Monthly updates of the Project Schedule by the Design-Build Firm shall be submitted for review and approval by the Engineer seven (7) Calendar Days before the *Work Program Invoice Submittal Date*. All updates of the Project Schedule shall maintain the logic of the baseline schedule, unless changes have been agreed upon by the Design-Build Firm and the Engineer to better reflect the current progress of Work and sequence of activities. Original activity durations shall not be modified without prior review and approval by the Engineer. The Engineer shall approve or reject the Project Schedule update within five (5) Calendar Days from its Submittal.

A Project Schedule narrative report shall be submitted describing current Project Schedule status and identifying potential impacts. This report will include a description of the progress made since the previous schedule submission and objectives for the upcoming thirty (30) Calendar Days. This report shall at a minimum include the following information:

a) **Project Status:**

The Design-Build Firm shall indicate if the project is on schedule, ahead of schedule or behind schedule. If the project is ahead of schedule or behind schedule, the report shall include the specific number of Calendar Days. If the project is behind schedule, the report shall include a detailed recovery plan that will put the project back on schedule or include a properly supported request for time extension.

b) **Critical Path:**
The report will describe the current critical path of the project and indicate if this has changed since the last update. Discuss current successes or problems that have affected either the critical path's length or have caused a shift in the critical path. Identify specific activities, progress, or events that may reasonably be anticipated to impact the critical path within the next thirty (30) Calendar Days, either affecting its length or shifting it to an alternate path.

c) **Logic Changes/Addition and/or Deletion of Activities:**
List all schedule logic changes that have been made to the schedule since the previous submission. For each change, describe the basis for the change and specifically identify the affected activities by identification number. All changes to the logic shall be reviewed and approved by the Engineer.

d) **GMX Participation/Review/Approval:**
Identify any and all activities, either in progress or scheduled to occur within the following thirty (30) Calendar Days that require GMX's participation, review, approval, etc.

e) **Drawdown Schedule:**
Provide an updated forecast of the monthly payout for the Work to be completed up to Final Payment. Such forecasted drawdown shall consider monthly and cumulative retainage and its eventual release.

If the Engineer determines the schedule update submitted is deficient, it will be returned to the Design-Build Firm for revisions. The Design-Build Firm must submit a revised schedule within two (2) Calendar Days from the returned date. The Design-Build Firm must use the approved schedule for planning, organizing, directing, and reporting progress.

Float is not for the exclusive use or benefit of either GMX or the Design-Build Firm.

8-1.2.2 Failure to Maintain an Approved Project Schedule:
Contract payments may be withheld for failure to finalize either the baseline or a revised Project Schedule in the time specified herein, until the Project Schedule is approved. Invoices without an approved Project Schedule update will result in rejection of the invoice. GMX will not make payment of invoices or release any retained amount until there is an approved Project Schedule.

8-1.2.3 Project Schedule Controls:
The Design-Build Firm must pursue the Work in accordance with the latest approved updated Project Schedule. The Design-Build Firm must submit on a weekly basis a three (3) week look-ahead schedule detailing the upcoming activities planned for the period and one (1) week back detailing the recent progress of Work completed. Such weekly submittal shall include the current Controlling Items of Work, comments by the Design-Build Firm and allow for comments by the Engineer.

The activities listed in the three (3) week look-ahead schedule shall match the activities listed in the Project Schedule, at a minimum, or provide further breakdown of a specific activity with multiple sub-tasks. If progress of Controlling Items of Work is delayed, the Design-Build Firm must provide a written plan itemizing methods to complete the Work within the Contract Time.

8-1.3 Beginning Work:

GMX will issue a Notice to Proceed within thirty (30) Calendar Days from the pre-design/construction conference. The Design-Build Firm shall not commence any Work until such notice has been issued by GMX. The Design-Build Firm must notify the Engineer no less than five (5) Calendar Days in advance of the planned start day of Work.

Prior to establishing any off-project activity in conjunction with a project, the Design-Build Firm shall notify the Engineer of the proposed activity. Covered activities include but are not necessarily limited to borrow pits, concrete or asphalt plant sites, and Material or equipment storage sites. The Design-Build Firm shall include in the notification the GMX Project Number, a description of the activity, the location of the site by township, range, section, county, and city, a site location map including the access route, and the name of the property owner, and a person to contact to arrange a site inspection. This notification shall sufficiently be provided in advance of planned commencement of the off-site activity to allow a reasonable period of time for the Engineer to conduct an investigation without delaying job progress. Do not perform any off-project activity without obtaining written clearance from the Engineer.

The Design-Build Firm may commence Work only on activities not requiring signed and sealed plans prepared and submitted by the Design-Build Firm to the Engineer for concurrence. Such activities include Mobilization and surveys not affecting traffic. All documents submitted by the Design-Build Firm shall be stamped "Released for Construction" by the Engineer as a requirement to commence Work.

8-1.4 Provisions for Convenience of Public:

The Design-Build Firm shall schedule and conduct operations to minimize inconvenience to adjacent businesses or residences. The Engineer reserves the right to approve or reject the scheduling and the performance of Work in any areas of the project where impacts caused by Construction operations result in inconvenience to the general public. In such situations, the Engineer may require the Design-Build Firm to adjust Construction operations to mitigate inconvenience.

8-1.5 Weekly Meeting:

The Engineer will conduct at a minimum a weekly construction and a weekly design progress meeting. The Design-Build Firm shall attend those meetings and provide updates on Work completed, upcoming operations, challenges, and approach to resolve them, etc. in compliance with the provisions of these Specifications.

It is the Design-Build Firms responsibility to contact and ensure that representatives of the impacted utilities are present at the meetings when planned activities will require coordination with them. At the weekly meeting, the Design-Build Firm shall submit a list of proposed attendees representing utility companies for the following week.

Based on the progress of Work, and when deemed necessary, the Engineer may schedule additional regularly schedules meetings. The Design-Build Firm shall attend such meetings as part of its contractual responsibilities.

8-2 ***Sanitary Provisions.***

The Design-Build Firm shall provide and maintain in a neat and sanitary condition such accommodations for the use of Design-Build Firm's employees as are necessary to comply with the requirements and regulations of the State and local boards of health.

The Design-Build Firm shall not create any public nuisance.

8-3 ***Control of Design-Build Firm's Equipment.***

8-3.1 Traffic Interference:

The Design-Build Firm shall not permit Equipment to unreasonably interfere with traffic while the Equipment is on or traversing a road or street.

8-3.2 Overloaded Equipment:

The Design-Build Firm and/or its Subcontractors shall not operate on any road or street any hauling unit or equipment loaded in excess of the maximum weights specified in Section 316.535, Florida Statutes or lower weights legally established for any section of road or bridge pursuant to the provisions of Section 316.555, Florida Statutes. The governmental unit having jurisdiction over a particular road or bridge may provide exceptions by special permit under the provisions of Sub-article 8-3.3, *Crossings*. This restriction applies to all roads and bridges inside and outside the project limits as long as these roads and bridges are open for public use. The Design-Build Firm may overload roads and bridges which are to be demolished after they are permanently closed to the public. The Design-Build Firm is responsible for all loss or damages resulting from Equipment operated on a structure permanently closed to the public.

8-3.3 Crossings:

Where it is necessary to cross an existing road, including specifically the existing travel lanes of a divided highway within the limits of the project, the Design-Build Firm shall obtain the necessary permits from the governmental unit having jurisdiction for crossing overloaded or oversized equipment. The Design-Build Firm shall comply with all permit conditions at no additional cost to GMX.

Cross existing roads or streets only at Engineer-designated points. The Engineer may require the Design-Build Firm to protect the pavement or Roadway at the crossing by using lumber, planks, fill or other GMX approved method at no cost to GMX or organization having jurisdiction. The Design-Build Firm shall provide and or pay for flagging and watchman service, or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.

8-3.4 Protection from Damage by Tractor-Type Equipment:

Measures shall be taken by the Design-Build Firm to ensure that the Design-Build Firm's Equipment, including tractor tracks, does not cause damage to any public roads and Rights-of-Way. If any such damage occurs due to the Design-Build Firm's operations, the Design-Build Firm shall repair the damage to the satisfaction of the governmental unit having jurisdiction over the road and Rights-of-Way at no cost to either GMX or the organization having jurisdiction.

8-3.5 Design-Build Firm's Equipment on Bridge Structures:

The Engineer of Record, or Specialty Engineer, shall analyze the effects of the loads that Design-Build Firm's Equipment imposes on Bridge structures, within the limits of the project, and develop procedures for using the loaded Equipment without exceeding the structure's design load capacity, during the following operations:

a) **Overloaded Equipment as defined in Sub-article 8-3.2, *Overloaded Equipment*:**

1) Operating on or crossing over completed Bridge structures.

2) Operating on or crossing over partially completed Bridge structures.

b) **Equipment within legal load limits:**

1) Operating on or crossing over partially completed Bridge structures.

c) **Construction cranes:**

1) Operating on completed Bridge structures.

2) Operating on partially completed Bridge structures.

Any pipe culvert(s) or box culvert(s) qualifying as a Bridge under Article 1-3, *Definitions*, is excluded from the requirements above.

A completed Bridge structure is a Bridge structure in which all components comprising the load carrying assembly have been completed, assembled, and connected in their final position. The components to be considered shall also include any related members transferring load to any Bridge structure.

