

**EXHIBIT 9**  
**OWNER DIRECT PURCHASES SUPPLEMENTARY CONDITIONS**

## **OWNER DIRECT PURCHASE PURCHASE INSTRUCTIONS**

The County has determined that this contract may be subject to certain sales tax exemptions pursuant to section 212.08(6), Fla. Stat.. This instruction sheet is intended to inform the Vendor of the requirements of the statute and the County's procedures.

1. The Contractor will compile a list of all purchases for this project that have an estimated cost over \$10,000.00.
2. The County will issue a Certificate of Entitlement to the Contractor to affirm that the tangible personal property purchased from the vendor will go into or become a part of a public work.
3. The vendor's invoice must be issued to the County, rather than to the Contractor. The County must issue the purchase order directly to the vendor.
4. The County's purchase order for the purchase must be attached to the Certificate of Entitlement. There must be a separate Certificate of Entitlement for each purchase order but copies of the Certificate are acceptable.
5. The County must make payment directly to the vendor.
6. The County assumes title to the materials from the vendor at the time of purchase or delivery by the vendor.
7. The County assumes the risk of damage or loss as of the time of purchase.
8. The County affirms that if the Florida Department of Revenue determines that the materials sold pursuant to the Certificate of Entitlement do not qualify for the exemption under Section 212.08(6), F.S., the County will be liable for any tax, penalty, and interest determined to be due.
9. Contractors, including subcontractors, who manufacture, fabricate, or furnish materials that the Contractor incorporates into public works are liable for tax in the manner provided in subsection (10) of Rule 12A-1.051, F.A.C. The contractor and subcontractors, not the governmental entity, are deemed to be the ultimate consumers of the articles of tangible personal property they manufacture, fabricate, or furnish to perform their contracts and may not accept a Certificate of Entitlement for these articles.
10. Contractors that supply raw materials such as rock, shell, fill dirt, and similar materials for incorporation into public works shall be liable for tax in the manner provided in subsection (10) of Rule 12A-1.051, F.A.C.
11. Contractors that manufacture and incorporate asphalt into public works projects are liable for tax on their costs, as provided in subsection (12) of Rule 12A-1.051, F.A.C., subject to a partial exemption, as provided in Section 212.06(1)(c), F.S.
12. Contractors that install people mover systems in public works projects are exempt from sales and use tax on their purchases of such systems or components of such systems and on any other costs incurred in the manufacture of such systems that would be taxable under the provisions of subsection (10) of Rule 12A-1.051, F.A.C.

**CERTIFICATE OF ENTITLEMENT**

The undersigned authorized representative of Bay County, Florida (hereinafter "Governmental Entity"), Florida Consumer's Certificate of Exemption Number 85-8012621727C-9, affirms that the tangible personal property purchased pursuant to Purchase Order Number \_\_\_\_\_ from \_\_\_\_\_ (Vendor) on or after \_\_\_\_\_ (date) will be incorporated into or become a part of a public facility as part of a public works contract pursuant to contract # \_\_\_\_\_ for the construction of \_\_\_\_\_

Governmental Entity affirms that the purchase of the tangible personal property contained in the attached Purchase Order meets the following exemption requirements contained in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.:

*Initial each of the following requirements.*

- \_\_\_\_ 1. The attached Purchase Order is issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works.
- \_\_\_\_ 2. The vendor's invoice will be issued directly to Governmental Entity.
- \_\_\_\_ 3. Payment of the vendor's invoice will be made directly by Governmental Entity to the vendor from public funds.
- \_\_\_\_ 4. Governmental Entity will take title to the tangible personal property from the vendor at the time of purchase or of delivery by the vendor.
- \_\_\_\_ 5. Governmental Entity assumes the risk of damage or loss at the time of purchase or delivery by the vendor.

Governmental Entity affirms that if the tangible personal property identified in the attached Purchase Order does not qualify for the exemption provided in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C., Governmental Entity will be subject to the tax, interest, and penalties due on the tangible personal property purchased. If the Florida Department of Revenue determines that the tangible personal property purchased tax-exempt by issuing this Certificate does not qualify for the exemption, Governmental Entity will be liable for any tax, penalty, and interest determined to be due.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement and the facts stated in it are true.

