

# **PROJECT MANUAL**

**FOR**

## **Reed Canal Park Stormwater Pond Pump**



### **PUBLIC WORKS CITY OF SOUTH DAYTONA**

**1770 Segrave Street**

**South Daytona, Florida 32119**

**Telephone: (386) 322-3080**

**Fax: (386) 322-3008**

**Bid # 22-B-007**

**February, 2022**

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**SECTION 00020****INVITATION TO BID****Reed Canal Park Stormwater Pond Pump****BID NO. 22-B-007**

Sealed proposals for furnishing all plant, labor, materials and equipment for constructing the **Reed Canal Park Stormwater Pond Pump** for the City of South Daytona, Florida, will be received at the City Manager's office, City Hall., located at 1672 S. Ridgewood Avenue, South Daytona, Florida, until **2:30 P.M. on Tuesday, March 29, 2022** at which time bids will be opened in the Council Chamber Room and publicly read aloud. Bids received after the above time and date will be returned unopened.

*DESCRIPTION OF WORK: Purchase and installation of a stationary, inline, submersible pump model MWI SEA312 or comparable rated for 3,000 gpm @ 6.5' tdh. Pump shall be operated with a "soft start" automatic start/stop controls. Details on demolition of existing infrastructure and installation are included in the plan set for this project.*

The work is to be constructed in accordance with the Drawings and Project Manual (including Specifications) which are available for inspection at the City of South Daytona's Public Works Administration Office located at 1770 Segrave Street, South Daytona, FL, 32119.

A digital copy of the complete set of bid documents may be obtained from the City of South Daytona's Public Works Administration Office, 1770 Segrave Street, South Daytona, FL, 32119. Contact can be made by telephone (386) 322-3080 and email at [bpeek@southdaytona.org](mailto:bpeek@southdaytona.org).

Any addenda to these documents will be issued via electronic mail. It is the bidder's responsibility to confirm that all addenda have been received prior to submitting a bid for this project.

Questions: Direct all questions in writing to City of South Daytona Public Works, 1770 Segrave Street, South Daytona, FL, 32119 or email at [bpeek@southdaytona.org](mailto:bpeek@southdaytona.org).

The owner reserves the right to reject any or all bids, and the award, if award is made, will be made to the lowest responsible bidder whose qualifications indicate the award will be in the best interest of the Owner and whose proposal complies with all the prescribed requirements.

Bids shall be:

1. Submitted on standard forms which will be furnished with the Project Manual,
2. Accompanied by a certified or cashiers check (drawn in favor of the City), or by a Bid Bond, in the amount of 10% of the total Bid,
3. Irrevocable after the time and date set for the opening of bids and for a period of 90 days thereafter, and
4. Submitted in sealed envelopes marked **“Bid for Reed Canal Park Stormwater Pond Pump for the City of South Daytona, Florida”**. In addition, the bidders name and address shall be shown on the outside of the sealed envelope. If submitted by mail or other delivery system, the sealed envelope shall be enclosed in a separate mailing envelope. Facsimile submittals will not be accepted.
5. Bids should be mailed to the Office of the City Manager, Attention: James L. Gillis, Jr., Post Office Box 214960, South Daytona, Florida 32121 or hand delivered to the Office of the City Manager, Attention: James L. Gillis, Jr., 1672 South Ridgewood Avenue, South Daytona, Florida 32119.

The successful bidder will be required to furnish and pay for a Certificate of Insurance, a 100% Performance and Payment Bond, and meet other requirements as set forth in the specifications.

The City of South Daytona is not responsible for the U.S. Mail or private couriers regarding mail being delivered by the specified time so that a bid can be considered. Proposals by telephone, telegraph, or FAX will not be accepted.

The City of South Daytona reserves the right to waive informalities and to reject any or all bids.

CITY OF SOUTH DAYTONA

By/s James L. Gillis, Jr.  
City Manager

END OF SECTION

**SECTION 00100****INSTRUCTIONS TO BIDDERS****00101. Project Description**

The work of this project consists of furnishing all labor, materials, equipment, tools, transportation, services, incidentals and performing all work necessary to construct the

**Reed Canal Park Stormwater Pond Pump  
BID NO. 22-B-007**

All above referenced work shall be complete, in place, and ready for service in accordance with the drawings and specifications.

The location of the project is South Daytona, Florida.

**00102. Defined Terms**

Terms used in these Instructions to Bidders are defined in the General Conditions of the Construction Contract and have the meanings assigned to them in the General Conditions. The term "Successful Bidder" means the lowest, qualified, responsible Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

The Owner for this project is:

City of SOUTH DAYTONA  
P.O. Box 214960  
South Daytona, FL 32121-4960  
(386) 322-3080

The Engineer for this project is:

Brian Peek  
City of SOUTH DAYTONA  
1770 Segrave Street  
South Daytona, FL 32119  
(386) 322-3080

**00103. Copies of Bidding Documents**

Complete sets of Bidding Documents may be obtained in the manner and at the location stated in the Invitation to Bid.

Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

#### **00104. Qualifications of Bidders**

To demonstrate qualifications to perform the Work, each Bidder must submit written evidence of his (or her) ability to perform the work. Each bid must include the following:

- (a) A sworn statement of his experience in performing work of the character for which his bid is submitted; and,
- (b) A sworn statement listing any and all obligations or projects currently undertaken by the Bidder so that the Owner may adequately assess current workload; and,
- (c) A sworn statement listing the most recent projects completed by the Bidder along with associated owner contact information for reference purposes; and,
- (d) The identification and experience of the resident superintendent assigned to the project for the Bidder; and,
- (e) A sworn statement showing the equipment definitely controlled by the Bidder and available to him for performing the work; and,
- (f) A sworn statement showing his current assets and liabilities as of a date not more than ninety (90) days prior to the date of bid submission; and,
- (g) Evidence of authority to conduct business in the jurisdiction where the project is located.

#### **00105. Examination of Contract Documents and Site**

Before submitting a Bid, each Bidder must (a) examine the Contract Documents thoroughly, (b) visit the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate Bidder's observations with the Contract Documents.

**Whenever such information concerning subsurface materials or conditions is given on the drawings, it is understood that Bidders should take into account the possibility that conditions affecting the cost or quantities of the work to be done may differ from those indicated. Before submitting his Bid each Bidder will, at his own expense, make such additional investigations and tests as the Bidder may deem necessary to determine his Bid for performance of the Work in accordance with the time, price and other terms and conditions of the Contract Documents.**

On request Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his Bid. Bidders making such investigations shall return site to original condition and shall pay for any damages resulting therefrom.

The lands upon which the Work is to be performed, rights-of-way for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Supplementary Conditions, General Requirements, or Drawings.

The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement and that the Contract Documents are sufficient in Scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

#### **00106. Approximate Estimate of Quantities**

The Bidder's attention is directed to the fact that in contracts based on unit prices the estimate of quantities of work to be done and materials to be furnished under these specifications, as shown on the Proposal Form and in the Contract, is approximate and is given only as a basis of calculation upon which to determine the lowest qualified Bidder. The Owner does not assume any responsibility when the quantities used during the course of the project are over or under those quantities listed in the bid, nor shall the Contractor plead misunderstanding or deception because of such an estimate of quantities, or of the character of the work or location, or other conditions pertaining thereto.

The Owner reserves the right to increase or diminish any or all of the above mentioned quantities of work or to omit any of them, as it may deem necessary, and such increase or decrease of the quantities given for any of the items shall not be considered as sufficient grounds for granting an increase in the unit prices bid.

#### **00107. Interpretations**

All questions about the meaning or intent of the Contract Documents shall be submitted to Engineer in writing. Replies will be issued by Addenda mailed, delivered or by facsimile to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than seven (7) working days prior to the date for opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

#### **00108. Scope of Work**

Unless otherwise provided in the Construction Specifications or the Proposal, it is the intent of the Contract Documents to prescribe a complete project which the Bidder proposes to construct, by furnishing all labor, materials, equipment, tools, necessary utilities and other facilities, and performing all work necessary to incidental to such construction, in full compliance with the Drawings, Specifications, Proposal, and Contract, and any special requirements contained therein or supplements attached thereto.

Should any construction or condition be anticipated which is not covered by these Specifications, the special requirements thereof will be stated in the Proposal, and any such special requirements shall be considered a part of these specifications as though they were fully contained herein. If any special requirements stated in the Proposal conflicts with any of the provisions of these Specifications, the former shall govern.

### **00109. Submission of Bids**

In preparing the Bid, all forms listed in Section 00300 shall be submitted and properly executed in ink. The failure to submit all the required forms listed will constitute an incomplete bid and therefore shall not be considered.

Bid Forms must be completed in ink or by typewriter. All blank spaces must be filled in. Where indicated on the Bid Form, the Bid price of each item on the form must be stated in words and numerals; in case of a conflict, words will take precedence.

The estimate of the various quantities of work applicable to unit price items as shown on the Bid Form is approximate and is intended solely to provide the basis of comparison upon which the award of contract is made. Final payment will be made on the basis of the actual completed quantities of each item.

Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

Bids by a Joint Venture must be executed by all individuals, Partners, or Corporations interested in the Joint Venture in the same manner that bids by these separate entities are required to be executed.

All names must be typed or printed below the signature.

The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

The address to which communications regarding the Bid are to be directed must be shown.

Only one bid from any individual, firm, partnership, or corporation under the same or different names, will be considered. Should it appear to the Owner that any Bidder is interested in more than one bid, all bids in which such Bidder is interested will be rejected.

Two originals of the Bid shall be submitted at the time and place indicated in the Invitation to Bid and shall be included in an opaque sealed envelope, marked:

**Reed Canal Park Stormwater Pond Pump  
BID NO. 22-B-007**

The Owner is not responsible for the U.S. Mail or private couriers regarding mail being delivered by the specified time so that a bid can be considered. Proposals by telephone, telegraph or FAX will not be accepted.



#### **00109. Bid Security**

Each proposal shall be accompanied by a Bid Security made payable to Owner, in the amount stated in the Invitation to Bid, and in the form of a certified or cashier's check or a Bid Bond issued by a Surety.

The Bid Security of the successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required Contract Security and insurance certificates, whereupon it will be returned; if the successful Bidder fails to execute and deliver the Agreement and furnish the required Contract Security and insurance certificates within ten (10) days of the Notice of Award, Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited as liquidated damages. The Bid Security of any Bidder whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the first day after the expiration of the period that Bids are specified to remain open in the Invitation to Bid.

#### **00110. Contract Time**

The number of consecutive calendar days, including rain days and holidays, within which, or the date by which, the Work is to be completed (the Contract Time) is set forth in the Bid Form and will be included in the Agreement.

#### **00111. Liquidated Damages**

Provisions for liquidated damages are set forth in the Bid Form and Agreement.

#### **00112. Davis-Bacon Act**

A portion of this project is being assisted by the United States Federal Government as reimbursement by the Federal Emergency Management Agency (FEMA). The successful Bidder must meet the requirements set forth in the Federal Labor Standards Provisions. In addition, the successful Bidder must meet or exceed the minimum hourly wages as set forth in the Davis – Bacon Act.

#### **00112. Subcontractors**

The Bidder is required to list in his bid all subcontractors proposed for completion of the work. When requested, an experience statement, pertinent information as to similar projects satisfactorily completed and other evidence of qualifications for each listed subcontractor shall be submitted within 7 days after the bid. If the Owner after due investigation has reasonable objection to any proposed subcontractor, Owner may before giving the Notice of Award request the apparent low bidder to submit an acceptable substitute without an increase in his bid price. If the apparent Successful Bidder declines to make any such substitution, the contract shall not be awarded to such Bidder, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Security. Any Subcontractor so listed and to whom Owner does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner.

Subcontractors listed in the Bid cannot be changed during the course of the work without written consent from the Owner. Failure to receive Owner's consent shall not constitute grounds to increase the cost of any bid item.

#### **00113. Material and Equipment List (Manufacturers)**

If the Supplementary Conditions, Bid Form and/or Specifications require the identity of certain material and equipment manufacturers be submitted to the Owner with the bid, the bidder shall list in his bid all material and equipment manufacturers proposed for those portions of the work for which such identification is so required. Such list shall be supplemented by material and equipment descriptions for all listed items selected. Supplemental information shall be submitted with the bid unless it has been pre-filed with the Engineer. In this latter case, the bid shall state that the information has been pre-filed. If the Bidder inserts a name of a manufacturer not on the list in individual sections, the Bid shall be deemed "non-responsive". A non-responsive Bid will not be read or accepted. Lack of objection by the Owner to a material or equipment manufacturer at this time does not relieve the Contractor from the responsibility for such material or equipment complying with the specifications, or with submittals in accordance with Section 01300, before incorporating said material and/or equipment into the Work.