The Design-Build Firm shall submit to the Engineer for review the Shop Drawings showing how the Equipment is to be used so that the Bridge structure will not be overstressed. The Design-Build Firm must comply with the requirements detailed under Sub-article 5-1.2, *Shop Drawings*.

8-3.6 Posting of the Legal Gross Vehicular Weight:

The Design-Build Firm must display the maximum legal gross weight, as specified in the Florida Uniform Traffic Code, in a permanent manner on each side of any dump truck or dump type tractor-trailer unit hauling embankment material, Construction aggregates, road base material, or hot bituminous mixture to the project over any public road or street. The Design-Build Firm must display the weight in a location clearly visible to the scale operator, in numbers that contrast in color with the background and that are readily visible and readable from a distance of fifty (50) feet.

8-4 *Preservation of Property.*

8-4.1 General:

For the purpose of this Article 8-4, *Preservation Of Property* the term *property* used in both single and plural tense includes, but it's not limited to, Bridges, public and private property and utilities (except as modified by the provisions of Article 8-6, *Utilities*), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe and underground structures, Intelligent Transportation System (ITS) facilities, traffic control signals and devices, highway lighting, and public highways.

The Design-Build Firm must preserve from damage all existing property, whether within the project limit or in its vicinity, which is in any way affected by the Work, and which the removal or destruction of such property is not specified in the Contract Documents.

The Design-Build Firm must ensure that no unsafe condition is caused by a damaged property.

The Design-Build Firm must immediately notify the Engineer of any damaged property. In addition, the Design-Build Firm must coordinate with the Engineer, as may be required, the repairs of any damaged property.

The Design-Build Firm shall protect all geodetic monuments, horizontal or vertical, located within the limits of the project Construction.

The Design-Build Firm must use all necessary precautions to prevent material being dispersed outside the Work site. If conditions are such that material is dispersed to areas where vehicles or other property may be damaged, the Design-Build Firm must suspend operations until conditions improve enough to permit Work without damage.

All debris and trash shall be removed from the Work area and clear zone of the project before Work ends for each day.

8-4.2 Damages to Existing Property Caused by Design-Build Firm:
Whenever the Design-Build Firm's activities damage any existing property, the Design-Build Firm must immediately restore it to the same or equivalent condition to that existing before such damage occurred, at no expense to GMX.

If the Design-Build Firm fails to restore such property, GMX may, at its sole option and with forty-eight (48) hours advanced notice to the Design-Build Firm, proceed to repair, rebuild, or otherwise restore the damaged property. The cost of such repairs will be deducted by GMX from any monies due or which may become due the Design-Build Firm.

8-4.3 Damages to Existing Property Caused by Third Party:
Whenever actions of a third-party causes damage to an existing property, whether within the project limit or in its vicinity, and such damage is in no way due to any fault or activities of the Design-Build Firm, the Design-Build Firm must immediately notify the Engineer and coordinate the applicable action as detailed below:

- Design-Build Firm must immediately restore the damaged property to the same or equivalent condition to that existing before such damage occurred; or

- Design-Build Firm must provide access and coordinate the required repair with the GMX's maintenance contractor.

In the case the Design-Build Firm repairs damages to existing property caused by a third party, GMX will subrogate its right of recovery to the Design-Build Firm and the Design-Build Firm may pursue the third party. To ensure recovery rights, the Design-Build Firm must file a police report of the incident causing the damages and properly document, including photos of the incident. The Design-Build Firm must exhaust all possible recovery avenues from the applicable third party before pursuing reimbursement from GMX.

If the Design-Build Firm is unsuccessful recovering its cost of repairs from the applicable third party, the Design-Build Firm may submit a request for reimbursement to GMX documenting all its efforts for third party recovery and supporting documentation of actual cost of repairs. For damages exceeding One Thousand Five Hundred Dollars ($1500) per occurrence, GMX will reimburse the Design-Build Firm fifty percent (50%) of the cost to repair. Reimbursement by GMX will be in accordance with Sub-article 4-3.2, Extra Work.

This provision does not apply to damages resulting from vandalism or theft. The Design-Build Firm must repair such damages at no expense to GMX.

8-4.4 Damages to Installed Material
In accordance with Sub-section 8-18 *Design-Build Firm's Responsibility for Work*, all damages caused to installed Material whether by action of the Design-Build Firm, or a third party, including Acts of God, of public enemy, or governmental authorities, are the sole responsibility of the Design-Build Firm. The Design-Build Firm must restore the damaged installed Material.

8-4.5 Design-Build Firm's Use of Public Roads and Bridges:
Where the Design-Build Firm hauls Material or Equipment to the Project over public roads and Bridges and such hauling causes damage, the Design-Build Firm, at Design-Build Firm's expense, shall immediately repair such road or Bridge to as good a condition as existed before the hauling began.

GMX may modify the above requirement in accordance with any agreement the Design-Build Firm might make with the governmental unit having jurisdiction over a particular road or Bridge, provided that the Design-Build Firm submits written evidence of such agreement to the Engineer.

The build-up of tar at intersections as a result of paving operations is considered damage to the road or highway and shall be addressed by the Design-Build Firm. Remedial work at such locations may demand the replacement of traffic signal loops that shall be coordinated, permitted, and inspected by the agency with jurisdiction over the signal.

8-5 ***Operations Within Railroad Right-of-Way.***

If the project's scope of Work is within or in the vicinity railroad Right-of-Way, the Design-Build Firm shall comply with the following Sub-articles:

8-5.1 Notification to the Railroad Company:

After the provisions of Sub-article 8-5.3, *Flagging Services* have been complied upon, the Design-Build Firm must notify the Superintendent of the railroad company, as shown on the Contract Documents, and the Engineer at least forty-five (45) Calendar Days in advance before beginning any operation within the limits or adjacent to the railroad Right-of-Way; any operation requiring movement of employees, trucks, or other Equipment across the tracks of the railroad company at other than an established public crossing; and any other Work that may affect railroad operations or property.

8-5.2 Design-Build Firm's Responsibilities:

The Design-Build Firm must comply with whatever requirements an authorized representative of the railroad company deems necessary in order to safeguard the railroad's property and operations. The Design-Build Firm is responsible for all damages, Delays, or injuries and all suits, actions, or claims brought on account of damages or injuries resulting from the Design-Build Firm's operations within or adjacent to railroad company Right-of-Way.

8-5.3 Flagging Services:

The railroad company will furnish protective services (i.e., watchman or flagging services) to ensure the safety of railroad operations during certain periods of the Contract. GMX will reimburse the railroad company for the cost thereof. The costs involved with the need for a watchman or flagman to complete re-work or correct deficiencies caused by the Design-Build Firm will be the Design-Build Firm's responsibility. Similarly, costs incurred due to the scheduling of a watchman or a flagman for activities cancelled by the Design-Build Firm without proper notice, as required by the railroad company, will be the Design-Build Firm's responsibility.

The Design-Build Firm shall schedule Work that affects railroad operations to minimize the need for protective services by the railroad company. Submit schedules and schedule changes to the Engineer so GMX can coordinate the scheduling of flagging resources. Projects with less than twenty (20) consecutive days of flagging services require a CSXT/FEC short-term flagger and the Design-Build Firm shall provide forty-five (45) Calendar Days written advance notice to the Engineer. Projects with twenty (20) or more consecutive days of flagging services require a CSXT/FEC long term flagger. The Design-Build Firm shall provide the Engineer a three (3) month written advance notice when a long term CSXT/FEC flagger will be required.

8-5.4 Flagging Services Estimated Duration:

GMX includes as part of the Work the duration that flagging services will be provided. This information is included in the Solicitation Documents. The costs associated with the estimated requirements are the maximum amount GMX will be allocating for the flagging services. Any additional needs and associated costs resulting from the sequencing, activity durations, and/or means and methods used by the Design-Build Firm will be the responsibility of the Design-Build Firm.

8-6 ***Utilities.***

The Design-Build Firm shall be responsible for coordinating all utility relocations. Coordination shall include any necessary utility agreements when and where applicable. The utility company or GMX shall be responsible for the costs of all relocations, adjustments, etc. deemed absolutely necessary to accomplish the requirements of the Contract Documents. The Design-Build Firm shall make every attempt to design around existing utilities, minimizing impacts.

Plans shall be provided to GMX showing existing and proposed utility locations and their relationship to the proposed Construction. GMX shall determine, at its sole discretion, whether a utility relocation, adjustment, etc. is absolutely necessary to accomplish the requirements of the Contract Documents. All costs for relocations, adjustments, etc. identified and proposed by the Design-Build Firm, for the convenience of the Design-Build Firm, shall be borne by the Design-Build Firm.

8-6.1 Arrangements for Protection or Adjustment:

The Design-Build Firm must not commence Work at points where the Construction operations are adjacent to utility facilities or other property, until making arrangements with the utility facilities to protect against damage that might result in expense, loss, disruption of service, or other undue inconvenience to the public or to the owners. The Design-Build Firm is solely and directly responsible to the owners and operators of such properties for all damages, injuries, expenses, losses, inconveniences, or delays caused by the Design-Build Firm's operations.

The Design Build Firm shall make the necessary arrangements with utility owners for removal or adjustment of utilities where the Engineer determines that such removal or adjustment is essential to the performance of the required Construction. The Engineer will determine the responsibility for any such required adjustments of utilities.