_____	<u>Purchasing Director</u>
Signature of Authorized Representative	Title
<u>Karen Grindle</u>	_____
Purchaser's Name (Print or Type)	Date
Federal Employer Identification Number: <u>59-6000512</u>	
Telephone Number: <u>(850) 248-8270</u>	

**You must attach a copy of the Purchase Order and the Florida Consumer's Certificate of Exemption to this Certificate of Entitlement.**

*Do not send to the Florida Department of Revenue. This Certificate of Entitlement must be retained in the vendor's and the contractor's books and records.*

## SUPPLEMENTARY CONDITIONS

### 1. OWNER DIRECT PURCHASES (ODP)

1.1 County reserves the right to require Contractor to assign some or all of its subcontracts or other agreements with material, including equipment, suppliers directly to County. Any materials purchased by County pursuant to such an assignment of a material supply subcontract or agreement shall be referred to as "Owner Direct Purchases" (ODP) and the responsibilities of both County and Contractor relating to such ODP shall be governed by the terms and conditions of these Supplementary Conditions, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist.

1.2 Material suppliers shall be selected by Contractor using competitive bidding/proposals. Supply contracts shall be awarded by the Contractor to the supplier whose bid/proposal is most advantageous to the County, price and other factors considered.

The Contractor shall include the price for all construction materials in lump sum price in his bid. Bid shall also include all **Florida State sales** and other taxes normally applicable to such material and equipment. The County may consider purchasing any item but does not expect to issue purchase orders for less than \$10,000. County - Purchasing of selected construction materials will be administered on a deductive Change Order basis.

1.3 Contractor shall provide County a list of all intended suppliers, vendors, and material men for consideration as ODP. This list shall be submitted at the same time as the preliminary schedule of values and the project CPM schedule. The Contractor shall submit price quotes from the vendors, as well as a description of the materials to be supplied, estimated quantities and prices.

1.4 Upon request from County, and in a timely manner, Contractor shall prepare Purchase Requisition Request Form which shall, in form and detail acceptable to County, specifically identify the materials which County may, in its discretion, elect to purchase directly. The Purchasing Requisition Request Form shall include:

- a. the name, address, telephone number and contact person for the material supplier
- b. manufacturer or brand, model or specification number of the item
- c. quantity needed as estimated by Contractor
- d. the price quoted by the supplier for the materials identified therein
- e. any sales tax associated with such quote
- f. delivery dates as established by Contractor
- g. any reduction in Contractor's cost for both the Payment Bond and the Performance Bond
- h. shipping, handling and insurance costs
- i. detail concerning bonds or letters of credit provided by the supplier if included in his/her proposal
- j. Special terms and conditions which have been negotiated with the supplier

relative to payment terms, discounts, rebates, warranty, credits or other terms and conditions which will revert to the Owner.

Contractor shall include copies of vendors' quotations and specifically reference any terms and conditions, which have been negotiated with the vendors concerning letters of credit, terms, discounts, or special payments.