#### **00115. Modification and Withdrawal of Bids**

All Bidders specifically waive any right to withdraw or modify a bid after it has been submitted to the Owner.

#### **00116. Opening of Bids**

Bids will be opened publicly and read aloud and an abstract of the amounts of the base Bids and major alternates (if any) will be made available after the opening of Bids.

#### **00117. Bids to Remain Open**

All Bids shall remain open for the period of time that bids are specified to remain open in the Invitation to Bid after the day of the Bid opening, but Owner may, in his sole discretion, release any Bid and return the Bid Security prior to that date.

#### **00118. Award of Contract**

The Owner reserves the right to reject any and all Bids, and the award, if award is made, will be made to the lowest responsible bidder whose qualifications indicate the award will be in the best interest of the Owner and whose Bid complies with all the prescribed requirements.

The Owner reserves the right to negotiate with the lowest responsible Bidder by modifying the scope of work by deleting and reducing bid items to meet budget requirements.

Discrepancies between words and figures listed in the Bid will be resolved in favor of words. Discrepancies between the indicated product of quantities and unit prices listed in the Bid and the correct product thereof will be resolved in favor of the correct product. Discrepancies

between the indicated sum of any column of figures listed in the Bid and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Bids, Owner shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and alternates and unit prices if requested in the Bid forms. It is Owner's intent to accept alternates (if any are accepted) in the order in which they are listed in the Bid form but Owner may accept them in any order or combination.

The Owner may consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items or material or equipment) proposed for those portions of the Work as to which the identity of Subcontractors and other persons and organizations must be submitted as provided in the Supplementary Conditions. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by Owner.

Irregular bids may be rejected. Irregular bids are defined as those containing serious omissions, unauthorized alternative bids, incomplete bids or unbalanced bids. Failure to provide all of the information required to accompany the bid will be considered an incomplete submission and not considered.

The Owner may conduct such investigations as he deems necessary to assist in the evaluation of any Bid. The Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.

If a contract is to be awarded it will be awarded to the lowest responsible Bidder whose evaluation by Owner indicates that the award will be in the best interests of the Project.

If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Invitation to Bid. The Successful Bidder must start the work within 30 calendar days of receiving the Notice of Award or the contract will be considered annulled and the bid security forfeited as liquidated damages.

#### **00119. Performance and Payment Bonds**

With the execution and delivery of the Contract, the successful bidder receiving the Contract award will be required to furnish a Payment and Performance Bond covering faithful and satisfactory performance of the work contracted, in an amount not less than one hundred percent (100%) of the total contract price, and a Public Construction Bond in an amount not less than one hundred percent (100%) of the Contract amount, covering payment in full for all services rendered, materials furnished and labor supplied or performed. The same Surety must execute both bonds each of which shall be in the form provided in the Contract Documents.

Should any Surety upon any Bond furnished in connection with this Contract become unacceptable or be deemed unsatisfactory to the Owner at any time, the Contractor shall upon written notice from the Owner, promptly furnish acceptable or substitute security as may be required to protect the interests of the Owner or of persons supplying services, labor and materials in the prosecution of work under the Contract. No further payment shall be deemed due or shall be made under this Contract, until the new Surety or Sureties will qualify and be accepted by the Owner.

## **00120. Indemnity and Insurance**

The Contractor shall not commence work under this Contract until he has obtained all insurance required by these Specifications and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved by the Contractor.

The Contractor shall submit certificates or other documentary evidences to the Owner for approval, covering Workmen's Compensation Insurance and Public Liability and Property Damage Insurance as well as any other insurance required by the Contract Documents. Each certificate or other documentary evidence presented shall contain therein or have contained in a rider attached thereto and made a part thereof, a clause to the effect that the insurer will notify the insured and the Owner in writing thirty (30) days prior to the cancellation of the policy. The certificate for each policy shall be executed in quintuplicate, or in as many copies as the Owner may require.

The Contractor shall be held responsible for all accidents and shall indemnify to the extent permitted by law and protect the Owner from all suits, claims and actions brought against it, and all cost or liability, including attorney's fees, to which the Owner may be put for any injury or alleged injury to the person or property of another resulting from negligence or carelessness in the performance of the work or from any improper or inferior workmanship or from inferior materials used in the work.

Should a Contractor in the performance of his/her Contract cause damage to any person, any property, or work of another Owner or other party to the damage, arrange for an amicable settlement thereon. It is agreed by all parties herein that such disputes shall not delay completion of the work, nor be cause for claim against the Owner. Work shall be continued by the party claiming damages at his expense, subject to such damages as may be obtained by due course of law.

The status of the Contractor in the work to be performed by him/her under this Contract is that of an independent Contractor and that, as such, he shall properly safeguard against any and all injury or damage to the public, to public and private property, materials and things; and that, as such, he/she alone shall be responsible for any and all damage, loss or injury to persons or property that may arise, or be incurred, in or during the conduct or progress of said work without regard to whether or not the Contractor, his/her subcontractors, agents, or employees have been negligent; and that the Contractor shall keep the Owner free, and discharge of, and from any and all responsibility for risks or casualties of every description, for any or all damage, loss or injury to persons or property arising out of the nature of the work, from the action of the elements, or from any unforeseen or unusual difficulty, the Contractor shall assume and be liable for all blame and loss of whatsoever nature by reason of neglect or violation of any federal, state, county, or local laws, regulations or ordinances; that Contractor shall indemnify and save harmless the Owner and all of its officers, agents and employees from all suits or actions at law caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the construction contract and shall, if required by the Owner, produce evidence of settlement of any such action before final payment shall be made by the Owner.

### **00121. Payment of Taxes**

The Contractor will be responsible for payment of all Excise, Sales and Use Taxes, and all other taxes required by law on all materials, tools, apparatus, equipment, fixtures, and incidentals which he purchases or uses for the purpose of fulfilling the work of this Contract, and he/she shall include all amounts required for such taxes with the item prices bid in his Proposal. No additional payment will be made to cover such taxes. Each Bidder shall thoroughly familiarize himself before submitting a Proposal, with all laws requiring the payment of taxes.

### **00121. Special Requirements**

Prohibited Interests. No official of the Owner who is authorized in such capacity, and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project shall become directly or indirectly interested, personally, in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise legislative, executive, supervisory, or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally, in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

Performance of Work by Contractor. The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the contract or any portion thereof, or of his right, title or interest therein, without written consent of the Owner. The Contractor shall perform on the site and with his own organization work equivalent to not less than 50 percent of the total dollar value of the work to be performed under this contract except that work designated hereinafter as specialty work may be performed by subcontractors and the cost of any such specialty work so performed by subcontract may be deducted from the total contract amount before computing the amount of work required to be performed by the Contractor with his own organization.

Sworn Statement on Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount, provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

END OF SECTION

**SECTION 00300****BID FORM**

BIDDER'S NAME: \_\_\_\_\_

PROJECT IDENTIFICATION: **Reed Canal Park Stormwater Pond Pump**

CONTRACT IDENTIFICATION AND NUMBER: **22-B-007**

THIS BID IS SUBMITTED TO:        **CITY OF SOUTH DAYTONA  
1672 SOUTH RIDGEWOOD AVENUE  
SOUTH DAYTONA, FLORIDA 32119**

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with the OWNER in the form included in the Contract Documents to furnish all necessary materials, equipment, machinery, tools, apparatus, transportation and labor and to complete all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.

2. BIDDER certifies that he has examined the site of the work and that from personal knowledge and experience, or that he has made sufficient test holes and/or subsurface investigations to fully satisfy self that the site is a correct and suitable one for this work and that he assumes full responsibility therefore; that he investigated the requirements to do business in the jurisdiction where the project is located, and that he is either qualified to do business or will obtain such pre-qualification prior to award of the contract; and that he has examined the Drawings and Specifications for the work and from his own experience or from professional advice that the Drawings and Specifications are sufficient for the work to be done and he has examined the other Contract Documents and all addenda relating thereto and that he has satisfied himself fully, relative to all matters and conditions with respect to the work to which this Bid pertains.

3. BIDDER accepts all of the terms and conditions of the Instructions to Bidders including, without limitation, those dealing with the disposition of Bid Security. This Bid will remain open for 90 days after the day of Bid opening. BIDDER will sign the Agreement and submit the required Performance and Payment bonds, insurance certificates and other documents required by the Contract Documents within ten (10) days after the date of OWNER's Notice of Award. BIDDER agrees to start the work within thirty (30) calendar days from the receipt of the Notice of Award.

4. The BIDDER agrees to accept as full compensation for completion of the project in full compliance with the Contract Documents, the lump sum price for the work items submitted herein with this Bid.

5. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

(a) BIDDER has examined the site and locality where the Work is to be performed, the legal requirements (federal, state and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the Work and has made such independent investigations as BIDDER deems necessary.

(b) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or a corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for himself any advantage over any other Bidder or over OWNER.

## **BID**

The undersigned offers to furnish all materials, equipment and labor for construction of "**Reed Canal Park Stormwater Pond Pump - BID NO. 22-B-007**," for the City of South Daytona, Florida, complete in every respect in strict accordance with the drawings, specifications and any future changes therein.

The LUMP SUM bid total:

\_\_\_\_\_ Dollars  
(In Words)

(In Figures) \$ \_\_\_\_\_

## **COMPLETION**

BIDDER agrees that the work will be substantially completed within **90** consecutive calendar days, including rain days and holidays, after the date when the Contract Time commences to run, and completed within **180** consecutive calendar days, including rain days and holidays, from (and including) the date when the Contract Time commences to run written on the Notice to Proceed.

BIDDER recognizes that time is of the essence to complete this Project and that OWNER will suffer financial loss if the construction milestones listed in Section 00550 are not completed within the required time or, if no construction milestones are listed, the Work is not fully complete within the time specified above. He also recognizes the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the OWNER if the construction milestone timeframes are not met or the Work is not fully complete on time.

Accordingly, instead of requiring any such proof, OWNER has determined and BIDDER agrees to accept that as liquidated damages (but not as a penalty). CONTRACTOR shall pay OWNER **Three Hundred Dollars (\$300)** for each consecutive calendar day, including rain days and holidays, that expires after each of the required construction milestone completion times listed in Section 00550 until each are completed or, if no construction milestones are listed, the time

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specified for final completion until the Work has been fully completed. All milestone completion dates, including substantial and final completion, will be determined solely by the Owner. The OWNER has the option to retain this amount from the compensation otherwise paid to the BIDDER. Should the total amount chargeable as liquidated damages exceed the amount due or payable to the CONTRACTOR or his/her Surety, then such excess shall be paid to the OWNER by the CONTRACTOR or his/her Surety.

## **SUPPLEMENTAL REQUIREMENTS**

The following documents are part of or attached to and made a condition of this Bid:

- a) Bid Form: Section 00300 including Acknowledgement of Addenda
- b) Statement of Bidder's Qualifications: Section 00320
- c) Listing of Subcontractors: Section 00330
- d) Listing of Previous Experience: Section 00331
- e) Bid Bond: Section 00410
- f) Public Entity Crimes Statement: Section 00470
- g) Anti-Collusion Statement: Section 00480
- h) Drug Free Work Place Certificate: Section 00485
- i) Required Construction Milestones: Section 00550
- j) Certificate as to Corporate Principal: Section 00620
- k) Insurance Requirements Checklist: Section 00800A, page 6

## **REQUIRED DISCLOSURE**

At its sole discretion, the City of South Daytona, Florida may reject any bidder the City finds to lack, or whose present or former executive employees, officers, directors, stockholders, partners or owners are found by the City to lack honesty, integrity, or moral responsibility. The discretion of the City may be exercised based on the City's own investigation, public records, or any other reliable sources of information. By submitting a bid, bidder recognizes and accepts that the City may reject the bid based upon the exercise of its sole discretion and bidder waives any claim it might have for damages or other relief resulting from the rejection of its bid based on these grounds.

## **ACKNOWLEDGMENT OF ADDENDA**

Addenda will be issued via email and it is the Bidder's responsibility to confirm that all addenda have been received prior to submitting a bid for the project. Acknowledgment is hereby made of the following Addenda received since issuance of Project Manual:

Addendum No. _____	Dated: _____	Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____	Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____	Addendum No. _____	Dated: _____

Attached hereto is a cashier's check on the \_\_\_\_\_ Bank of  
\_\_\_\_\_ or Bid Bond for the sum of  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_),  
made payable to \_\_\_\_\_ (Owner).