GMX considers relocations and adjustments (or other protection) under the following circumstances as essential to the Construction of the Work:

a) Utilities lying within the vertical and horizontal construction limits, plus the reasonably required working room necessary for operation of equipment normally used for the particular type of construction, all as determined by the Engineer (and except as provided in paragraph d) below). In the case of overhead electrical conductors that carry more than 400 V, a minimum of ten (10) feet clearance between the conductor and the nearest possible approach of any part of the equipment is required, except where the utility owner effects safeguards approved by the Florida Department of Labor and Employment Security and OSHA.

b) Utilities lying within the horizontal limits of the project and within twelve (12) inches below the ground surface or the excavation surface on which the Design-Build Firm operates construction Equipment, or within twelve (12) inches below the bottom of any stabilizing course specified in the Contract Documents.

c) Utilities lying within the normal limits of excavation for underground drainage facilities or other structures (except as provided in paragraph d) below). Such normal limits shall extend to side slopes along the angle of repose, as established by sound engineering practice, unless the Contract Documents require support of the excavation sides by sheeting or the Design-Build Firm elects to sheet such excavation for its own convenience.

d) Where utilities cross pipe trenches transversely within the excavation area, but not within positions from which relocation or removal is necessary, the utility owner is responsible for providing and affecting all reasonable measures for their support and protection during Construction operations. The Design-Build Firm must cooperate with the utility owner in the owner's effecting of such support and protective measures. The Design-Build Firm is responsible for all damage to the utility that is caused by the Design-Build Firm's neglect or failure to cooperate or to use proper precaution in performing its Work.

In the event that the Design-Build Firm determines the need for a temporary relocation of a utility or a particular sequence of timing in the relocation of a utility, such relocation must be coordinated by the Design-Build Firm with the utility owner and a representative of the utility owner must be present at all times during the relocation Work.

GMX will not consider relocation or adjustment requests based on the Design-Build Firm's proposed use of a particular method of Construction or a particular type of Equipment as essential to the Work if the Design-Build Firm could use other common methods and Equipment without relocating or adjusting the utility.

The Design-Build Firm shall make all required utility relocations or adjustments due to delivery of Design-Build Firm-furnished Materials to the project, at no expense to GMX.

8-6.2 Cooperation with Utility Owners:

The Design-Build Firm must cooperate with the owners of all underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement Work may be kept to a minimum, and that services rendered by the utility owners will not be unnecessarily interrupted.

In the event of interruption of water or other utility services as a result of accidental breakage, exposure, or lack of support not caused by the Design-Build Firm's operations, the Design-Build Firm must promptly notify the proper utility owner and cooperate with the Engineer in the prompt restoration of service. If water service is interrupted and the Design-Build Firm is performing the repair Work, the Design-Build Firm shall work continuously until the service is restored.

The Design-Build Firm must not begin Work around fire hydrants until the local fire authority has approved provisions for continued service.

8-6.3 Responsibility for Damage to Utilities:

The Design-Build Firm shall exercise caution when working adjacent to existing or relocated utilities. The Design-Build Firm is solely and directly responsible to the owners and operators of such utilities for all damages, injuries, expenses, losses, inconveniences, or impacts caused by the Design-Build Firm's operations.

The Design-Build Firm must immediately stop all operations where a utility is damaged as a result of the Construction and the area is to be made available to the utility owner. No repairs will be undertaken by the Design-Build Firm, or any of its Subcontractors, unless specifically directed to do so in writing by the UOA. All costs involved in the repair of damages caused to the existing utilities by the Construction operations will be paid for by the Design-Build Firm.

8-6.4 Utility Adjustments:

Certain utility adjustments and reconstruction Work may be underway during the progress of the Contract. The Design-Build Firm shall cooperate with the various utility construction crews who are maintaining utility service. The Design-Build Firm shall exercise due caution when working adjacent to relocated utilities. The Design-Build Firm shall repair all damage to the relocated utilities resulting from its operations at no expense to GMX.

The requirements of Sub-article 8-6.1, *Arrangements for Protection or Adjustment,* outline the Design-Build Firm's responsibility for protecting utility facilities. GMX will include in the Contract the utility authorities who are scheduled to perform utility Work on the project for GMX. Utility adjustments required by GMX shall be in addition to those desired by the Design-Build Firm.

The utility Work required by GMX which will be accomplished concurrently with the Work will involve facilities owned by the agencies listed in the Solicitation Documents.

The utility agencies performing Work for GMX shall advise the Design-Build Firm of the scheduled utility adjustment period. The utility adjustment period indicates the total time required for each phase of the Work and may or may not be consecutive days. Utility adjustments may or may not be underway prior to the Design-Build Firm receiving its Notice to Proceed. The Design-Build Firm shall coordinate all field activities to facilitate utility adjustments required by GMX.

Where utility work must be coordinated with Work, the portion of the anticipated relocation period covering such concurrent Work may or may not begin on the day Work begins and may or may not be completed in consecutive days.

8-7 ***Rights in and Use of Materials Found on the Site of the Work.***

8-7.1 Ownership and Disposal of Existing Materials:

Except as might be stipulated or implied otherwise on the Contract Documents, all Materials which are not the property of other parties, and all material in structures designated to be removed by the Design-Build Firm, shall become the property of the Design-Build Firm, and shall be properly disposed of by the Design-Build Firm. Materials from existing structures which are required to be removed and which are designated to remain the property of GMX may generally be used by the Design-Build Firm during Construction. Such material shall not be cut or otherwise damaged during removal unless permission is given by the Engineer.

The Design-Build Firm shall store material in an accessible location if so, directed by the Engineer. GMX is not responsible for the quality or quantity of any material salvaged.

The ownership of existing Materials by the Design-Build Firm shall not include earth or other excavated material required for the Work. Should GMX-furnished areas for obtaining borrow material contain limerock material, do not remove such material from the pit unless the Engineer gives specific approval.

8-7.2 Ornamental Trees and Shrubs:

Any ornamental trees or shrubs existing on the Project Site or in the Right-of-Way, which are required to be removed for the Construction operations and which are not specifically designated on the Contract Documents to be reset, or to be removed by others prior to the Construction operations, shall remain the property of GMX, and shall be relocated by the Design-Build Firm as directed. The Design-Build Firm shall be fully responsible for maintaining all grass plots, trees, and shrubs outside the limits of Construction as shown on the Contract Documents in good condition. Tree limbs which interfere with Equipment operation and are approved for pruning shall be neatly trimmed and the tree cut coated with tree paint.

8-8 ***Discovery of an Unmarked Human Burial.***

When an unmarked human burial is discovered, immediately cease all activity that may disturb the unmarked human burial and notify the Engineer. The Design-Build Firm shall not resume activity until specifically authorized by the Engineer.

8-9 ***Right-of-Way Furnished by GMX.***

Except as otherwise provided in the Contract Documents, GMX will furnish all Right-of-Way necessary for the proper completion of the Work at no expense to the Design-Build Firm.

Use of GMX owned Right-of-Way for the purpose of equipment or material storage, lay-down facilities, pre-cast material fabrication sites, batch plants for the production of asphalt, concrete or other construction related Materials, or other similar activities, shall require advance written approval by GMX prior to making use of said GMX owned Right-of-Way. Use of GMX owned Right-of-Way for these purposes is expressly limited to storage of equipment and Materials or production of Materials or products for the Work.

The Design-Build Firm shall not allow residential dwelling in any GMX Right-of-Way, including for security purposes.

8-10 ***Limitations of Operations.***

8-10.1 Night Work:

Whenever performing Work during the hours of limited visibility or darkness, the Design-Build Firm must furnish, place, and maintain lighting facilities capable of providing light of sufficient intensity {five (5) ft.·cd minimum} to allow good workmanship and proper inspection. The Design-Build Firm must provide a light meter to demonstrate that the minimum light intensity is being maintained.

The Design-Build Firm must submit a lighting plan at the pre-design/construction conference showing the type and location of lights to be used for night Work. The plan shall show the location of all lights necessary for every aspect of Work to be performed at night. Present the plan on standard size plan sheets {not larger than twenty-four (24) inches by thirty-six (36) inches} and on a scale of one hundred (100) or fifty (50) feet to one (1) inch. The plan must also include the proposed temporary lighting for instances where the existing lighting will be replaced or temporarily put out of service. The existing level of illumination must be preserved, or improved, for the duration of the Work.

The Design-Build Firm must obtain the Engineer's approval of the lighting plan prior to beginning any night Work. The Design-Build Firm must perform all modifications to the lighting plan required by the Engineer in order to fit field conditions. The Design-Build Firm must arrange the lighting so it does not interfere with or impede traffic approaching the worksite(s) from either direction. Lighting placement must not produce undue glare to adjacent property owners or the traveling public.

Utilize padding or shielding, or locate mechanical and electrical equipment to minimize noise, as directed by the Engineer. Provide portable generators with noise levels that comply with all applicable Federal, State, and local environmental regulations.

During active night Work operations, the Design-Build Firm must furnish, place and maintain portable changeable message signs to alert approaching motorists of Construction zones ahead. The Design-Build Firm may only operate the portable changeable message signs during active Construction activities. The Design-Build Firm must have the Superintendent present on site to control all active night Work operations.

Compensation for lighting for night Work will not be paid separately and must be included in the Price Proposal.