- 1.5 After receipt of the Purchasing Requisition Request Form, County shall issue a Purchase Order for all items of material, which County chooses to purchase directly. The purchase order shall be sent to the vendor with a copy sent to the contractor. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the contractor, excluding any sales tax associated with such price. The Purchase Order shall also require the delivery of the ODP on the delivery dates provided by the Contractor in the Purchasing Requisition Request Form.
- 1.6 In conjunction with the execution of the Purchase Orders by the suppliers, Contractor shall execute and deliver to County one or more deductive Change Orders, referencing the full value of all ODP to be provided by each supplier from whom the County elected to purchase material directly, plus all sales taxes associated with such materials in Contractor's bid to County, plus any savings to Contractor in the cost of Payment and Performance Bonds associated with such ODP. To compensate the Contractor for the warranty enforcement obligation the Contractor's overhead and profit associated with ODP shall not be deducted from the contract.
- 1.7 Contractor shall be fully responsible for all matters relating to the procurement of materials furnished by and incorporated into the Project in accordance with these Supplementary Conditions including, but not limited to, assuring the correct quantities, placing the order in a timely manner, and assuring coordination of purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Contractor for the particular materials furnished. The Contractor shall provide all services required for the unloading, handling and storage of materials through installation. The County assumes the risk of loss of building material through their incorporation into the installation.
- 1.8 As ODP are delivered to the jobsite, the Contractor shall visually inspect all shipments from the suppliers, and sign off on the receiving reports for material delivered. The Contractor shall assure that each delivery of ODP is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order together with such additional information as the County may require. The Contractor will then forward the receiving report to the County Project Manager to match up with the invoice for payment.
- 1.9 The Contractor shall insure that ODP conform to the Specifications, and determine prior to incorporation into the Work if such materials are patently defective, and

whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Contractor discovers defective or non-conformities in ODP upon such visual inspection, the Contractor shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the County of the defective or nonconforming condition so that repair or replacement of those materials can occur without any undue delay or interruption to the Project. If the Contractor fails to perform such inspection and otherwise incorporates into the work such defective or nonconforming ODP, the condition of which it either knew or should have known by performance of an inspection, Contractor shall be responsible for all damages to County resulting from Contractor's incorporation of such materials into the Project, including liquidated or delay damages.

- 1.10 The Contractor shall maintain records of all ODP it incorporates into the Work from the stock of ODP in its possession. The Contractor shall account monthly to the County for any ODP delivered into the Contractor's possession, indicating portions of all such materials which have been incorporated into the work
- 1.11 The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Contractor for resolution with the appropriate supplier, vendor, or subcontractor. Additionally, ODP items shall be warranted by the Contractor as part of the Contractor's warranty. The Contractor agrees and understands that it shall undertake all warranty enforcement and other related duties of the County for its Owner Direct Purchase equipment and materials.
- 1.12 Notwithstanding the transfer of ODP by the County to the Contractor's possession, the County shall retain legal and equitable title to any and all ODP.
- 1.13 The transfer of possession of ODP from the County to the Contractor shall constitute a bailment for the mutual benefit of the County and the Contractor. The County shall be considered the bailor and the Contractor the bailee of the ODP. ODP shall be considered returned to the County for purposes of their bailment at such time as they are incorporated into the Project.
- 1.14 The County shall purchase and maintain builders risk insurance sufficient to protect against any loss of or damage to ODP. Such insurance shall cover the full value of any ODP not yet incorporated into the Project during the period between the time the County first takes title to any of such ODP and the time when the last of such is incorporated into the Project. The Contractor shall purchase and maintain builders risk, all risk, insurance based on the completed value of project, less the County's ODP values. The Contractor must name Bay County as additional insured on its policy.
- 1.15 The County shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs resulting from any delay in the delivery of, or defects in, ODP. Contractor's sole or exclusive remedy shall be an extension of the Contract Time for such reasonable time as determined by Contract Administrator.

- 1.16 Contractor shall be required to review invoices submitted by all suppliers of ODP delivered to the project sites and either concur or object to the County's issuance of payment to the suppliers, based upon Contractor's records of materials delivered to the site and any defects detected in such materials.
- 1.17 In order to arrange for the prompt payment to the supplier, prompt submittal of a copy of the applicable Purchase Order as receiving report, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the County. Upon receipt of the appropriate documentation, the County shall prepare a check drawn to the supplier based upon the data provided. This check will be released and remitted directly to the supplier. The Contractor agrees to assist the County to immediately obtain partial or final release of waivers as appropriate.
- 1.18 At the end of the project Contractor will be provided with a deductive Change Order for the costs incurred by County to provide all ODP, not covered by previous change orders. Salvage materials shall be stored or removed from the site at the County's direction, or may be turned over to the Contractor by the County for salvage or disposal at the Contractor's option.