\_\_\_\_\_  
(Name of Bidder) (Affix Seal)

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title of Officer)

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Contractor's Florida License Number

The full names and residences of persons and firms interested in the foregoing bid, as principals, are as follows:

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

END OF SECTION

**SECTION 00320****STATEMENT OF BIDDERS QUALIFICATIONS**

All questions must be answered, and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The bidder may submit any additional information he desires.

- A. Name of bidder.
- B. Permanent main office address.
- C. When organized.
- D. If a corporation, where incorporated.
- E. How many years have you been engaged in the contracting business under your present firm or trade name?
- F. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
- G. General character of work performed by your company.
- H. Have you ever failed to complete any work awarded to you? If so, where and why?
- I. Have you ever defaulted on a contract? If so, where and why?
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.
- K. List your major equipment \_\_\_\_\_.
- L. Experience in construction work similar in type to this project.
- M. Background and experience of the principal members of your organization, including the officers.
- N. Credit available: \$ \_\_\_\_\_
- O. Give bank reference: \_\_\_\_\_
- P. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner?

Q. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Statement of Bidder's Qualifications.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name of Bidder

By: \_\_\_\_\_  
Name/Title

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_ being duly sworn deposes and says that he is the  
\_\_\_\_\_ of \_\_\_\_\_

and that the answers to the \_\_\_\_\_ (Organization)  
foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

END OF SECTION

## LISTING OF SUBCONTRACTORS

[illegible]

00330-1

**SECTION 00331****LISTING OF PREVIOUS EXPERIENCE**

The bidder proposes that he/she is qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. A minimum of three (3) projects must be listed below. The Owner reserves the right to check references and confirm information provided herein.

NO.	PROJECT	OWNER	DESCRIPTION / COST	REFERENCE

END OF SECTION

**SECTION 00410****BID BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_

\_\_\_\_\_  
(hereinafter called the Principal) and

\_\_\_\_\_  
(hereinafter called the Surety)

are held and firmly bound unto the City of South Daytona, Florida (hereinafter called the Owner) in the sum of

\_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents:

**WHEREAS**, the Principal contemplates submitting or has submitted a bid to the City of South Daytona, Florida, for

**Reed Canal Park Stormwater Pond Pump  
BID NO. 22-B-007**

**WHEREAS**, the Principal desires to file this bond in accordance with the law, in lieu of a certified or cashier's check otherwise required to accompany this Bid.

**NOW, THEREFORE:** the conditions of this obligation are such that if the Bid be accepted the Principal shall within ten (10) days after the receipt of notification of the acceptance thereof execute a contract in accordance with the Bid and upon the terms, conditions and unit or lump sum prices set forth therein, in the form and manner required by the Owner, and execute a sufficient and satisfactory Contract Bond payable to the Owner, in an amount not less than the total contract price, as indicated by the approximate quantities shown in the Bid, in form and with security satisfactory to the said City, then this obligation be void; otherwise to be and remain in full force and virtue in law; and the Surety shall upon the failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to the aforesaid City upon demand the amount hereof in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

**IN TESTIMONY WHEREOF**, the Principal and Surety have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By:

\_\_\_\_\_  
(Principal)

**ATTEST:**

By:

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
Seal

END OF SECTION  
00410-1

**SECTION 00470****PUBLIC ENTITY CRIMES STATEMENT**

SWORN STATEMENT UNDER SECTION 287.133(3)(a), FLORIDA STATUTES, ON  
PUBLIC ENTITY CRIMES:

This sworn statement is submitted with Bid, Proposal **or** Contract No \_\_\_\_\_ for  
\_\_\_\_\_ . This sworn statement is submitted by

\_\_\_\_\_ whose business address

Is \_\_\_\_\_ and (if applicable)

its Federal Employer Identification Number (FEIN) is \_\_\_\_\_. (If the  
entity has no FEIN, include the Social Security Number of the individual signing this sworn

statement: \_\_\_\_\_ .) My name is \_\_\_\_\_ any my

relationship to the entity named above is \_\_\_\_\_.

I understand that a "public entity crime" as defined in Paragraph 287.133(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

I understand that "convicted" or "conviction" as defined in Paragraph 287.133(i)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

I understand that an "affiliate" as defined in Paragraph **287.133(l)(a)**, Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime: or
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.



I understand that a "person" as defined in Paragraph 287.133(i)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies).

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989, AND (Please indicate which additional statement applies.)

\_\_\_\_\_ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

\_\_\_\_\_ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order).

(Signature) \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority, \_\_\_\_\_ who, after first being sworn by me, affixed his/her signature in the space provided above on this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

END OF SECTION

00470-2

<b>SECTION 00480    ANTI-COLLUSION STATEMENT</b>
--

By signing this form, the bidder agrees that this is made without any other understanding, agreement, or connection with any person, corporation, or firm submitting a proposal for the same purpose and that the proposal is in all respects fair and without collusion or fraud.

SIGN in ink in the space provided below. Unsigned bids will be considered incomplete, and will be disqualified, and rejected.

IT IS AGREED BY THE UNDERSIGNED BIDDER THAT THE SIGNING AND DELIVERY OF THE BID REPRESENTS THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FORGOING SPECIFICATIONS, CONTRACT AND PROVISIONS, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN EACH OF THE GOVERNMENTAL PARTIES.

NAME OF FIRM: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_  
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY AND STATE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

COMPLETION TIME: \_\_\_\_\_

NO proposals will be withdrawn for a period of ninety (90) days subsequent to the opening of the proposals, without the consent of the City of South Daytona.

NO BID (REASON) \_\_\_\_\_

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

END OF SECTION

## **SECTION 00485    DRUG FREE / TIE PREFERENCE STATEMENT**

In the event of a tie bid a preference is given to vendors submitting a certification with their bid/proposal certifying they have a drug-free workplace in accordance with Section 287.087, Florida Statutes. This requirement affects all public entities of the State and becomes effective January 1, 1991. The special conditions are as follow:

Identical Tie Bids - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- b. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- c. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- d. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction or, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- e. Impose a sanction on, or require the satisfaction participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- f. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

---

VENDOR'S SIGNATURE

END OF SECTION  
00485-1

**SECTION 00500****FORM OF AGREEMENT**

THIS AGREEMENT, made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_,

by and between \_\_\_\_\_

\_\_\_\_\_ party of the first part and the City of South Daytona, Florida, party of the second part.

WITNESS:

That the first party, for the consideration hereinafter fully set out hereby agrees with the second party as follows:

1. That the first party shall furnish all material and perform all the work for

**Reed Canal Park Stormwater Pond Pump**

**BID NO. 22-B-007**

in full part and complete accord with Contract Documents contained herein:

- |                            |  |
|----------------------------|--|
| a) Invitation to Bid       | g) Bid Bond  |
| b) Instructions to Bidders | h) Form of Agreement                                     |
| c) General Conditions      | i) Payment and Performance Bond                          |
| d) Specifications          | j) Certificate of Insurance                              |
| e) Drawings                | k) Insurance Requirements                                |
| f) Bid                     | l) FHWA 1273   |
|                            | m) Equal Opportunity and Copeland Anti-Kick Back Clauses |

2. That the CONTRACTOR proposes and agrees to commence work under this contract within thirty (30) consecutive calendar days, including rain days and holidays, after the date contained in the written Notice of Award and to **substantially complete** all work within **90 consecutive calendar days**, including rain days and holidays, and to **fully complete** all work within **180 consecutive calendar days**, including rain days and holidays, from (and including) the date when the Contract Time commences to run written on the Notice to Proceed. The Contractor shall not be entitled to any damages on account of hindrances or delays in construction from any cause whatsoever. This paragraph shall include but not be limited to any actions which result in delays in scheduling, substantial changes in scope of work or substantial increases in the costs of performing the work under the Contract Documents.
3. The second party hereby agrees to pay at the time and in the manner set forth in the General Conditions to the first party for the faithful performance of this Agreement, subject to additions and deductions as provided for in the General Conditions, in lawful money of the United State, the price set forth in the Proposal heretofore submitted to the City by the Contractor, a copy of said Proposal being a part of these contract documents.

4. It is mutually agreed between the parties hereto that the CONTRACTOR shall pay the OWNER **Three Hundred Dollars (\$300)** for each consecutive calendar day, including rain days and holidays, that expires after each of the required construction milestone completion times listed in Section 00550 until each are completed or, if no construction milestones are listed, the time specified for final completion until the Work has been fully completed. All milestone completion dates, including substantial and final completion, will be determined solely by the Owner. The OWNER has the option to retain this amount from the compensation otherwise paid to the BIDDER. Should the total amount chargeable as liquidated damages exceed the amount due or payable to the CONTRACTOR or his/her Surety, then such excess shall be paid to the OWNER by the CONTRACTOR or his/her Surety.
5. It is further mutually agreed between the parties hereto that if at any time after the execution of this Agreement and the surety bond hereto attached for its faithful performance, the OWNER shall deem the surety or sureties upon such bond to be unsatisfactory or, if for any reason such bond ceases to be adequate to cover the payment and performance of the work, the CONTRACTOR shall, at its own expense within ten (10) days after the receipt of notice from the OWNER to do so, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the OWNER. In such event, no further payment to the CONTRACTOR shall be deemed to be due under the Agreement until such new or additional security for the faithful performance of the work be furnished in manner and form satisfactory to the OWNER.
6. In order to induce the OWNER to enter into this Agreement, the CONTRACTOR has examined the Contract Documents thoroughly; visited the site and familiarized himself with the local conditions that would have affected cost, progress or performance of the work; familiarized himself with federal, state and local laws, ordinances, rules and regulations that affected cost, progress or performance of the work; and does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
7. The CONTRACTOR certifies that he has given the ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that the CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the ENGINEER is acceptable to the CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
8. When the work to be accomplished under this Agreement has been completed in accordance with the drawings and specifications and accepted by the OWNER, it is mutually agreed and understood that the CONTRACTOR, together with his surety, shall fully and unconditionally guarantee for a period of not less than one year from date of final completion of the work as determined by the OWNER, all materials and labor (workmanship) incorporated in this project.
9. The CONTRACTOR binds himself, his partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

10. Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the OWNER and the CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
11. All progress payments must be submitted to the Engineer in accordance with Article 14 of Section 00700 Standard General Conditions of the Construction Contract.
12. This project is being funded with federal grant funds. Any grant funds lost as a result of any Contractor action, or lack thereof, will be retained from the compensation otherwise paid to the Contractor.

**IN WITNESS WHEREOF** THE PARTIES HERETO HAVE EXECUTED THIS agreement on the day and date first above written in two (2) counterparts, each of which shall, without proof or accounting for the other counterpart, be deemed an original contract.

ATTEST:

CITY OF SOUTH DAYTONA

\_\_\_\_\_  
James L. Gillis, Jr., City Manager

By \_\_\_\_\_  
William C. Hall, Mayor

WITNESS:

CONTRACTOR

\_\_\_\_\_

By \_\_\_\_\_

TECHNICAL PROVISIONS OF  
CONTRACT APPROVED:

APPROVED BY:

\_\_\_\_\_  
Brian Peek, Public Works Director

\_\_\_\_\_  
Wade Vose, City Attorney

**Equal Opportunity Clause**

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

00500-4

- 7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Copeland "Anti-Kick Back" Act – 18 USC 874 and 40 USC 276c; 29 CFR Part 3**

The contractor and subcontractor(s) shall comply with the requirements of the Copeland "Anti-Kick Back" Act as supplemented in the U.S. Department of Labor regulations 29 CFR Part 3. The Copeland Act makes it a federal crime for anyone to require any laborer or mechanic (employed on a federally assisted project) to kickback (i.e. give up or pay back) any part of their wages. The Copeland Act requires every contractor and subcontractor to submit weekly payroll reports (certified payroll) and regulates permissible payroll deductions.

END OF SECTION

00500-5





**SECTION 00550****REQUIRED CONSTRUCTION MILESTONES**

The CONTRACTOR agrees to complete the required construction milestones listed below within the time frame specified.

Construction Milestone #1: \_\_\_\_\_  
\_\_\_\_\_

Required Milestone #1 Completion Time\*: \_\_\_\_\_

Construction Milestone #2: \_\_\_\_\_  
\_\_\_\_\_

Required Milestone #2 Completion Time\*: \_\_\_\_\_

Required Substantial Completion Time\*: **90 Days**

Required Final Completion Time\*: **180 Days**

The CONTRACTOR agrees to accept liquidated damages and pay the OWNER **Three Hundred Dollars (\$300)** for each consecutive calendar day, including rain days and holidays, that expires after each of the required construction milestone completion times listed above until each are completed or, if no construction milestones are listed, the time specified for final completion until the Work has been fully completed. All milestone completion dates, including substantial and final completion, will be determined solely by the Owner. The OWNER has the option to retain this amount from the compensation otherwise paid to the CONTRACTOR. Should the total amount chargeable as liquidated damages exceed the amount due or payable to the CONTRACTOR or his/her Surety, then such excess shall be paid to the OWNER by the CONTRACTOR or his/her Surety.