8-10.2 Sequence of Operations:

The Design-Build Firm shall not start new Work that will adversely impact Work in progress. The Engineer reserves the right to require the Design-Build Firm to finish any Work in progress before starting new Work.

Unless specifically authorized in writing by the Engineer, the Design-Build Firm must not perform Construction activities for the duration of a Special Event. Special Events may include but are not limited to concerts, sports events, parades, etc., which may increase traffic volumes on the highway during scheduled work hours.

8-10.3 Interference with Traffic:

The Design-Build Firm shall at all times conduct the Work in a manner and sequence to ensure the least practicable interference with traffic. The Design-Build Firm's vehicles and other Equipment shall be operated in such a manner that they will not be a hazard or hindrance to the traveling public. Materials stored along the Roadway and parked vehicles shall be placed outside the clear zone.

Where existing pavement is to be widened and stabilizing is not required, the Design-Build Firm must prevent any drop-off conditions by scheduling operations to place the full thickness of widened base by the end of the working hours. The Design-Build Firm must not construct widening strips simultaneously on both sides of the road, except where separated by a distance of at least quarter (1/4) mile along the road and where either the Work of excavation has not been started or the base has been completed.

8-10.4 Coordination with other Contractors:

The Design-Build Firm shall arrange the Work and dispose of Materials so as not to interfere with the operations of other contractors engaged on adjacent or overlapping Work. Design-Build Firm shall perform the Work in the proper sequence in relation to that of other contractors and shall join with and connect to the Work of others as required by the Contract Documents. The Engineer may require the Design-Build Firm to coordinate its Work with others as deemed necessary.

Design-Build Firm is responsible for any damage resulting from Design-Build Firm's operations to the work performed by other contractors. The Design-Build Firm is not responsible for damage to its Work resulting from the work performed by other contractors. Should a difference of opinion arise as to the rights of the Design-Build Firm and others working within the limits of, or adjacent to, the Work, GMX will decide as to the relative priority of all concerned.

8-10.5 Drainage:

The Design-Build Firm shall conduct the operations and maintain the Work in such condition to ensure adequate drainage at all times. Functioning storm sewers, gutters, ditches, and other run-off facilities must not be obstructed. The Design-Build Firm shall provide positive drainage for all pavement remaining after milling operations.

8-10.6 Fire Hydrants:

The Design-Build Firm is responsible to maintain accessibility to fire hydrants on or adjacent to the Roadway at all times. No material or obstruction shall be placed within fifteen (15) feet of any fire hydrant.

8-10.7 Protection of Structures:

The Design-Build Firm shall not operate heavy equipment in proximity to pipe headwalls or other structures that may cause their displacement.

8-10.8 Fencing:

The Design-Build Firm must erect and maintain fence, either temporary or permanent, as a first order of business to secure the Right-of-Way on limited access facilities.

8-10.9 Hazardous or Contaminated Materials:

When the Design-Build Firm's operations encounter or expose any condition which may indicate the presence of a hazardous substance or contaminated material operations shall be discontinued in the vicinity of the condition and the Engineer shall be notified immediately. The presence of tanks or barrels; discolored earth, metal, wood, groundwater, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous substances, toxic waste, or pollutants.

The Design-Build Firm must make every effort to minimize the spread of any hazardous or contaminated materials, into uncontaminated areas, as directed by the Engineer. The Design-Build Firm's normal operations in the affected area shall not resume until so directed by the Engineer.

Disposal of the hazardous or contaminated materials must occur in accordance with the laws, requirements and regulations of any local, state, or federal agency having jurisdiction. Where the Design-Build Firm performs Work necessary to dispose of hazardous or contaminated materials, and the Contract does not include compensation for such disposal, payment will be made in accordance with Sub-article 4-3.2, *Extra Work*.

8-10.10 Tolls Coordination:

The Design-Build Firm must coordinate Work activities with the Engineer, the GMX ITS/Toll Maintenance Manager and Toll Operations Contract Manager.

8-10.11 Milling:

The Design-Build Firm shall provide suitable transitions between milled areas and the adjacent pavement in order to create a smooth longitudinal riding surface. The Design-Build Firm shall also restrict the milling operation such that any lane milled will be repaved the same day as the milling operation. The opening of traffic on milled surfaced will not be permitted. Damage to any existing joint seal caused by the milling operations must be repaired by the Design-Build Firm at no additional costs to GMX.

8-11 ***Use of Explosives.***

Use of explosives will not be allowed.

8-12 ***Dredging and Filling.***

If dredging and filling are part of the Work, Design-Build Firm must obtain a certificate of registration from the Florida Department of Environmental Protection and must keep accurate logs and records of all such activities for the protection and conservation of the natural resources. Obtain details as to the application of this law from the Department of Environmental Protection.

No excavation or dredging, beyond the depths detailed in the Contract Documents, shall be allowed unless it is authorized by the Engineer.

8-13 ***Restoration of Surfaces Opened by Permit.***

Upon the presentation of a duly authorized and satisfactory permit that provides that all necessary repair Work will be paid for by the party holding such permit, the Engineer may authorize the Design-Build Firm to allow parties bearing such permits to make openings in the Highway. Upon receipt of the Engineer's written order, perform, in an acceptable manner, all necessary repairs due to such openings, and such necessary Work that the Engineer orders, subject to the same conditions as the original Work performed.

8-14 ***Opening Sections of Highway to Traffic.***

Whenever any Bridge or section of Roadway is in an acceptable condition for travel, the Engineer may direct the Design-Build Firm to open it to traffic. The Engineer's direction to open a Bridge or Roadway does not constitute an acceptance of the Bridge or Roadway, or any part thereof, or waive any Contract provisions.

Perform all necessary repairs or renewals, on any section of the Roadway or Bridge thus opened to traffic under instructions from the Engineer, due to defective material or Work or to any cause other than ordinary wear and tear, pending completion and the Engineer's acceptance of the Roadway or Bridge, or other Work, at no expense to GMX.

Prior to opening to traffic on a newly constructed Bridge, the Design-Build Firm shall request and schedule an independent structural inspection to be completed by GMX or its representative. All comments resulting from such inspection shall be addressed to the satisfaction of the Engineer prior to opening to traffic. GMX will not allow time extensions to the Contract in order to comply with this requirement.

In addition, and prior to opening to traffic a newly constructed Bridge or section of Roadway, the Design-Build Firm will conduct a field meeting with the Engineer to evaluate that the maintenance of traffic signage is clear to the driver and does not conflict with existing signs or create a safety hazard.

8-15 *Structures Over Navigable Waters.*

8-15.1 Compliance with Federal and Other Regulations:

Where erecting structures in, adjacent to, or over, navigable waters, the Design-Build Firm shall observe all regulations and instructions of Federal and other authorities having control over such waters. The Design-Build Firm shall not obstruct navigation channels without permission from the proper authority and provide and maintain navigation lights and signals in accordance with the Federal requirements for the protection of the structure, of Falsework, and of navigation.

In the event of accidental blocking of the navigation channel, immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage.

When work platforms are indicated in the permit for construction, submit work platform construction plans to the appropriate Coast Guard District for approval. Obtain approval prior to beginning Construction on the platform.

8-15.2 Maintenance of Channel:

Where the Work includes the excavation of a channel or other underwater areas to a required section, maintain the section from shoaling or other encroachment until Final Acceptance.

In the event of accidental blocking of the navigation channel, immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage.

8-16 *Park Protection.*

8-16.1 Compliance with Applicable Regulations:

In carrying out Work within or adjacent to local, State or National parks, the Design-Build Firm must comply with all of the regulations of such authority having jurisdiction, governing the protection of and the carrying out of Work in parks, and observe all sanitary laws and regulations with respect to the performance of Work in these areas. Keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the Construction, installation, and maintenance of any Construction camps, living quarters, stores, warehouses, sanitary facilities, and other structures; all in accordance with the requirements of the park official.

8-16.2 Prevention and Suppression of Fires:

The Design-Build Firm, its employees, and Subcontractors must take all reasonable precautions to prevent and suppress fires. The Design-Build Firm must notify a forest official at the earliest possible moment of the location and extent of all fires. The Design-Build Firm must safely extinguish the fire if practicable.

8-17 ***Final Cleaning up of Right-of-Way.***

Upon completion of the Work, and before acceptance and final payment is made, the Design-Build Firm shall remove from any Right-of-Way and the Project Site all Falsework, Equipment, surplus and discarded Materials, rubbish and temporary structures, restore all property, both public and private, which has been damaged during the prosecution of the Work, leave waterways unobstructed, and leave the Project Site and the Roadway in the same or better condition than originally found throughout the entire length of the Work under Contract.

The placing of Materials of any character, rubbish or Equipment, on abutting property, with or without the consent of the property owners, shall not constitute satisfactory disposal; however, the Design-Build Firm will be allowed to temporarily store Equipment, surplus Materials, usable forms, etc., on a well-kept site owned or leased by the Design-Build Firm, adjacent to the project, but no discarded Equipment or Materials or rubbish shall be placed on such site.

When directed by the Engineer, areas adjacent to the project used as a materials storage area or equipment yard shall be shaped, dressed, and grassed by the Design-Build Firm in order to avoid an objectionable appearance, at such time as they are no longer needed by the Design-Build Firm for such purposes.

8-18 ***Design-Build Firm's Responsibility for Work.***

Until acceptance by GMX, the Work shall be under the charge and custody of the Design-Build Firm. The Design-Build Firm shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever arising either from the execution or non-execution of the Work and shall rebuild, repair, restore and make good, without additional compensation, all injury or damage to any portion of the Work.

In the case extensive or catastrophic damage to the Work due to unforeseeable causes beyond the control and without the fault or negligence of the Design-Build Firm, including Acts of God, of public enemy, or governmental authorities, GMX at its sole discretion, for damages exceeding One Thousand Five Hundred Dollars ($1500) per occurrence may reimburse the Design-Build Firm fifty percent (50%) of the cost to repair Work not covered by the Design-Build Firm's liability insurance. In such instance the Design-Build Firm must have been in compliance with the Insurance Requirements of the Contract. GMX will not reimburse the Design-Build Firm any costs that should have been covered by the insurance required by the Contract.

The Design-Build Firm is not responsible for damage to any landscape items caused by an officially declared hurricane that occurs after the Final Acceptance of the entire Work, and during any remaining portion of the twelve (12) month establishment period, as defined in Section 580-4, *Establishment*, of the FDOT Supplemental Specifications.

8-19 ***Temporary Suspension of Design-Build Firm's Operations.***

8-19.1 Authority to Suspend Design-Build Firm's Operations:

The Engineer has the authority to suspend the Design-Build Firm's operations, in whole or in part. The Engineer will order such suspension in writing, giving detailed reasons for the suspension. Contract Time will be charged during all suspensions of Design-Build Firm's operations. GMX may grant an extension of Contract Time in accordance with Sub-article 8-20.3, *Adjusting Contract Time*, when deemed appropriate.

No additional compensation will be paid to the Design-Build Firm when the operations are suspended for the following reasons:

a) The Design-Build Firm fails to comply with the Contract Documents;

b) The Design-Build Firm fails to carry out orders given by the Engineer; or

c) The Design-Build Firm causes conditions considered unfavorable for continuing the Work.

The Design-Build Firm must immediately comply with any suspension order and not resume operations until authorized to do so, in writing, by the Engineer.

During such suspensions, the Design-Build Firm shall remove all Equipment and Materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102, *Maintenance of Traffic*, and 104, *Prevention, Control, and Abatement of Erosion and Water Pollution*, of the FDOT Standard Specifications.

The Design-Build Firm is not entitled to any additional compensation for removal of Equipment and Materials from clear zones or for compliance with Section 102, *Maintenance of Traffic*, and Section 104, *Prevention, Control, and Abatement of Erosion and Water Pollution*, of the FDOT Standard Specifications.

Failure to immediately comply with an order of suspension is a basis for GMX to declare the Design-Build Firm in default in accordance with Article 8-22, *Default and Termination of Contract*.

8-19.2 Prolonged Suspensions:

If the suspension of Work is for an indefinite period of time, the Design-Build Firm shall store all Materials in such a manner that they will not become damaged or obstruct or impede the traveling public unnecessarily.

The Design-Build Firm shall take reasonable precautions to prevent damage to or deterioration of the Work performed, shall provide suitable drainage within the limits of the project and adjacent Roadway by opening ditches, shoulder drains, etc., and shall provide any temporary structures necessary for safe public traffic through the project.

8-19.3 Design-Build Firm's Request to Suspend Operations:

The Design-Build Firm shall not suspend operations or remove Equipment or Materials necessary for the completion of the Work without the written permission from the Engineer. All requests for suspension of operations shall be in writing to the Engineer and shall specify requested dates to begin and end the suspension.

Contract Time will be charged during suspension periods requested by the Design-Build Firm and approved by the Engineer. The Design-Build Firm is not entitled to any additional compensation or time extensions for suspension of operations during such periods.

8-20 *Computation of Contract Time.*

8-20.1 General:

Contract Time begins as defined in Article 1-3, *Definitions*. The Design-Build Firm shall perform all Work in accordance with the Contract Documents and within the Contract Time. The Design-Build Firm must have an approved Project Schedule, including any required update(s), as stated in Sub-article 8-1.2.1, *Project Schedule Updates*, as a condition precedent to the Design-Build Firm having any right to an extension of Contract Time or any monetary compensation arising out of any Delay.

GMX includes a thirty (30) Calendar Day period in the calculation of the Contract Time to make all necessary arrangements for the Engineer to perform an inspection of the Work to verify that all Work has been completed, pursuant to Sub-article 5-10.2, *Inspection for Acceptance.* Any deficiencies and/or required modifications resulting from the inspection will be summarized by the Engineer and provided to the Design-Build Firm. The Design-Build Firm shall remedy all items listed by the Engineer within the remaining Contract Time.

No time extensions will be granted to correct deficiencies identified during the GMX inspection of the Work as requested by the Design-Build Firm. Any delays incurred by the Design-Build Firm to complete the list of pending items will be subject to the provisions of Article 8.23, *Liquidated Damages for Failure to Complete the Work during Contract Time*.

8-20.2 Holidays and Special Events:

The Design-Build Firm will not be allowed to perform Work on Holidays and Special Events noted on the Contract Documents. The Design-Build Firm may request authorization from the Engineer to Work during a Holiday or a Special Event by submitting a written request to the Engineer at least ten (10) Calendar Days in advance of the Holiday or Special Event for which the Design-Build Firm is requesting authorization to Work. Contract Time will be charged during the Holidays and Special Events. No Supplemental Agreement is required to approve the Design-Build Firm to Work on a Holiday or Special Event as long as the Contract Time is not impacted.

8-20.3 Adjusting Contract Time:

GMX may grant the Design-Build Firm an extension of Contract Time for the following reasons:

- A Controlling Item of Work is delayed by factors not reasonably anticipated or foreseeable at the time the Design-Firm submitted the Proposal to GMX;
- The Contract Amount is increased due to overruns, Extra Work, or unforeseen Work GMX will base the consideration for granting an extension of Contract Time on the extent that the time normally required to complete the Extra Work delays the Contract completion schedule;
- The Engineer suspends the Design-Build Firm's operations, as provided in Article 8-19, *Temporary Suspension of Design-Build Firm's Operations*, for reasons other than the fault of the Design-Build Firm.

8-20.3.1 Weather Days:

The Engineer will monitor the effects of weather and document when Work has been impacted. By the 5th Calendar Day of each month the Engineer will complete a *Time Extensions Granted for Weather Days* form found on the GMX website, notifying the Design-Build Firm the recorded number of weather days that impact Contract Time as described herein inclusive of when zero (0) Calendar Days impact the Contract Time.

Unless the Design-Build Firm provides to the Engineer a written objection accompanied by factual support within ten (10) Calendar Days of receiving the Engineer's notice of recorded number of weather days, the Design-Build Firm waives any rights to claim for compensable time extension based on those noticed weather day impacts. The Engineer will not require the Design-Build Firm to submit a request for additional time due to the effects of weather.

Time extensions granted for weather days will not require a Supplemental Agreement.

GMX will grant non-compensable time extensions, on a Calendar Day for Calendar Day basis, for impacts to the Controlling Items of Work caused by the effects of rain or other inclement weather conditions (such as low temperatures preventing placement of asphalt or concrete), related adverse soil conditions (saturated material or flooded areas of work) that prevent the Design-Build Firm from productively performing Controlling Items of Work resulting in:

a) The Design-Build Firm being unable to work at least fifty percent (50%) of the scheduled Working Day on pre-determined Controlling Items of Work; or

b) The Design-Build Firm must make major repairs to Work damaged by weather, provided that the damage is not attributable to the Design-Build Firm's failure to perform or neglect; and provided that the Design-Build Firm was unable to work at least fifty percent (50%) of the scheduled workday on pre-determined Controlling Items of Work.

No additional compensation will be made for Delays caused by the effects of inclement weather. No Contract Time extension will be granted for days not included in the approved Project Schedule as Working Days.

8-20.3.2 Delivery of Materials:

GMX will consider the delays in delivery of Materials or component Equipment that affect progress on a Controlling Item of Work as a basis for granting a time extension if such delays are beyond the control of the Design-Build Firm. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Design-Build Firm shall furnish substantiating letters from a representative number of manufacturers of such Materials or Equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of Materials or component equipment.

GMX will not consider requests for time extension due to delay in the delivery of custom manufactured Equipment such as traffic signal Equipment, highway lighting Equipment, etc., unless the Design-Build Firm furnishes documentation that the Design-Build Firm placed the order for such Equipment in a timely manner, the Delay was caused by factors beyond the manufacturer's control, and the lack of such Equipment caused a delay in progress of a Controlling Item of Work. No additional compensation will be paid for delay caused by delivery of custom manufactured Equipment.

8-20.3.3 Utility Relocation:

GMX will consider the effect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following conditions exist:

a) Utility Work detailed in the Contract Document was not accomplished in accordance with the utility relocation schedule for reasons outside of the control of the Design-Build Firm; and

b) Utility Work affected completion of Controlling Items of Work; and

c) The Design-Build Firm took all reasonable measures to minimize the effect of utility Work on Work progress, including cooperative scheduling of the Design-Build Firm's operations with the scheduled utility Work at the pre-design/construction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Design-Build Firm's operations to avoid Delay.