CONTRACTOR:

OWNER:

\_\_\_\_\_

City of South Daytona

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_  
(CONTRACTOR signs and submits with their Bid.)

Title: \_\_\_\_\_  
(OWNER executes and inserts into signed Contract.)

\* All completion times listed are consecutive calendar days, including rain days and holidays, that expire from (and including) the date when the Contract Time commences to run as written in the Notice to Proceed.

END OF SECTION  
00550-1

**SECTION 00620****CERTIFICATE AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of  
the corporation named as Principal in the within Bid Bond; that \_\_\_\_\_

who signed the said Bid Bond on behalf of the Principal was then of said corporation; that I  
know his signature, and his signature thereto is genuine; and that said Bid Bond was duly  
signed, sealed and attested for in behalf of said corporation by authority of its governing body.

\_\_\_\_\_  
Signature

AFFIX CORPORATE SEAL

END OF SECTION

**SECTION 00640****PAYMENT AND PERFORMANCE BOND**

Return Recorded Document to:  
Records Clerk  
1672 South Ridgewood Avenue  
South Daytona, FL 32119

Name of Project: **Reed Canal Park Stormwater Pond Pump**  
City Project No. **22-B-007**

Bond No. \_\_\_\_\_

*Space Reserved for Recording Data*

**PAYMENT AND PERFORMANCE BOND  
FOR  
PUBLIC CONSTRUCTION**

*per Section 255.05, Florida Statutes (2010)  
Guaranty for Construction of Public Improvements*

BY THIS BOND, We, \_\_\_\_\_, as Principal, and \_\_\_\_\_, a corporation, as Surety, are bound to **CITY OF SOUTH DAYTONA, FLORIDA**, a municipal corporation, herein called Owner or sometimes referred to as "City," in the sum of \_\_\_\_\_ and /100 Dollars (\$\_\_\_\_\_), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain Contract having an effective date of \_\_\_\_\_, entered into by and between the Principal and the City, hereinafter sometimes referred to as the Contract, entered into between Principal and Owner for construction of improvements reflected in the Project Manual, as prepared by Les Gillis, P.E., Florida Registration No. 58034, of the City of South Daytona, the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract Documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

**Notice of Nonpayment and Time Limitations**

Pursuant to Florida Statutes Section 255.05, as amended from time to time, a claimant, except a laborer, who is not in privity with the Principal, shall, before commencing or not later than forty-five (45) days after commencing to furnish labor, materials, or supplies for the prosecution of the Work, furnish the Principal

with a notice that he or she intends to look to this bond for protection. A claimant who is not in privity with the Principal and who has not received payment for his or her labor, materials, or supplies shall deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the Work or thereafter but not before forty-five (45) days after the first furnishing of labor, services, or materials by the claimant or, with respect to rental equipment, not later than ninety (90) days after the date that the rental equipment was last on the job site available for use. No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. Notices required or permitted under this section may be served in accordance with Section 713.18, Florida Statutes. An action, except for an action exclusively for recovery of retainage, must be instituted against the Principal or the Surety on this bond within one (1) year after the performance of the labor or completion of delivery of the materials or supplies. An action exclusively for recovery of retainage must be instituted against the Principal or the Surety within one (1) year after the performance of the labor or completion of delivery of the materials or supplies, or within ninety (90) days after receipt of final payment (or the payment estimate containing the Owner's final reconciliation of quantities if no further payment is earned and due as a result of deductive adjustments) by the Principal or Surety, whichever comes last.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

IN WITNESS WHEREOF, this performance and payment bond is executed in duplicate originals, each of which shall be deemed an original, this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Attest:	_____ (Name of Principal)
_____ (As to Corporate Principal) Secretary	By: _____
	Name/Title: _____
_____ (Witness to Principal)	_____

(Corporate Seal)

_____ (Witness to Surety)	_____ (Surety)
	By: _____
	(Attorney-In-Fact)

(Corporate Seal)

NOTE: Date of BOND must not be prior to date of Contract. If Developer/Principal is Partnership, all partners should execute BOND. All BONDS signed by an agent must be accompanied by a certified copy of the authority to act.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

**Front Page for Bond required by Section 255.05, F.S**  
**PAYMENT AND PERFORMANCE BOND**

(Public Works)

Notice and Time Limitations Must Be In Accordance  
With Section 255.05 Florida Statutes (2010)

**BOND No.** \_\_\_\_\_

**PRINCIPAL:**

Name of Developer/Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**SURETY:**

Surety Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**OWNER:**

Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

City of South Daytona, Florida, a chartered municipal corporation

1672 South Ridgewood Avenue South Daytona, FL 32119

James L. Gillis, Jr., City Manager

(386) 322-3011

**Amount: \$** \_\_\_\_\_

**City Case/Project No. 22-B-007**

**Description of Work:** Purchase and installation of a stationary, inline, submersible pump model MWI SEA312 or comparable rated for 3,000 gpm @ 6.5' tdh. Pump shall be operated with a "soft start" automatic start/stop controls. Details on demolition of existing infrastructure and installation are included in the plan set for this project.

**Project Location:** South Daytona, Florida

Front Page

All other pages are subsequent to this page regardless of any numbers that may be printed thereon.

00640-3

**Certificate for Filing in Public Records**

**PAYMENT AND PERFORMANCE BOND**

(Public Works)

In Compliance with Section 255.05(1)(a) Florida Statutes (2010)

**Bond No.** \_\_\_\_\_

The Principal, \_\_\_\_\_  
by and through its undersigned representative, does hereby certify that the attached:

**Payment and Performance Bond No.** \_\_\_\_\_,  
is a true and correct copy of the fully executed financial guarantee delivered to:

**CITY OF SOUTH DAYTONA, FLORIDA**

pursuant to Section 255.05, Florida Statutes (2010); as Owner/Holder of the subject property in trust for the public, for the public construction project known as:

Error! Reference source not found.

located in South Daytona, Volusia County, Florida, and identified by the City of South Daytona  
as Case No. \_\_\_\_\_.

**All claimants are called upon to take notice of the notice requirements and time limitations prescribed by Section 255.05(2), Florida Statutes (2010).**

\_\_\_\_\_ a Florida \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing Certificate of Filing was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as a duly  
authorized representative of \_\_\_\_\_ a Florida  
\_\_\_\_\_, the Principal named in the attached **Payment and Performance**  
**Bond No.** \_\_\_\_\_.

*Notary, please check one:*

\_\_\_\_\_ Personally known to me  
\_\_\_\_\_ Produced identification

\_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires: \_\_\_\_\_ Printed Name: \_\_\_\_\_

END OF SECTION  
00640-4

**SECTION 00645****LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, that a CORPORATION known as \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ a PARTNERSHIP known as consisting only of the following members \_\_\_\_\_ an INDIVIDUAL \_\_\_\_\_ trading as \_\_\_\_\_ of \_\_\_\_\_ in the State of \_\_\_\_\_ hereinafter called PRINCIPAL and \_\_\_\_\_ of the City of \_\_\_\_\_, State of \_\_\_\_\_ hereinafter called SURETY, are held and firmly bound unto the \_\_\_\_\_ as Obligee, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) lawful money of the United States of America, to be paid to said Obligee, or its attorney, successors or assigns, for the use of the parties hereinafter designated, to the payment of which sum well and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain Contract with said Obligee dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (hereinafter called the Contract), for the construction of **Reed Canal Park Stormwater Pond Pump, BID NO. 22-B-007**, which contract together with the documents therein described as "Contract Documents" shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, the condition of this obligation is such that if the above bonded Principal shall promptly pay or cause to be paid in full all sums of money which may be due any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the work whether or not the said materials or labor enter into and become component parts of the work or improvements contemplated, then this obligation will be void, otherwise it will remain in full force and effect.

The Principal and Surety hereby jointly and severally agree with the Obligee herein that every person, co-partnership, association or corporation who, whether as subcontractor or otherwise, has furnished material or supplied or performed labor in the prosecution of the work as above provided and who has not been paid in full therefore, may sue in assumpsit on this bond in the name of the Obligee for his, their or its use, prosecute the same to final judgment for such sum or sums as may be justly due him, then or it, and have execution thereon. Provided, however, that the Obligee shall not be liable for payment of any costs or expenses of such suit.

Provided further that no such suit shall be commenced prior to ninety (90) days from the date upon which said person, co-partnership, association or corporation furnished, supplied or performed the last of the material or labor for which the said claim is made, and every such suit shall be commenced no later than one (1) year from the date when the cause of action accrued.

The said Surety for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed there under or the Specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specification.



IN WITNESS WHEREOF the said Principal and Surety have duly executed this Bond in quintuplicate under seal the day and year first above written.

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Corporation-Contractor

WITNESS:

\_\_\_\_\_  
President AFFIX CORPORATE SEAL

\_\_\_\_\_

BY: \_\_\_\_\_  
Individual-Contractor  
(SEAL)

WITNESS:

BY: \_\_\_\_\_  
Partnership-Contractor

\_\_\_\_\_

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

(SEAL)

\_\_\_\_\_

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

(SEAL)

\_\_\_\_\_

\_\_\_\_\_  
Business Address

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Attorney in Fact

END OF SECTION

00645-2

**SECTION 00650****CERTIFICATES OF INSURANCE**

This is to certify \_\_\_\_\_ Company has issued to \_\_\_\_\_, of the City of \_\_\_\_\_, State of \_\_\_\_\_, the following policy or policies; General Liability Policy No. \_\_\_\_\_ effective \_\_\_\_\_, 20\_\_\_\_ limits \_\_\_\_\_, Automobile Liability Policy No. \_\_\_\_\_ effective on \_\_\_\_\_, 20\_\_\_\_, and expiring on \_\_\_\_\_, 20\_\_\_\_, limits \_\_\_\_\_.

**BUILDERS' RISK/INSTALLATION FLOATER**

This is to certify \_\_\_\_\_ Company has issued to \_\_\_\_\_, of the City of \_\_\_\_\_, State of \_\_\_\_\_, the following policy or policies; Builder's Risk/Installation Floater Policy No. \_\_\_\_\_, limits \_\_\_\_\_, effective on \_\_\_\_\_, 20\_\_\_\_, and expiring on \_\_\_\_\_, 20\_\_\_\_.

If at any time this coverage is to be cancelled, the undersigned will notify the insured and the City of South Daytona, Florida, Finance Department, in writing thirty (30) days prior to cancellation of the policy.

\_\_\_\_\_

(This certificate must be made by a duly authorized official of the Insurance Company carrying the risk, or a separate certificate of similar context executed on Insurance Company's Standard Form may be attached hereto.)

END OF SECTION

<b>SECTION 00660    AFFIDAVIT REGARDING WORKMEN'S COMPENSATION</b>
--

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_ being duly sworn according to law, deposes  
and says (it, he, they) ha\_\_\_\_\_ accepted the Workmen's Compensation laws of the State  
of Florida, with its supplements and amendments and has insured (its, his, their) liability there  
under in accordance with the terms of said Laws with the \_\_\_\_\_  
Company, under the terms of Policy No. \_\_\_\_\_ for a period from \_\_\_\_\_  
, 20\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_ .

WITNESS:

\_\_\_\_\_

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public (Print or Type)

My Commission Expires: \_\_\_\_\_

END OF SECTION

<b>SECTION 00665      CERTIFICATE OF INSURANCE FOR WORKMEN'S COMPENSATION</b>
---

This is to certify that \_\_\_\_\_, Company has  
issued to \_\_\_\_\_, of the City of \_\_\_\_\_, State of  
\_\_\_\_\_, the following policy or policies: Workmen's Compensation and  
Employer's Liability Policy No. \_\_\_\_\_ effective on \_\_\_\_\_, 20\_\_\_\_  
re \_\_\_\_\_, Policy No. \_\_\_\_\_ effective  
on \_\_\_\_\_, 20\_\_\_\_ and expiring on \_\_\_\_\_,  
20\_\_\_\_ re \_\_\_\_\_ limits.

If at any time this coverage is to be canceled, the undersigned will notify the insured and the  
\_\_\_\_\_ in writing thirty (30) days prior to cancellation of  
policy.