8-20.3.4 Time Extension Requests:

As a condition precedent to the Design-Build Firm being granted an extension of Contract Time, the Design-Build Firm must submit to the Engineer:

a) A written preliminary request for extension of Contract Time within five (5) Calendar Days after the commencement of a Delay to a Controlling Item of Work. If the Design-Build Firm fails to timely submit a preliminary request for an extension of Contract Time, the Design-Build Firm fully, completely, absolutely and irrevocably waives any entitlement to an extension of Contract Time for that Delay. Each preliminary request for an extension of Contract Time shall include at a minimum the commencement date of the Delay, the cause of the Delay, and the Controlling Item of Work affected by the Delay; and

b) A written request for a Contract Time extension within thirty (30) Calendar Days after the completion of the Work impacted by the Delay to the Controlling Item of Work identified in the preliminary request for extension of Contract Time. Each request for a Contract Time extension shall include at a minimum all documentation that the Design-Build Firm wishes GMX to consider related to the Delay, and the exact number of Calendar Days requested to be added to Contract Time. If the Design-Build Firm contends that the Delay is compensable, the Design-Build Firm must specify that it is seeking compensable time pursuant to Sub-article 4-3.2.2, *Compensable Time due to Delays.* If the Design-Build Firm fails to timely submit this request for a Contract Time extension, the Design-Build Firm waives any entitlement to an extension of Contract Time or entitlement to additional compensation for the Delay.

The Design-Build Firm must have an approved Project Schedule, including any required update(s), as stated in Sub-article 8-1.2, *Submission of Project Schedule*, as a condition precedent to the Design-Build Firm having any right to the granting of an extension of Contract Time or any monetary compensation arising out of any delay.

The Design-Build Firm's failure to have an approved Project Schedule, including any required update(s), for the period of potential impact, or in the event the currently approved schedule and applicable updates do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact will result in any entitlement determination as to time or money for such period of potential impact being limited solely to the GMX's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, GMX's determination as to entitlement as to either time or compensability will be final, unless the Design-Build Firm can prove by clear and convincing evidence that GMX's determination was without any reasonable factual basis.

8-21 *Failure of Design-Build Firm to Maintain Satisfactory Progress.*

8-21.1 General:

Time is of the essence for the performance of the Work. The Design-Build Firm must plan, and schedule all Work related operations, and make every effort for a timely completion of the Work minimizing the impacts to the traveling public.

8-21.2 Unsatisfactory Progress:

Unsatisfactory progress will be deemed to have occurred when:

a) The Contract Time for performing the Work has expired and the Design-Build Firm has not completed the Work; or

b) The specified time or date for performing a Milestone has expired and the Design-Build Firm has not completed the Work for that Milestone; or

The percentage of Work completed falls behind the percentage of Contract Time elapsed, pursuant to the Project Schedule, by fifteen percent (15%) or more.

If the Engineer determines that unsatisfactory progress of Work has occurred, GMX reserves the right to withhold payments until the deficiency has been remedied by the Design-Build Firm.

8-21.3 Assessment for Failure to Maintain Traffic:

A fee will be assessed if the Design-Build Firm fails to re-open all lanes specified in the traffic control plans, during the times shown in the Contract Documents. This assessment will be made in the following amounts per impacted lane:

a) For the first thirty (30) minutes or portion thereof: One Thousand Dollars ($1,000).

b) For each additional thirty (30) minute period or portion thereof: an additional fee of One Thousand Five Hundred Dollars ($1500) up to three (3) hours.

c) Thereafter, an additional fee of Twenty-Five Thousand Dollars ($25,000) will be assessed, and the Design-Build Firm must stop all other Work and allocate all resources to safely open all the affected lanes for vehicular traffic.

All fees for failure to maintain traffic will be deducted from the Invoice submitted by the Design-Build Firm following the incident, will be deducted from the total Contract Amount, and are forfeited and not recoverable by the Design-Build Firm.

8-22 *Default and Termination of Contract.*

8-22.1 Determination of Default:

In case of a default by the Design-Build Firm, GMX will provide a written fourteen (14) Calendar Day notice to cure to the Design-Build Firm and the Surety via certified mail. A fourteen (14) Calendar Day notice to cure will not be provided for Sub-articles (f), (h), (i) and (l) and the Design-Build Firm will be immediately declared in default. The following acts or omissions would deem the Contractor in default if the Design-Build Firm:

a) Fails to begin the Work under the Contract as specified in the Notice to Proceed; or

b) Fails to perform the Work with sufficient resources to assure the prompt completion of the Contract as detailed in the Project Schedule; or

c) Fails to perform the Work in accordance with the Contract Documents; or

d) Fails to remove Materials or to perform anew such Work the Engineer rejects as unacceptable and unsuitable; or

e) Fails to pursue the Work or fails to resume pursuing of the Work which has been discontinued, as directed by the Engineer; or

f) Becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily; or

g) Failure to timely pay Subcontractors/Subconsultants/Suppliers, including compliance with the prompt payment provisions of the Small Business Participation Policy; or

h) Submits false statements or certifications; or

i) Provides any gift or type of unauthorized remuneration to any entity or individual providing work or services for the project; or

j) Makes an assignment of its rights under the Contract for the benefit of creditors; or

k) Fails to comply with Contract requirements regarding minimum wage payments or EEO requirements; or

l) Fails to suspend Work as directed by the Engineer; or

m) For any other cause whatsoever, fails to perform the Work in an acceptable manner; or

n) The Surety providing the Contract Bond becomes unacceptable to GMX, as required by the Contract Documents and an acceptable Surety has not been promptly substituted; or

o) Fails to provide all required insurance and to keep said insurance in force during the duration of the Contract; or

p) Fails to comply with Article 3-4, *Audit and Examination of Contract Records and Proposal Records/Escrow of Proposal Documents;* or

q) Fails to comply with Article 7-14, *Public Records*

If the Design-Build Firm, within the curative period described in the notice to cure, does not remedy the default, GMX may declare the Design-Build Firm in default and exercise its rights under the Contract, including, but not limited to, its rights under the Contract Bond. Regarding Sub-article (l) if the Design-Build Firm fails to comply with GMX's written order to suspend Work GMX will, upon written certificate from the Engineer that the Design-Build Firm has not suspended Work, have full power and authority, without violating the Contract, to take any action deemed necessary.

GMX has no liability for anticipated profits related to unfinished Work on a Contract GMX has terminated for default.

Notwithstanding any other provision of the Contract, GMX reserves the right to declare the Design-Build Firm or its affiliate in default and immediately terminate the Contract, without any prior notice to the Design-Build Firm, in the event the Design-Build Firm or its affiliate is at any time convicted of a Public Entity Crime as defined in Section 287.133, Florida Statutes.

The Design-Build Firm must comply and follow the instruction provided in the executed *Sworn Statement on Public Entity Crimes and Debarment*. The Design-Build Firm shall only be paid for any completed Work up to the date of termination. The Design-Build Firm shall be liable for any and all additional costs and expenses GMX incurs in completing the Work after such termination.

8-22.2 Termination of Contract for Convenience:

GMX in its sole discretion may terminate the Contract or a portion thereof for convenience. A written notification will be provided to the Design-Build Firm with an effective date of termination.

When the Contract, or any portion thereof, is terminated for convenience prior to completion of the Work, payment will be made for Work completed per the Schedule of Values. When Work is necessary to comply with the termination notice and cannot be compensated under a Schedule of Values, the Design-Build Firm will be compensated in accordance with the provisions set forth in Sub-article 4-3.2, *Extra Work*. No compensation of any kind or amount will be made for Work not commenced prior to the notice of termination for convenience.

Termination of the Contract, or a portion thereof, under the provisions of this Sub-article, shall not relieve the Design-Build Firm or the Surety of its responsibilities for the completed portion of the Contract or its obligation for, and concerning any just claims arising out of, the Work performed. All Design-Build Firm claims for additional compensation due to GMX's termination of the Contract for convenience, either in whole or in part, must comply with the requirements of Article 5-12, *Claims by Design-Build Firm*.

8-22.3 Completion of Work by GMX:

All costs and charges incurred by GMX because of or related to the Design-Build Firm's default shall be charged against the Design-Build Firm. If the expense of Contract completion exceeds the sum which would have been payable under the Contract, the Design-Build Firm and the Surety shall be jointly and severally liable to GMX for the excess cost of completion.

8-23 ***Liquidated Damages for Failure to Complete the Work During Contract Time.***

GMX and the Design-Build Firm recognize that time is of the essence regarding meeting Contract milestones and completion of the Work within time provided for in the Contract. Failure to meet Contract milestones or to obtain Final Acceptance pursuant to the Project Schedule will result in damage to GMX.

The Design-Build Firm shall pay to GMX as liquidated damages, and not as a penalty, the amounts established in the following Schedule of Liquidated Damages, for each and every Calendar Day that achievement of the Contract milestones or Final Acceptance exceeds the date(s) in the Project Schedule.

Table 8-23
Schedule of Liquidated Damages

Original Contract Amount	Daily Charge Per Calendar Day
$50,000 and under	$836
Over $50,000 but less than $250,000	$884
$250,000 but less than $500,000	$1,074
$500,000 but less than $2,500,000	$1,742
$2,500,000 but less than $5,000,000	$2,876
$5,000,000 but less than $10,000,000	$3,770
$10,000,000 but less than $15,000,000	$4,624
$15,000,000 but less than $20,000,000	$5,696
$20,000,000 and over	$9,788 + .005% of the amount in excess of $20 Million

GMX reserves the right to increase the Daily Charge if the Contract Amount is increased by ten percent (10%) or more as applicable based on the above Schedule of Liquidated Damages.

8-23.1 Right to Withhold Payment:
In its sole discretion, GMX reserves the right to withhold as payment of liquidated damages, any monies GMX owes to Design-Build Firm under any contract.

8-23.2 Allowing Design-Build Firm to Finish Work:
GMX's determination to allow the Design-Build Firm to continue and to finish the Work, or any part of it, after the expiration of the Contract Time shall in no way constitute a waiver on the part of GMX to assess liquidated damages under the Contract.

8-24 ***Recovery of Damages Suffered by Third Parties.***
When the Design-Build Firm fails to complete the Work within the time in the Contract Documents or within such additional time that GMX may grant, GMX may recover from the Design-Build Firm amounts which GMX pays for damages suffered by third parties, unless failure to timely complete the Work was caused by GMX's act or omission.

8-25 ***Release of Design-Build Firm's Responsibility.***
The Work will be considered completed when GMX has issued Final Acceptance for all Work and the Design-Build Firm has complied with all the requirements of the Contract. The Design-Build Firm will then be released from further obligation, except as set forth in the Contract Bond and the warranty provisions.

END OF SECTION 8

SECTION 9
MEASUREMENT AND PAYMENT

9-1 ***Measurement of Quantities.***

9-1.1 Measurement Standards:

The Engineer will measure all Work completed under the Contract in accordance with the United States Standard Measures.

9-1.2 Method of Measurements:

The Engineer will take all measurements horizontally or vertically.

9-2 ***Scope of Payments.***

9-2.1 Items Included in Payment:

The Design-Build Firm shall accept the compensation as provided for in the Contract as full payment for:

a) Furnishing all Materials and for performing all Work contemplated under the Contract;

b) All loss or damage arising out of the nature of the Work or for actions of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until Final Acceptance;

c) All other costs incurred under the provisions of the Contract; and

d) Any and all tolls incurred by the Design-Build Firm during the execution of the Work. No passes will be issued to the Design-Build Firm for free tolls under the Contract.

The Contract lump sum prices shall include all labor, Materials, Equipment, tools, and indirect costs required for their completion. Other than the provisions for pay adjustments detailed in Sections 287, 334, 337, 346, and 352 of FDOT Standard Specifications Division II. **GMX will not pay any Material price adjustment or indexing for any reason whatsoever for the Work**.

9-2.2 Invoice Certifications:

For any Invoice submitted by the Design-Build Firm for payment under the Contract, the Design Build Firm shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the Invoice is submitted in good faith, that the supportive data are accurate and complete to the Design-Build Firm's best knowledge and belief, and that the amount of the Invoice accurately reflects what the Design-Build Firm in good faith believes to be GMX's liability for payment. Such certification must be made by an officer or director of the Design-Build Firm with the authority to bind the Design-Build Firm. The Design-Build Firm also agrees to indemnify GMX for any costs and expenses, including but not limited to audit costs, attorneys' fees, and expert witness fees that GMX incurs due to any fraudulent submissions made by the Design-Build Firm.

9-2.3 Interest Provisions:

Any monies not paid when due to either party under this Contract shall not bear interest, except as may be required by Section 215.422(3)(b), Florida Statutes, as amended.

9-2.4 Deviation from Contract Documents:

If the Design-Build Firm fails to construct any portion of the Work in accordance with the Plans released for Construction or authorized dimensions, GMX, at its sole discretion, will:

a) Require the Design-Build Firm to reconstruct the non-conforming portion of the Work at no additional cost to GMX;

b) Accept the non-conforming portion of the Work without payment to the Design-Build Firm; or

c) Accept the non-conforming portion of the Work with a reduction in payment.

When GMX elects option c) above, reductions under the provisions of this Article will not be made to the Schedule of Values component unless such reduction results in a monetary reduction in excess of One Hundred Dollars ($100).

9-3 *Partial Deletion of Work.*

GMX reserves the right to cancel portions of the Work, either in Construction or engineering services, or both, by payment to the Design-Build Firm of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation or suspension of the Work by GMX. No allowance will be made for any loss of anticipated profit resulting from partial deletion of the Work.

9-4 *Partial Payment.*

9-4.1 General:

The Design-Build Firm will request payment for Work completed and accepted by the Engineer by submitting an Invoice. The Invoice shall be based on the approved Schedule of Values contained in the Contract and shall include the GMX Procurement/Contract number, the GMX Work Program number, the Invoice number, the Invoice date, the period that the Invoice represents, and the required certification.

The Design-Build Firm will receive partial payments on monthly invoices, based on the amount of Work completed in accordance with the approved Schedule of Values prepared by the Design-Build Firm and approved by the Engineer, and Extra Work, if applicable, documented through approved Work Orders and/or executed Supplemental Agreements. Payment to the Design Build Firm will be made in compliance with Chapter 218, Florida Statutes, Florida Prompt Payment Act.

The monthly payments will be made only for those quantities approved by the Engineer.

Invoices shall be submitted no later than twelve (12) o'clock Noon on the pre-established *Work Program Invoice Submittal Dates* (a copy of the current year *Work Program Invoice Submittal Dates* may be found on the GMX's website). The Design-Build Firm shall refer to the "*GMX Work Program Invoice Checklist*" to ensure completeness of the Invoice. At GMX's sole discretion, late, incomplete and/or inaccurate monthly Invoices may be rejected and/or delayed for processing. The following documents shall accompany all monthly Invoices:

a) Work Program Invoice Submittal Form

b) Invoice Tracking Form

*c) Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant**

*d) Certification of Disbursement to Subcontractors/Subconsultants/Suppliers**

e) Construction Compliance with Specifications and Plans

*These forms are not required with the submission of the first monthly Invoice.

GMX will pay the monthly Invoice amount based on the approved quantities to date less the amount retained, less Assessments for Failure to Maintain Traffic (if applicable), less Liquidated Damages (if applicable), and less payments previously made (if applicable). The amount retained shall be determined in accordance with Table 9-5.1:

Table 9-5.1: Retainage Schedule

Percentage of Project Completion	Amount Retained
0 to 100%	Five percent (5%) of the Contract Amount earned for completed Work.

For Contracts with multiple projects, GMX will apply the above percentages separately to each project. Any sums owed to GMX by the Design-Build Firm may be deducted from the payment due on any Invoice.

9-4.2 Withholding Payment:

Should any defective Work or Materials be discovered prior to Final Acceptance, or should a reasonable doubt arise prior to Final Acceptance as to the integrity of any part of the completed Work, the Engineer will not authorize payment for such defective or questioned Work until the defect has been remedied and causes of doubt removed. GMX, at its sole discretion, may also elect to withhold payments due to non-compliance with the Small Business and Local Business provisions of the Specifications per Sub-articles 7-11.5 and 7-12.5, respectively. GMX reserves the right to withhold any monies as per Article 5-11 *Final Acceptance*.

9-4.3 Release of Retainage

9-4.3.1 At Fifty Percent (50%) Completion of Work

After fifty Percent (50%) completion of the Construction services purchased pursuant to the Contract, the Design Build Firm may present to GMX a payment request for up to one-half (1/2) of the retainage held by GMX.

Fifty percent (50%) completion of the Construction services is defined as the point at which GMX has expended fifty percent (50%) of the total cost of the Work purchased as identified in the Contract together with all costs associated with existing Supplemental Agreements and other additions or modifications to the Contract.

Payment will be made to the Design – Build Firm, unless GMX has grounds for withholding the payment pursuant to Sub-articles 8-1.2.2, *Failure to Maintain an Approved Project Schedule* and 9-4.2, *Withholding Payment.*

9-4.3.1 After Final Acceptance:

After the Design-Build Firm has furnished to GMX all submittals required by the Contract, and GMX has issued Final Acceptance, the retainage may be reduced less any amount GMX elects to deduct for defective Work as provided in Sub-article 9-4.2, *Withholding Payment*.

The Design-Build Firm must submit a written request for release of retainage. GMX reserves the right to process a partial retainage release.

For Contracts with multiple projects, GMX will release the prorated retainage for each project.

9-4.4 Partial Payments for Stockpiled Materials:

9-4.4.1 General:

Partial payments will be allowed for Materials stockpiled in locations approved by the Engineer. The Design-Build Firm shall furnish GMX with copies of third party's certified invoices to document the value of the Materials received. The following conditions shall apply to all payments for stockpiled Materials:

a) There must be reasonable assurance that the stockpiled Material will be incorporated into the Work on which partial payment is made.

b) Only properly documented delivery charges will be included in partial payments.

c) Partial payments will not be made for Materials which were stockpiled prior to award of the Contract.

d) In no case will partial payments for Materials (including partial payments for delivery of Materials) exceed seventy-five percent (75%) of the component of the Schedule of Values in which the Material is to be incorporated, except for structural steel and precast items.

e) The stockpiled material must be approved by the Engineer.