\_\_\_\_\_

(This certificate must be made by a duly authorized official of the Insurance Company carrying the risk, or a separate certificate of similar context executed on Insurance Company's Standard Form may be attached hereto.)

END OF SECTION

<b>SECTION 00670 CONTRACTOR'S STATEMENT UNDER OATH TO OWNER</b>
---

To: \_\_\_\_\_  
 \_\_\_\_\_

The undersigned, as Contractor, has heretofore, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, been awarded a Contract by you, as Owner, to furnish all the materials and labor in the construction of a project entitled:

**Reed Canal Park Stormwater Pond Pump**  
**BID NO. 22-B-007**  
**CITY OF SOUTH DAYTONA, FLORIDA**

for the Contract Price of \_\_\_\_\_ in accordance with plans and specifications therefore as prepared by the City of South Daytona, P.O. Box 214960, South Daytona, FL 32121-4960.

Said project has been completed and the Contract and Plans therefore fully complied with and all of the Contract Price has been paid by you, except the Final Payment thereon, which is now due, but is being withheld until a sworn statement is furnished, as required by \_\_\_\_\_ showing whether there are any unpaid and outstanding bills in connection with said Project.

The undersigned hereby certified, under oath, that all lienors contracting directly with or directly employed by the undersigned, on said Contract, have been paid in full, and further certifies, under oath, that there are no outstanding or unpaid bills for labor performed, or materials furnished in connection with said work or improvements.

Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Contractor

By: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
 Notary Public, State of Florida

END OF SECTION

<b>SECTION 00680    RECEIPT AND RELEASE</b>
---

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned of \_\_\_\_\_ of \_\_\_\_\_  
 was heretofore, on \_\_\_\_\_, 20\_\_\_\_, award a Contract by \_\_\_\_\_  
 for the Contract Price of \_\_\_\_\_ to furnish all the materials and labor in the  
 construction of a project entitled: **Reed Canal Park Stormwater Pond Pump, BID NO. 22-B-007**  
 in accordance with the plans and specifications therefore, as prepared by the City of South  
 Daytona and the undersigned has completed said work and fully complied with said Contract  
 and has heretofore received the sum of \$ \_\_\_\_\_ as payment thereon.

That the undersigned has this date received from \_\_\_\_\_  
 the sum of \$ \_\_\_\_\_, representing the full balance due \_\_\_\_\_,  
 as Contractor, under the terms of said Contract, and certified that said Contract has been fully  
 performed in accordance with the terms thereof, and that \_\_\_\_\_  
 has paid in full all persons furnishing labor and/or materials in connection therewith, including all  
 subcontractors and suppliers, and that there are no unpaid bills for labor performed or materials  
 furnished in connection with said work or improvements.

That the undersigned, for value received, does hereby forever release and discharge the said  
 \_\_\_\_\_ as described in the said Contract, from any and all  
 liens, claims or demands whatsoever that \_\_\_\_\_ has or  
 may have for work performed or materials furnished thereon by any subcontractor or supplier  
 and that \_\_\_\_\_ will hold harmless the \_\_\_\_\_  
 from any and all loss and liability arising or to arise by reason of any unpaid bills for labor  
 performed or materials furnished on said project in connection with said work or improvements.

IN WITNESS WHEREOF, the undersigned has hereto set \_\_\_\_\_ hand and seal  
 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witnessed by:

\_\_\_\_\_  
 CONTRACTOR

BY: \_\_\_\_\_  
 Name and Title

State of \_\_\_\_\_  
 County of \_\_\_\_\_

Before me, the undersigned authority, personally appeared \_\_\_\_\_, to me  
 well known and known to me to be the person described in and who executed the foregoing  
 instrument, and he acknowledged before me that he executed the same.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
 Notary Public, State of Florida

END OF SECTION  
 00680-1

<b>SECTION 00690    CONSENT OF SURETY FOR FINAL PAYMENT</b>
---

Project Name:           **Reed Canal Park Stormwater Pond Pump**  
                                 **BID NO. 22-B-007**

Location: \_\_\_\_\_

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_

Type of Contract: \_\_\_\_\_

Amount of Contract: \_\_\_\_\_

In accordance with the provisions of the above-named contract between the Owner and the Contractor, the following named surety: \_\_\_\_\_

on the Payment Bond of the following named Contractor: \_\_\_\_\_  
hereby approves of final payment to the Contractor, and further agrees that said final payment to the Contractor shall not relieve the Surety Company named herein of any of its obligations to the following named Owner, as set forth in said Surety company's bond: \_\_\_\_\_

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand and seal

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
(Signature of Authorized Representative)

(Affix  
Corporate Seal)

\_\_\_\_\_  
TITLE

END OF SECTION

## SECTION 00700 STANDARD GENERAL CONDITIONS

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

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*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE



These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

**\*\*\*\*AS AMENDED BY THE CITY OF SOUTH DAYTONA\*\*\*\***

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both. A demand for money or services by a third party is not a Claim.

11. *Compensable Delay* - A delay without the fault or negligence of the CONTRACTOR limited to OWNER-caused changes in the Work, suspensions of the Work, or termination for convenience by the OWNER.
12. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
13. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
14. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
15. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
16. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
17. *Correction Period* - The time during which the CONTRACTOR must correct defective Work or remove defective Work from the site and replace it with non-defective Work, all at no cost to the OWNER, pursuant to paragraph 13.07 of the General Conditions, as supplemented.
18. *Cost of the Work*—See Paragraph 11.01 for definition.
19. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
20. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in the Agreement.
22. *Excusable Delay* - A delay without the fault or negligence of the CONTRACTOR, the OWNER, or any other contractor caused by events or circumstances limited to hurricanes, tornadoes, or new sink holes. Labor disputes and shall give rise only to Inexcusable Delays.

23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
24. *Final Completion* - The date upon which final payment is due to be paid by OWNER to CONTRACTOR.
25. *Float or Slack Time* - The time available in the progress schedule during which an unexpected activity can be completed without delaying the Substantial Completion of the Work.
26. *General Requirements*—Sections of Division 1 of the Specifications.
27. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
28. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
29. *Inexcusable Delay* - Any delay caused either (i) by events or circumstances within the control of the CONTRACTOR, such as inadequate crewing, slow submittals, etc., which might have been avoided by the exercise of care, prudence, foresight, or diligence on the part of the CONTRACTOR, (ii) by weather conditions (other than hurricanes and tornadoes) or (iii) labor disputes.
30. *Initiation of Operation* - The date when the OWNER actually begins to use the entire Work for the purposes for which it was planned, designed and built, thus commences the Correction Period. The OWNER shall not be deemed to have accepted the Work until Initiation of Operation.
31. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
32. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
33. *Modification* - (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A modification may be issued after the Effective Date of the Agreement.
34. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.



35. *Non-prejudicial Delay* - Any delay impacting a portion of the Work within the available total Float or Slack Time, as that term is used in Section 01310: Progress Schedules, and not necessarily preventing completion of the Work within the Contract Time.
36. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
37. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
38. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
39. *PCBs*—Polychlorinated biphenyls.
40. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
41. *Prejudicial Delay* - Any Excusable or Compensable Delay impacting the Work and exceeding the total Float Time available in the progress schedule, thus preventing completion of the Work within the Contract Time unless the Work is accelerated.
42. *Preoperational Testing (Check-Out-Testing)* - All field inspections, installation checks, water tests, performance tests, and necessary corrections required of the CONTRACTOR as a condition or conditions to achieving Substantial Completion to demonstrate to the OWNER and ENGINEER that individual components of the Work have been properly constructed and operate in accordance with the Contract Documents for their intended purposes.
43. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
44. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
45. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

46. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
47. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
48. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
49. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
50. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
51. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
52. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
53. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
54. *Start-Up Testing (Demonstration Testing)* - A predefined trial period required as a condition to Initiation of Operation during which CONTRACTOR is to operate the entire Work (or any part thereof agreed to by the OWNER) under actual and simulated operating conditions for the purpose (i) of making such minor adjustments and changes to the Work as may be necessary for the Work to comply with the Contract Documents and (ii) of complying with the final test requirements in the Contract Documents.
55. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
56. *Substantial Completion*— The Work (or a specified part thereof) has progressed to the point where, in the opinion of the OWNER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in

accordance with the Contract Documents and that all conditions precedent to Substantial Completion have been met in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

- 57. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
- 58. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
- 59. *Supplier*—A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
- 60. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- 61. *Unit Price Work*—Work to be paid for on the basis of unit prices.
- 62. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
- 63. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. Does not conform to the Contract Documents; or
  - b. Does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. Has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment

to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### *2.01 Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### *2.02 Copies of Documents*

- A. After the Agreement has been executed, the Engineer will furnish the CONTRACTOR five (5) complete sets of Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

### *2.03 Commencement of Contract Times; Notice to Proceed*

- A. A “Notice to Proceed” may be given to the Contractor at any time after the Effective date of the Agreement. The Contract Time will commence to run on the day indicated in the Notice to Proceed. In no event will the Contract Time commence to run later than the sixtieth (60th) day after the Effective Date of the Agreement.

#### 2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

#### 2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
  - 1. A preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  - 2. A preliminary Schedule of Submittals; and
  - 3. A preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
  - 4. The submittals required in subparagraphs 1, 2 and 3 shall be as specified in Section 01310, 01340 and 01370, respectively.

#### 2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules

submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefore.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

#### **3.01 *Intent***

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.
- D. When measurements are affected by conditions already established or where items are to be fitted into construction conditions, it shall be the CONTRACTOR's responsibility to verify all such dimensions at the site and the actual job dimensions shall take precedence over scale and figure dimensions on the Drawings.
- E. The CONTRACTOR shall carefully study and compare all Drawings, Specifications and other instructions; shall test all figures on the Drawings before laying out the Work; shall notify the ENGINEER of all errors, inconsistencies, or omissions which he may discover; and obtain specific instructions before proceeding with the Work. The CONTRACTOR shall not take advantage of any apparent error or omissions which may be found in the Drawings or

Specifications, and the ENGINEER shall be entitled to make such corrections therein and interpretations thereof as may be deemed necessary for the fulfillment of their intent. The CONTRACTOR shall be responsible for all errors in construction which could have been avoided by such examination and notification and shall correct, at its own expense, all Work improperly constructed through failure to notify the ENGINEER and request specific instructions.

### 3.02 *Reference Standards*

#### A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by



Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

*B. Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. The provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

*3.04 Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  1. A Field Order;
  2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
  3. Engineer's written interpretation or clarification.

*3.05 Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
  1. Have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. Reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### 4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefore as provided in Paragraph 10.05.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

- 1. Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
- 2. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

- 1. The completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
- 2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
- 3. Any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

- 1. Is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
- 2. Is of such a nature as to require a change in the Contract Documents; or

3. Differs materially from that shown or indicated in the Contract Documents; or
4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

Then Contractor shall, within three (3) days after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. Such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefore as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. The cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. Reviewing and checking all such information and data;
  - b. Locating all Underground Facilities shown or indicated in the Contract Documents;
  - c. Coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
  - d. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such

time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefore as provided in Paragraph 10.05.

#### *4.05 Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### *4.06 Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  1. The completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. Any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby; and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefore as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 7.

- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them 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 arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them 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 arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.
- J. No claim of the CONTRACTOR under paragraphs 4.02, 4.04 and 4.06 shall be allowed unless, (1) the CONTRACTOR has given the notice required in subparagraph 4.06D, and (2) within thirty (30) days (but before final payment) after the CONTRACTOR has given written notice, the CONTRACTOR submits to the OWNER a detailed claim setting forth the CONTRACTOR's right to an increase in the Contract Price or extension of the Contract Time as provided in Articles 11 and 12 of the Standard General Conditions.

## **ARTICLE 5 – BONDS AND INSURANCE**

### ***5.01 Performance, Payment, and Other Bonds***

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or



by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

1. The following requirements shall be met by all surety companies furnishing bid, performance, payment or other type of Bonds:

a. The Surety shall be rated as "A" or better as to General Policyholders Rating and Class X or better as to Financial Category by Best's Key Rating Guide, published by Alfred M. Best Company, Inc., 75 Fulton Street, New York, New York, 10038. All Surety Companies are subject to approval and may be rejected by the OWNER without cause.

2. Limitations: Bonding limits or bonding capacity refers to the limit or amount of Bond acceptable on any one (1) risk.

a. The bonding limit of the Surety shall not exceed ten percent (10%) of the policyholder surplus (capital and surplus) as listed by the aforementioned Best's Key Rating Guide, on any one risk (penalty or amount of any one bond).