9-4.4.2 Partial Payment Amounts:

The following partial payment restrictions apply:

a) Partial payments less than Five Thousand Dollars ($5,000) for anyone (1) month will not be processed.

b) Partial payments for any item listed in the Schedule of Values with an extended total less than Five Thousand Dollars ($5,000) will not be processed.

c) Partial payments for structural steel and precast items will not exceed eighty-five percent (85%) of the cost of the item listed in the Schedule of Values.

d) Partial payment will not be made for aggregate and base course material received after paving or base Construction operations begin.

9-4.4.3 Off Site Storage:

At GMX sole discretion, partial payments for Materials stockpiled in approved in-state and out-of-state locations may be allowed if the conditions of Sub-article 9-4.4.1, *General*, and the following conditions are met:

a) Furnish GMX a materials bond stating the Supplier guarantees to furnish the material described in the Contract to the Design-Build Firm and GMX. Under this bond, the Obligor shall be the material Supplier and the Obligees shall be the Design-Build Firm and the Greater Miami Expressway Agency. The materials bond shall be in the full dollar amount of the Materials cost.

b) The following clauses must be added to the Contract between the Design-Build Firm and the Supplier of the stockpiled Materials:

"Notwithstanding anything to the contrary, <supplier> will be liable to the Design-Build Firm and the Greater Miami Expressway Agency should <supplier> default in the performance of this agreement."

"Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Design-Build Firm's obligation to furnish the Materials described in this agreement to the Greater Miami Expressway Agency."

c) The agreement between the Design-Build Firm and the Supplier of the stockpiled Materials must include provisions that the Supplier will store the Materials and that such Materials are the property of the Design-Build Firm.

9-4.4.4 Retainage for Partial Payments of Stockpiled Materials:
The standard retainage as described in Sub-article 9-4.4.1, *General*, will be withheld from all of the partial payments hereinabove described.

9-4.5 Certification of Payment for Subcontracted Work:
Prior to receipt of any payment, the Design-Build Firm shall certify that all Subcontractors/Subconsultants/Suppliers having an interest in the Contract have received their pro rata share of previous payments from the Design-Build Firm for all Work completed and Materials furnished to date, unless the Design-Build Firm demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both GMX and the affected Subcontractor/Subconsultant/Supplier. This certification shall be in the GMX *Certification of Disbursement to Subcontractors/Subconsultants/Suppliers* form. All other undisputed amounts due to Subcontractors/Subconsultants/Suppliers shall be promptly paid by the Design-Build Firm.

During the course of the Work, at its absolute discretion, GMX may require the Design-Build Firm to provide releases for payment from all Subcontractors/Subconsultants/Suppliers that have completed Work and/or furnished Materials to date pursuant to the latest submitted *Invoice Tracking Form*.

Payments to Small Businesses shall comply with the requirements of the Small Business Participation Policy.

9-5 *Record (As-Built) Drawings.*
During the progress of the Work, the Design-Build Firm shall maintain or cause to be maintained records of the exact locations, as installed, of all Materials which were not installed exactly as shown on the RFC Plans. This information shall be recorded on the Design-Build Firm's field sets of Plans along with revisions that have been authorized by Supplemental Agreement, if any. The Design-Build Firm shall make its field sets of drawings available for review by the Engineer on a monthly basis. Any missing and/or inaccurate information identified by the Engineer shall be verified/incorporated to the as-built set of plans by the Design-Build Firm before the following review.

Upon completion of the Work, the Design-Build Firm shall prepare a set of record drawings, which shall be noted "As-Built", and shall bear the date and name of the Subcontractors (if applicable) that performed the Work. Where the Work is installed exactly as shown on the Plans, the drawings shall not be revised/modified.

The Design-Build Firm shall review the completed record drawings and ascertain that all data furnished on the drawings are accurate and truly represent the Work as actually installed. The electronic files, including the "As-Built" information, shall be submitted to GMX when completed, together with two sets of black line prints of the record drawings as a requirement for Final Acceptance.

9-6 ***Disputed Amounts due the Design-Build Firm.***

GMX reserves the right to withhold payment from the final Invoice any disputed amounts between the Design-Build Firm and GMX. Release of all other amounts due shall be made as provided in Article 9-8, *Final Payment*.

In addition, GMX shall withhold payment equal to the amounts due for which any Subcontractor/Subconsultant/ Supplier has filed a notice of non-payment. The Design-Build Firm must provide a waiver and release from each Subcontractor/Subconsultant/Supplier or shall demonstrate to GMX's sole satisfaction good cause for not making the required payment to the Subcontractor/Subconsultants/Supplier.

9-7 ***Warranty of Title.***

The Design-Build Firm warrants and guarantees that title to all components of the Work paid by GMX and covered by any Invoice, whether incorporated in the Work or not, will pass to GMX no later than at the time of payment, free and clear of all liens.

9-8 ***Final Payment.***

When the Contract Work has been completed by the Design-Build Firm and the Final Inspection and Final Acceptance have been given by GMX, an offer of final payment showing the value of the Work will be prepared by GMX as soon as the necessary measurements and computations can be made. All prior Invoices and payments will be subject to correction in the final payment. Provided that the requirements of a) through c) of this Article have been met, the amount of the final pay estimate, less any sums that may have been deducted or retained under the provisions of the Contract will be paid to the Design-Build Firm as soon as practicable after Final Acceptance of the Work and pursuant to Chapter 218, Florida Statutes, Florida Prompt Payment Act.

a) The Design-Build Firm has submitted written acceptance of the balance due, as determined by GMX, as full settlement of the Design-Build Firm's account under the Contract and of all claims in connection therewith.

1) The Design-Build Firm shall have the option of accepting the balance due with the stipulation that acceptance of such payment will not constitute a waiver of pending claims pursuant to Sub-article 5-12.5, *Action on Claim*. In such case the Design-Build Firm shall specifically identify the claim filed and still pending settlement. No payments will be made under this option without the Design-Build Firm's qualified acceptance letter and required backup documentation.

2) By exercising this option, the Design-Build Firm agrees that any pending or future suit must be limited to the particulars in any unresolved claims filed pursuant to Article 5-12, *Claims by Design-Build Firm*, and must be filed within three hundred and sixty-five (365) Calendar Days from the date of Final Acceptance. Failure by the Design-Build Firm to file suit within this period shall constitute full acceptance without qualification.

b) The Design-Build Firm has furnished a sworn affidavit to the effect that all bills are paid and no suits are pending (other than those exceptions listed if any) in connection with the Contract and that the Design-Build Firm has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of GMX or its designee. Any tort liability exceptions, if any, shall be accompanied by evidence of adequate insurance as required in Sub-article 7-3.2, *Insurance*.

c) The Surety on the Contract Bond has consented (by completion of its portion of the affidavit and surety release) to final payment to the Design-Build Firm and agrees that the making of such payment shall not relieve the Surety of any of its obligations under the Contract Bond.

9-9 ***Application for Final Payment.***

The Design-Build Firm's application for final payment shall be accompanied by the following:

a) *Work Program Invoice Submittal* form

b) *Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant* form

c) Final *Invoice Tracking Form*

d) Final Schedule of Values

e) Consent of Surety to make Final Payment and Release, Signed and Sealed

f) Power of Attorney from Surety for Release of Final Payment, Signed, Sealed, and dated the same as Consent of Surety

g) *Contractor's/Consultant's Final Release and Affidavit* form

h) Release of Lien from each Subcontractor/Subconsultant/Supplier

i) List of Subcontractors/Subconsultants/Suppliers contact information, with telephone numbers, email, and location addresses

j) *Construction Compliance with Specifications and Plans* form

k) Other special warranties as required by the Specifications, in the name of GMX.

9-10 ***Waiver of Claims.***

The making of an offer for final payment by GMX and acceptance by the Design-Build Firm will constitute:

a) A waiver of all claims by GMX against Design-Build Firm, except claims arising from unsettled liens, from defective Work appearing after Final Acceptance, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; and

b) A waiver of all claims by Design-Build Firm against GMX, other than those previously made in writing pursuant to Article 5-12, *Claims by Design-Build Firm*, and remaining unsettled.

9-11 ***Offsetting Payments.***

If payment of any amount due GMX after settlement, or final adjudication of any claim is not made by the Design-Build Firm within sixty (60) Calendar Days, GMX may, at its sole discretion, offset such amount from payments due the Design-Build Firm for Work performed under any other contract with GMX, excluding amounts owed to Subcontractors/ Subconsultants/Suppliers. Offsetting any amount in this manner shall not be considered a breach of the Contract by GMX.

9-12 ***Warranty Bond.***

The Design-Build Firm may request that GMX release the Contract Bond in order to replace it with a Warranty Bond when the following provisions are met by the Design-Build Firm:

a) The Design-Build Firm has received final payment; and

b) The Design-Build Firm has submitted to GMX all Contract related documentation; and

c) The Design-Build Firm has provided all releases for payment from all first tier Subcontractors and Suppliers. The amounts reported in the releases must match those reported in the final *Invoice Tracking Form*; and

d) The Design-Build Firm submits a *Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant* form marked final; and

e) The Design-Build Firm has submitted to GMX an unqualified letter of acceptance; and

f) The Warranty Bond submitted complies with the requirements detailed under Sub-article 6-7.1, *Warranty.*

Failure by the Design-Build Firm to submit the request for the release of the Contract Bond with all the required documentation will result in GMX holding the Contract Bond for the duration of the warranty period detailed under Article 6-7, *Minimum Warranty Provisions*.

END OF SECTION 9