3. Requirements:

a. Policyholders surplus is required to be five (5) times the amount of any one bond.

b. The Agent countersigning the bond shall be resident in the County where the Project is located and/or other counties that are acceptable to the OWNER.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and

surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

- D. Contractor shall pay Owner all losses, damages, expenses, costs, and attorney's fees, including but not limited to any appellate proceedings, which the Owner sustains because of default by the Contractor under the contract.

#### *5.02 Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverage so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

#### *5.03 Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### *5.04 Contractor's Insurance*

- A. (In the case of a conflict between paragraph 5.04A of Section 00700 and one or more of the provisions of Section 00800A, the provisions of 00800A shall prevail.) Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth

below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
  - a. By any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
  - b. By any other person for any other reason;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from; and
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. With respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. Include at least the specific coverage and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. Include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. Remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. Include completed operations coverage:
  - a. Such insurance shall remain in effect for two years after final payment.
  - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### *5.05 Owner's Liability Insurance*

- A. This paragraph has been deleted in its entirety.

#### *5.06 Property Insurance*

- A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. Include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
  2. Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, false work and Work in transit and shall insure against at least the following perils; fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, hurricanes, flood, tornadoes, collapse, debris removal, demolition occasioned by

enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions.

3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. Cover materials and equipment in transit for incorporation in the Work or stored at the site or at another location provided that such materials and equipment are to be included in an Application for Payment.
  5. Allow for partial utilization of the Work by Owner;
  6. Include testing and startup; and
  7. Be maintained in effect until the later of the two; Initiation of Operation or Final Completion, unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued.
8. The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph 5.06 shall comply with the requirements of Section 00800A.
- B. Delete this paragraph in its entirety.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Delete this paragraph in its entirety.
- E. Delete this paragraph in its entirety.

#### *5.07 Waiver of Rights*

- A. Delete this paragraph in its entirety.

#### *5.08 Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### *5.09 Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds or insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### *5.10 Partial Utilization, Acknowledgment of Property Insurer*

- A. The CONTRACTOR shall maintain all insurance as required in Paragraph 5.06A for the Work and allow OWNER to occupy or use a portion or portions of the Work prior to Substantial Completion. CONTRACTOR shall make appropriate provisions with insurers providing the proper endorsements, if required. The

property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

## **ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES**

### *6.01 Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.
- C. The Owner reserves the right to review and approve the resident superintendent.

### *6.02 Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.
- C. Maintenance work may be performed during hours other than regular working hours. Regular working hours are defined between 8 AM and 5 PM but not more than eight (8) hours per day at 5 days per week. Requests to Work during hours other than regular working hours, hereinafter referred to as irregular hours, must be submitted to the OWNER at least seventy-two (72) hours in advance of the period proposed for such irregular working hours and shall set forth the proposed schedule for such hours to give the OWNER ample time to arrange for its personnel to be at the site of the Work.
- D. The OWNER will pay for charges of ENGINEER and construction observation/inspection performed during regular working hours. The

CONTRACTOR shall pay for all additional engineering and construction observations charges required during irregular hours which may be authorized under the provisions of paragraph 6.02.C. The rate paid to the OWNER by the CONTRACTOR for additional engineering and construction observation changes shall be in accordance with the existing Contract between the OWNER and ENGINEER. The OWNER shall have the option to retain this amount from the compensation otherwise owed to the contractor.

- E. The CONTRACTOR shall also pay for the costs of all additional engineering charges and construction observation required during the correction of defective Work. Such additional costs incurred during irregular working hours and during the correction of defective Work, shall be a subsidiary obligation of the CONTRACTOR and no extra payment shall be made by the OWNER on account of such Work. The OWNER shall have the option to retain this amount from the compensation otherwise owed to the contractor.

#### *6.03 Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### *6.04 Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
- 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.



2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 *Substitutes and “Or-Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. *“Or-Equal” Items:* If the Engineer believes an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by the Engineer as an “or-equal” item only if all of the following apply:
  - a. In the exercise of reasonable judgment Engineer determines that:
    - 1) It is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
    - 2) It will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
    - 3) It has a proven record of performance and availability of responsive service.
  - b. Contractor certifies that, if approved and incorporated into the Work:
    - 1) There will be no increase in cost to the Owner or increase in Contract Times; and
    - 2) It will conform substantially to the detailed requirements of the item named in the Contract Documents.
  - c. Owner agrees and gives written approval of such agreement.
2. *Substitute Items:*
  - a. If an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

- b. Contractor shall submit sufficient information as provided below to allow the Engineer and Owner to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by the Engineer and Owner from anyone other than Contractor.
- c. The requirements for review by the Engineer and Owner will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as the Engineer and Owner may decide is appropriate under the circumstances.
- d. Contractor shall make written application to the Engineer and Owner for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - 1) Shall certify that the proposed substitute item will:
    - a) Perform adequately the functions and achieve the results called for by the general design,
    - b) Be similar in substance to that specified, and
    - c) Be suited to the same use as that specified;
  - 2) Will state:
    - a) The extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) Whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - c) Whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
  - 3) Will identify:
    - a) All variations of the proposed substitute item from that specified, and
    - b) Available engineering, sales, maintenance, repair, and replacement services; and
  - 4) Shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction to be approved by both the Engineer and Owner. Contractor shall submit sufficient information to allow both the Engineer and Owner to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by the Engineer and Owner will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer and Owner's Evaluation:* The Engineer and Owner will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. The Engineer and Owner may require Contractor to furnish additional data about the proposed substitute item. Both the Engineer and Owner must agree as to the acceptability of the proposed substitute item or it will not be classified as such. No "or equal" or substitute will be ordered, installed or utilized until the Engineer and Owner's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." The Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record the Engineer and Owner's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not the Engineer and Owner approve a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of the Engineer and Owner for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of the Engineer and Owner for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. The CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom OWNER may have reasonable objection and shall not be required to employ as a Subcontractor, Supplier or any person or organization against whom the CONTRACTOR has reasonable objection. A Subcontractor, Supplier or other person or organization identified in the CONTRACTOR's Bid and not objected to

in writing by OWNER prior to the execution of the Agreement will be deemed acceptable to OWNER. All other Subcontractors shall be deemed to have been accepted if the OWNER delivers no written objection thereto within forty-five (45) days after CONTRACTOR's written identification of such Subcontractors.

- B. However, if the OWNER has reasonable objection (as determined by the ENGINEER) to any Subcontractor identified in the Bid or subsequently, the CONTRACTOR shall submit an acceptable substitute without entitlement to any change in Contract Price. If the OWNER demands the substitution of a Subcontractor at any time without having reasonable objection to such Subcontractor, the CONTRACTOR shall comply and shall be entitled to change in Contract Price (by appropriate Change Order or Written Amendment) for the difference in cost occasioned by such substitution. After acceptance by the OWNER, the CONTRACTOR shall make no substitution without written approval of the OWNER, which may be granted or withheld at OWNER's sole discretion. No acceptance by the OWNER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the OWNER to reject defective work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
  - 1. Shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. Shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor

or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

- H. The CONTRACTOR will be required to perform the Work as a prime contractor. The CONTRACTOR shall not sublet, sell, transfer, assign or otherwise dispose of the Work under the Agreement or any portion thereof, or his right, title or interest therein, without written consent of the OWNER. The CONTRACTOR shall perform on the site and with his own organization work equivalent to not less than 50 percent of the total dollar value of the work to be performed under the Agreement except that work hereinafter designated as specialty work may be performed by Subcontractors and the cost of any such specialty work so performed by Subcontractors may be subtracted from the total Contract Price before computing the amount of work required to be performed by the CONTRACTOR with his own organization.

#### *6.07 Patent Fees and Royalties*

- A. Contractor 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. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors 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 arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance

of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them 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 arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### *6.08 Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.
- B. The OWNER, prior to the advertisement of the Project, has applied for or has secured permits and/or licenses for the Project as described in "Location, Scope and Special Requirements."

#### *6.09 Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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 arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 10.05.

#### 6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 6.11 *Use of Site and Other Areas*

##### *A. Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them 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 arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
4. Use of OWNER's property by the CONTRACTOR for storage of materials and equipment will be negotiated.
5. Use of the OWNER's existing washrooms, lavatories, sanitary facilities or plumbing fixtures by the CONTRACTOR or any of its employees or Subcontractors will not be permitted.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 Record Documents

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

#### 6.13 Safety and Protection - *The CONTRACTOR's obligations under paragraph 6.13 of the Standard General Conditions shall continue after the date of Substantial Completion until the Initiation of Operation.*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and



3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

The Engineer is not responsible for the safety of any person on the jobsite other than the Engineer's own employees. The Contractor is responsible for construction means, methods, sequences, testing, techniques and procedures necessary for performing, superintending or coordinating all portions of the work in accordance with the contract documents and any health or safety precautions required by the contract documents and/or any regulatory agencies. The Engineer has no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Engineer does not have the authority to stop the work of any construction contractor. The Owner agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the Owner's agreement with the Contractor. The Owner agrees that the Engineer shall be entitled to indemnification from the Contractor for any loss incurred by the Engineer arising out of any claim brought by any person or personal injuries sustained on the jobsite and warrants that this intent shall be made evident in the Owner's agreement with the Contractor. The Engineer shall be made an additional insured under the Contractor's general liability insurance policy for personal injuries to any person sustained on the jobsite.

- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone

for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. The CONTRACTOR shall be completely responsible for any tanks, wet wells or similar structures that may become buoyant during the construction and modification operations due to the ground water or floods and before the structure is put into operation. If there is any possibility of buoyancy of a structure, the CONTRACTOR shall take the necessary steps to prevent its buoyancy either by increasing the structures weight, by filling it with approved material or other acceptable methods. The proposed final structures have been designed against buoyancy; however, during various construction stages, methods employed by the CONTRACTOR and other conditions which may affect the buoyancy, the CONTRACTOR shall take the necessary precautions against buoyancy. Damage to any structures due to floating or flooding shall be repaired or the structures replaced at the CONTRACTOR's expense.

#### *6.14 Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### *6.15 Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### *6.16 Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

### 6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

#### 1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

#### 2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
  - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended, and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

#### C. *Submittal Procedures:*

- 1. Before submitting each Shop Drawing or Sample, Contractor shall have:
  - a. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

- d. Determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

*D. Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.
4. Shop Drawings and other submittal data shall be reviewed by the ENGINEER for each original submittal and first resubmittal; thereafter, the CONTRACTOR shall reimburse OWNER for services rendered by ENGINEER for review time of subsequent resubmittals.

*E. Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

#### 6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

#### 6.19 *Contractor's Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. All Work not completed in accordance with the contract documents shall constitute a breach of contract on the part of the Contractor. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee. The contractor's warranty and guarantee against defective work shall not have an expiration date.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. Abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. Normal wear and tear under normal usage.
- C. Contractor warrants, without expiration, that (1) the supplies to be provided to the City pursuant to this Agreement are fit and sufficient for the purpose intended; (2) the supplies are merchantable, of good quality, and free from defects, whether patent or latent, in material or workmanship, and (3) the supplies sold to the City pursuant to this Agreement conform to the standards required by this Contract. The Contractor further warrants that the Contractor has title to the supplies provided, in that the supplies are free and clear of all liens encumbrances, and other security interests. All warranties made in this Agreement, together with service warranties and guarantees, shall run to the City and its successors and assigns.
- D. Additional Warranties – For all Work constructed in accordance with the Contract Documents and accepted by the Owner, the Contractor further expressly warrants the Work and all supplies for a period of one (1) year. This shall cover 100% of

all component failures due to defects in workmanship or repeated use. This is a minimum acceptable warranty. Warranty will be considered in bid award.

#### *6.20 Indemnification*

- A. (In the event of a conflict between this paragraph and other provisions of the Contract Documents, this paragraph shall control.) To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them 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 arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting there from but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. The Contractor agrees not to bring any claim, suite, action or other legal proceeding against the engineer and its consultants that may arise out of or in connection with the Work or this agreement. The Engineer and its consultants are intended third-party beneficiaries of this covenant not to sue, and are entitled to enforce this covenant in law or in equity.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. The preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### *6.21 Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## **ARTICLE 7 – OTHER WORK AT THE SITE**

### *7.01 Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees or through other direct contracts therefore, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - 1. Written notice thereof will be given to Contractor prior to starting any such other work; and
  - 2. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefore as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the

execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### *7.02 Coordination*

- A. The parties expressly acknowledge that Work may be done by other contractors.
  - 1. The CONTRACTOR shall cooperate with all other contractors who may be performing Work on behalf of the OWNER in the vicinity of the Work to be done under this contract, and he shall conduct his operation as to interfere to the least possible extent with the Work of such contractor;
  - 2. The CONTRACTOR shall promptly make good, at its own expense, any injury or damage that may be caused by it to other contractors, employees or subcontractors or suppliers thereof;
  - 3. Any difference or conflict which may arise between the CONTRACTOR and other contractors in regard to their respective Work shall be adjusted and determined by the OWNER; and
  - 4. If the Work is delayed because of any acts of omissions of any other contractor, the CONTRACTOR shall have no claim against the OWNER on that account.

#### *7.03 Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.



- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

## **ARTICLE 8 – OWNER'S RESPONSIBILITIES**

### *8.01 Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### *8.02 Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

### *8.03 Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### *8.04 Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

### *8.05 Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### *8.06 Insurance*

- A. Delete this paragraph in its entirety.

### *8.07 Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

#### *8.08 Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

#### *8.09 Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

#### *8.10 Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

#### *8.11 Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

#### *8.12 Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

### **ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

#### *9.01 Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

#### *9.02 Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in

accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### *9.03 Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### *9.04 Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 10.05.

#### *9.05 Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the

design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

#### *9.06 Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

#### *9.07 Determinations for Unit Price Work*

- A. ENGINEER will have authority to determine the actual quantities and classifications of items of Unit Price Work performed by CONTRACTOR, and the written decisions of ENGINEER on such matters will be final, binding on CONTRACTOR and not subject to appeal.

#### *9.08 Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims, disputes and other matters relating to requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than ten (10) days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within thirty (30) days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty (30) days after receipt of the opposing party's submittal, if any, in accordance with this

paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty (30) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty (60) days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

- B. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. No action, either at law or at equity, shall be brought in connection with any such claim, dispute or other matter later than thirty (30) days after the date on which the ENGINEER has rendered such written decision in respect thereof. Failure to bring an action within said thirty (30) day period shall result in ENGINEER's decision being final and binding upon the OWNER and the CONTRACTOR. In no event may any such action be brought after the time at which instituting such proceedings would be otherwise barred by the applicable statute of limitations.

#### *9.09 Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

#### *10.01 Authorized Changes in the Work*

- A. Without invalidating the Agreement, and without notice to any Surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders. The CONTRACTOR shall not proceed with any Change Order until the OWNER and Engineer have signed and delivered to the CONTRACTOR the written Change Order. Upon receipt of a Change Order, CONTRACTOR shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 11 or Article 12 on the basis of a claim made by either party.
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or

both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefore as provided in Paragraph 10.05.

#### 10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16.

#### 10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
  - 1. Changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  - 2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
  - 3. Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### 10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

#### 10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor to modify contract time, contract price, or both.

- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 10 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 30 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. Deny the Claim in whole or in part;
  2. Approve the Claim; or
  3. Notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within ten (10) days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### *11.01 Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by

a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:



- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
- c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor are required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

1. Contractor agrees that:

- a. The cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
- b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

*C. Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

*11.03 Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  1. The quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  2. There is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

A change in Contract Price or Contract Time can only be made through a written Change Order. Any Claim for an adjustment in the Contract Price or Contract Time shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05. Written notice stating the general nature of the Claim shall be submitted no later than ten (10) days after the start of the event giving rise to the Claim itself. Failure to submit any claim within the aforementioned timeframe constitutes an irrevocable waiver of the claim.

The Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

- a. Contractor knew of the existence of such conditions that would cause an adjustment of Contract Price or Contract Time prior to or at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
- b. The existence of such a condition(s) could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

### *12.01 Change of Contract Price*

- A. The Contract Price may only be changed by a written Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. A mutually acceptable fixed fee; or
2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  - a. For costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 10 percent;
  - b. For costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
  - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 10 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
  - d. No fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
  - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
  - f. When both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

## 12.02 *Change of Contract Times*

- A. The Contract Time may be changed only by a written Change Order. Any claim for an extension or shortening in the Contract Time shall be based on written notice delivered to the OWNER and ENGINEER within ten (10) days from detection or the beginning of any event or circumstance giving rise to an Excusable or Compensable Delay and setting forth the general nature of the cause of delay. Any Claim for an adjustment in the Contract Time shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. No forfeiture due to delay shall be made because of any Excusable and Prejudicial Delays in the completion of the entire Work or a specified part thereof. Any such delays shall not entitle the CONTRACTOR to any change in Contract Price. The sole remedy of the CONTRACTOR shall be an extension of the Contract Time pursuant to this Article and the provisions of Section 01310: Progress Schedules.
- C. No forfeiture due to delay shall be made because of any Compensable and Prejudicial Delays in the completion of the Work or a specified part thereof. Any such delays will entitle the CONTRACTOR solely to an extension of the Contract Time pursuant to this Article and the provisions of Section 01310: Construction Progress Schedules, of the General Requirements.
- D. No extensions of Contract Time or increases in Contract Price shall be granted for Non-prejudicial Delays of any type or for Inexcusable Delays, unless otherwise agreed to by the OWNER at his sole discretion.

## 12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor (excluding rain days and holidays), the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include acts or neglect by Owner.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times only. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any

claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor or for rain days and holidays. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### *13.01 Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### *13.02 Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### *13.03 Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Payment of testing and laboratory services is specified in Section 01410; Testing and Laboratory Services for inspections and tests required by the Contract Documents. CONTRACTOR shall pay for inspections, tests or approvals covered by paragraph 13.03C. Costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04B shall be paid as provided in said paragraph 13.04B.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

#### 13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay 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 arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of Work of others), and any additional expenses experienced by OWNER due to delays to other contractors, an appropriate deductive Change Order shall be issued. The CONTRACTOR shall further bear the responsibility for maintaining the schedule and will be excluded from a time extension and the recovery of delay damages due to the uncovering. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in Paragraph 10.05.
- D. If the uncovered work is not found to be defective, the Contractor shall not be entitled to any increase in Contract Price or Contract Time and should strive in the future to seek all necessary inspections on the on all pertinent work before covering.



### 13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

### 13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay 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 arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- C. CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. The CONTRACTOR shall not be entitled to an extension of Contract Time for correcting or removing defective Work.

### 13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. Repair such defective land or areas; or
  - 2. Correct such defective Work; or

3. If the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. Satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting there from.
  5. When deemed necessary by OWNER, CONTRACTOR shall furnish and install at no cost to OWNER, such temporary equipment and material necessary to maintain functionality of the Work while defective Work is being corrected or replaced.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. 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 arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
  - C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
  - D. Where defective Work (and damage to other Work resulting there from) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
  - E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.
  - F. Subject to adjustments as described in sub-paragraph 13.07G, the period during which the CONTRACTOR must correct defective Work or remove it from the site and replace it with non-defective Work, all at no cost to the OWNER (the "Correction Period"), shall be no more than one (1) year. If the date of Substantial Completion is not the same date as Initiation of Operation, such Correction Period shall commence upon Initiation of Operation, not upon the date of Substantial Completion. In such cases, the time between Substantial Completion and Initiation of Operation shall not exceed one hundred (100) days.
  - G. No later than thirty (30) days before Initiation of Operation the OWNER shall notify the CONTRACTOR in writing of the date upon which Initiation of

Operation is expected to occur, and the CONTRACTOR shall ensure that the Work is ready in its entirety by such date for use by the OWNER as contemplated in the Contract Documents.

- H. From the date of Substantial Completion until Initiation of Operation, the CONTRACTOR shall bear all risks of injury, loss, or damage to any part of the Work arising from the elements or from any other cause. The CONTRACTOR shall rebuild, repair, restore, and make good at no cost to the OWNER, all injuries, losses, or damage to any portion of the Work occasioned by any cause and shall, at no expense to the OWNER, provide suitable drainage and erect such temporary structures and take all other actions as are necessary for the protection of the Work. Suspension of the Work or the granting of an extension of the Contract Time for any cause shall not relieve the CONTRACTOR of its responsibility for the Work as herein specified. The CONTRACTOR's responsibilities under this paragraph 13.07 are in addition to, not in lieu of, all other obligations imposed by these Contract Documents.
- I. At the OWNER's sole option, the Correction Period may be extended or shortened. The Contract Price shall be adjusted accordingly as provided in paragraphs 11 and 12 of the Standard General Conditions.

#### *13.08 Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay 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 arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

#### *13.09 Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to

comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. 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 arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefore as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

### *14.01 Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### *14.02 Progress Payments*

#### *A. Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to

Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. Payment to Contractor for stored materials shall be the Owner's option and at the Owner's sole discretion.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage shall be 10% of the contract amount until the project has been deemed substantially complete whereby the retainage will be reduced to 5% of the contract amount. Once all work has been deemed fully complete by the Owner, the retainage will be released.
4. Each monthly Application for Payment shall incorporate the corresponding "Monthly Progress Status Report" prepared per the requirements of Section 01310: Progress Schedules.

*B. Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. The Work has progressed to the point indicated;
  - b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for

in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

- c. The conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
- 3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
    - a. Inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
    - b. There may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
  - 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
    - a. To supervise, direct, or control the Work, or
    - b. For the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
    - c. For Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
    - d. To make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
    - e. To determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
  - 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. The Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. The Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

- 1. Payment becomes due in accordance with Florida Statute 218.735(a) of the Florida Prompt Payment Act.

*D. Reduction in Payment:*

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work including but not limited to failing to pay subcontractors;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. There are other items entitling Owner to a set-off against the amount recommended including but not limited to the Owner's disagreement as to the quantity or quality of the work performed and the amount of liquidated damages that the Contractor has incurred; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
- 2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor, within ten (10) days of receipt of written notice of payment recommendation by Engineer, written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
- 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as

determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

4. The OWNER can withhold payment owed to the CONTRACTOR if the damages, including liquidated damages, and the cost of completion exceed the amount of money owed or remaining under the Contract. In that case, the CONTRACTOR shall continue working until the project has been completed.

#### 14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.04 *Substantial Completion*

- A. After all requirements of Section 01700: Contract Closeout have been met with respect to Substantial Completion, and when the CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, the Owner will direct the Engineer to notify Contractor in writing giving the reasons therefore.
- C. If Owner considers the Work substantially complete, the Owner shall direct the Engineer to deliver to the Contractor a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.



#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
  2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefore. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 *Final Payment*

##### *A. Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments. The Contractor must submit the Application for Final Payment and all required documentation, described below, within thirty calendar days after the Final Completion Date.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. All documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. Consent of the surety, if any, to final payment;
  - c. A list of all Claims against Owner that Contractor believes are unsettled; and
  - d. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### *B. Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for

payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

*C. Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

*14.08 Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

*14.09 Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
  1. A waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

*15.01 Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be

granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefore as provided in Paragraph 10.05.

1. Notwithstanding this paragraph 15.01A, if the OWNER stops Work under paragraph 13.05 or suspends the CONTRACTOR's services under paragraph 13.09 of the Standard General Conditions, or suspends the Work or any portion thereof because of the CONTRACTOR's failure to prosecute the Work without endangering persons and property, the CONTRACTOR shall not be entitled to an extension of Contract Time or increase in Contract Price.
- B. The OWNER may at any time, suspend the Work or any portion thereof for cause; in this case, the CONTRACTOR shall not be entitled to a change in contract time or contract price.

#### *15.02 Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
  1. Contractor's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
  1. Exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  2. Incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  3. Complete the Work as Owner may deem expedient.

- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds 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 arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

#### *15.03 Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including those fees referenced in Section 12.01.C;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, including those fees referenced in Section 12.01.C;
  - 3. 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

arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. Reasonable expenses directly attributable to termination.

- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

*15.04 Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

## **ARTICLE 16 – DISPUTE RESOLUTION**

*16.01 Methods and Procedures*

- A. The Engineer shall mediate all disputes between the Owner and the Contractor. The Engineer shall fairly and impartially consider disputes and claims placed before him or her and provide written recommendations for resolution of these disputes and claims to both the Owner and Contractor.
- B. The dispute resolution process shall be completed as follows:
1. If an event, action or order causes a dispute between the Owner and Contractor, the Owner or Contractor must file a written protest with the Engineer, within ten (10) days of the event, action or order that causes the dispute, stating clearly and in detail the basis for the objection. Failure to submit all disputes or

claims to the Engineer within the aforementioned timeframe constitutes an irrevocable waiver of the dispute or claim.

2. The Engineer will consider the written protest and make a decision on the basis of the pertinent construction contract provisions, together with the facts and circumstances involved in the dispute.

3. The Engineer may request, in writing, written evidence or documentation from either the Contractor or Owner. The Owner or Contractor must furnish the requested evidence or documentation within ten (10) days of receiving the Engineer's written request. Any evidence or documentation received after the allotted ten (10) days shall not be considered during final judgement. The Engineer shall furnish copies of the requested information to the other party when received.

4. The Engineer's decision will be furnished in writing to both parties within thirty (30) days after receipt of the written protest. In cases of extreme complexity, the Engineer may be allowed additional time to formulate a decision upon notifying both parties within the thirty (30) day time allotted.

5. The Engineer's decision will be final and conclusive on the subject unless either party, within ten (10) days of receiving the decision, institutes arbitration or legal action. Venue for any litigation, at law or equity or arbitration, shall lie exclusively in the place of Volusia County, Florida. The Engineer's decision will be admissible as evidence in any arbitration or circuit proceedings as provided by law.

6. The Engineer's costs in formulating his or her decision is to be paid by the party submitting the written protest. Both parties shall not be entitled to hold the Engineer personally liable for any decision rendered.

7. The CONTRACTOR shall carry on the Work and maintain the progress schedule during any dispute, regardless of how resolved, unless otherwise mutually agreed in writing.

8. This Contract, or any provision hereof, shall be construed and interpreted, and any litigation arising there from, shall be governed by the laws of the State of Florida.

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 *Giving Notice***

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. Delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. Delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

#### *17.02 Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### *17.03 Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

#### *17.04 Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

#### *17.05 Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

#### *17.06 Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

#### *17.07 Forms*

- A. The form of all submittals, notices, change orders and other documents permitted or required to be used or transmitted under the Contract Documents shall be determined by the ENGINEER. The forms for Notice to Proceed, Notice of Award and others, which the ENGINEER may use, are contained in the subsequent pages of these Supplementary Conditions.





<b>SECTION 00705</b>	<b>RELEASE OF CLAIMS</b>
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STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

CITY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that the sum of \_\_\_\_\_

Dollars (\$\_\_\_\_\_) set out in the accompanying Estimate Statement No. \_\_\_\_\_  
Final, the receipt of which is hereby acknowledged, is accepted as full and complete payment  
for all work done, materials furnished, and damages or claims arising under the City of South  
Daytona Contract entitled: **Reed Canal Park Stormwater Pond Pump, BID NO. 22-B-007.**

WITNESSES:

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_

\_\_\_\_\_

(SEAL)

Taken, sworn, and subscribed to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public (Print or Type)

(SEAL)

My commission Expires: \_\_\_\_\_

END OF SECTION

<b>SECTION 00800A</b>	<b>CONTRACTOR'S STANDARD INSURANCE REQUIREMENTS</b>
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**CITY OF SOUTH DAYTONA**  
**CONTRACTORS STANDARD INSURANCE REQUIREMENTS**  
**AND INDEMNIFICATION CLAUSE**

**I. INSURANCE**

- A. Prior to commencing work, the Contractor shall provide at his own cost and expense insurance to the City of SOUTH DAYTONA as required below. The insurance companies must be licensed in the State of Florida and be rated by A.M. Best as A: Class X or better. The required insurance shall be evidenced by certificates and/or policies as determined by the City. All policies and certificates of insurance shall be approved by the City prior to inception of any work.
- B. It is required that each Certificate of Insurance and/or policy must give 30 days prior written notice of cancellation, non-renewal or adverse change to the City of SOUTH DAYTONA Finance Department by registered mail, return receipt requested. All such notices shall name the Contractor and identify the contract number.
- C. The "City of SOUTH DAYTONA," wherever used, shall be defined to include the City itself, elected officials, officers, employees, volunteers, representatives, agents and any affiliates.
- D. The "Contractor," wherever used, shall be defined to include the Contractor, any subsidiaries or affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.
- E. If at any time any of the required policies shall be or shall become unsatisfactory to the City as to form or substance, or if the insurance company becomes unsatisfactory to the City, the Contractor shall, upon written notice to that effect from the City, promptly obtain a new policy, submit the policy to the City for approval, and submit the Certificate of Insurance, as previously required.

If at any time the Contractor shall fail to furnish and/or maintain the required insurance, this contract may be declared suspended, discontinued or terminated, at the discretion of the City. Failure of the Contractor to take out and/or maintain any of the required insurances shall not relieve the Contractor from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Contractor concerning indemnification.

- F. The Contractor is required to provide new Certificates of Insurance to the City at least 20 days prior to the coverage renewal dates. If any of the insurance requirements are not complied with at their renewal dates, the City may at their option, (1) withhold

payments to the Contractor until those requirements have been met or, (2) pay the renewal premium and withhold such payments from any monies due the Contractor.

- G. In the event of any claims having been filed due to any operation under this contract that are in excess of the insured amounts, the excess amount of such claim, or any portion thereof, may be withheld from payments due the Contractor until such time as the Contractor shall furnish such additional security covering such claims as may be determined by the City of SOUTH DAYTONA
- H. The Contractor shall provide the following insurance on forms no more restrictive than the latest edition of those filed by the Insurance Services Office, and name the "City of SOUTH DAYTONA" (as defined in "C" above) as an Insured to the extent of the City's interests.

## **II. LIABILITY INSURANCE**

- A. **WORKERS' COMPENSATION - STATUTORY** - in compliance with the Workers' Compensation law of the State of Florida including employers liability coverage of at least \$100,000. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Acts and Jones Act.
- B. **COMMERCIAL GENERAL LIABILITY** - with minimum limits of:
  - \$2,000,000     General Aggregate
  - \$1,000,000     Products - Completed Operations Aggregate
  - \$1,000,000     Personal and Advertisement Injury
  - \$1,000,000     Each Occurrence
  - \$ 100,000     Fire Damage
- C. **BUSINESS AUTOMOBILE LIABILITY** - with minimum limits of \$1,000,000 per occurrence combined single limit. This insurance shall include for bodily injury and property damages the following coverage's:
  - (1) Owned Automobiles
  - (2) Hired Automobiles
  - (3) Non-owned Automobiles
  - (4) Employee Non-ownership

**NOTE!** The required limits of liability for the above policies may include umbrella insurance with the umbrella policy making up the difference between the policy limits of the underlying policies and the total amount of coverage required. Such Umbrella

Liability insurance shall be a "follow form" and be at least as broad as the underlying policies.

### **III. PROPERTY INSURANCE**

When this contract includes construction of and/or additions to above-ground buildings or structures, Builder's Risk and/or Installation Floater policies must be provided as follows:

A. **BUILDER'S RISK** - "All risk" form in the amount of 100% of the completed value of such addition, building or structure to include personal property of others in the care, custody or control of the Contractor, and shall include a flat-premium endorsement.

- (1) Maximum Deductible - \$5,000 each claim
- (2) Certified Copy of the policy must be provided to the City prior to the commencement of work.
- (3) Waiver of Occupancy Clause or Warranty - to provide that the Builder's Risk coverage will continue to apply until final acceptance by the City of the building or addition, regardless of any prior occupancy.
- (4) Flood Insurance must be provided when buildings or structures are located within an identified special flood hazard area. The Flood Insurance must protect the interest of the City and be in the amount of the total insurable value of such building or structure, or the maximum amount of flood insurance coverage available under the National Flood program, whichever is the lesser.
- (5) For additions or repairs of existing buildings or structures, the "Builder's Risk Completed Form" covering the Contractor's interest in improvements, repairs, additions, or alterations to completed buildings, shall be included.
- (6) Bridges, Viaducts or similar structures - the "Bridge Builders Risk Form" - "All risk" contract with the flat-premium endorsement should be utilized.

B. **INSTALLATION FLOATER** - when the contract is for the installation of machinery and/or equipment into an existing structure, but does not contemplate construction of or addition to the structure itself.

- (1) "All Risk" coverage to include transit and installation.
- (2) Amount of Insurance - 100% of installed replacement cost value
- (3) Maximum Deductible - \$5,000 each claim.

- (4) Cessation of Insurance - Coverage is to continue in force until final acceptance by the City.
- (5) Certified Copy of the policy must be provided to the City prior to commencement of work.
- (6) Flood Insurance - must be provided when machinery or equipment are located within an identified special flood hazard area. The Flood Insurance must protect the interest of the city and be in the amount of the total insurable value of such machinery or equipment.

#### **IV. CERTIFICATE OF INSURANCE CLAUSES**

All policies and Certificates of Insurance of the Contractor shall contain the following clauses and agreements:

- A. Insurers shall have no right of recovery or subrogation against the City of SOUTH DAYTONA (as defined in "C" above), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance.
- B. The clause "other insurance" in a policy in which the City of SOUTH DAYTONA is named as an Insured shall not apply to the City of SOUTH DAYTONA.
- C. The insurance companies issuing the policies shall have no recourse against the City of SOUTH DAYTONA (as defined in "C" above) for payment of any premiums or for assessments under any policy for insurance.
- D. Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of the Contractor.
- E. Any loss payable under the Property Insurance, if any, is to be adjusted with and made payable to the City of SOUTH DAYTONA, as their interest may appear.

#### **V. CITY INDEMNIFICATION**

The following Indemnification Agreement shall be a provision of this contract and also shall be endorsed onto or attached to the insurance policy and Certificate of Insurance:

"The Contractor agrees to protect, defend and pay on behalf of, and hold the City of SOUTH DAYTONA and its elected officials, officers, employees, volunteers, representatives, agents and affiliates free and harmless from and against all claims for personal or bodily injury or death, or property damage or destruction of tangible property including loss of use thereof, losses, penalties, damages, settlements, costs, charges, professional fees or other expenses of every kind and character in connection with and arising directly or indirectly out of this agreement and/or performance thereof, unless

such claims are a result of the City of SOUTH DAYTONA'S sole negligence. This indemnification clause includes claims made by the employees and subcontractors of the Contractor against the Owner and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. Nothing contained herein shall be construed as a waiver of any immunity from or a limitation of liability the City may have under the doctrine of sovereign immunity or Chapter 768.28, Fla. Stat. This indemnification provision shall survive the completion of the project and shall be in full force and effect beyond the completion of the project or the termination of this contract."

**VI. ENGINEER INDEMNIFICATION**

"The Contractor agrees to protect, defend and pay on behalf of, and hold the ENGINEER and its officers, employees, and affiliates free and harmless from and against all claims for personal or bodily injury or death, or property damage or destruction of tangible property including loss of use thereof, losses, penalties, damages, settlements, costs, charges, professional fees or other expenses of every kind and character in connection with and arising directly or indirectly out of this agreement and/or performance thereof, unless such claims are a result of the ENGINEER'S sole negligence. This indemnification clause includes claims made by the employees and subcontractors of the Contractor against the ENGINEER. This indemnification provision shall survive the completion of the project and shall be in full force and effect beyond the completion of the project or the termination of this contract.

The Contractor shall be responsible for such requirements through the date of final acceptance of the project by the City. With regard to the Contractor's indemnification obligation for products and completed operations, the Contractor shall be responsible for a minimum period of at least one year subsequent to the City's acceptance of the product or completed operation."

- VII.** The following Insurance Requirement Checklist shall be adhered to in its entirety. The coverage limits and language as indicated on the following checklist shall be reflected on the Contractor's Certificate of Insurance.
- VIII.** A Wavier of Subrogation shall be provided to the City.
- IX.** The Contractor's insurance carrier shall submit a letter showing authorization that the company is registered by the State of Florida Department of Insurance

**CITY OF SOUTH DAYTONA, FLORIDA  
INSURANCE REQUIREMENTS CHECKLIST**

Items marked "X" must be provided

<u>X</u>	<u>General Liability</u>	<u>Minimum Limits Required</u>	
	<u>X</u> Commercial General Liability	\$ <u>2,000,000</u>	General Aggregate
	<u>X</u> Occurrence Form	\$ <u>1,000,000</u>	Product/Completed Operations Ag.
	_____	\$ <u>1,000,000</u>	Personal & Advertising Injury
	_____	\$ <u>1,000,000</u>	Each Occurrence
	_____	\$ <u>100,000</u>	Fire Damage
<u>X</u>	<u>Automobile Liability</u>		
	Owned, Hired & Non-Owned	\$ <u>1,000,000</u>	Combined Single Limit per Occurrence
<u>X</u>	<u>Worker's Compensation and Employer's Liability</u>	<u>Statutory</u>	
		\$ <u>100,000</u>	Each Accident
		\$ <u>500,000</u>	Disease - Policy Limit
		\$ <u>100,000</u>	Disease - Each Employee
_____	<u>Professional Liability - Errors &amp; Omissions</u> (*To be completed by Bidder)		
	* Deductible: \$ _____	\$ _____	Aggregate
	* Claims Made (Y/N): _____	\$ _____	Each Claim
	* Occurrence (Y/N): _____		
	* Defense included in Limits (Y/N): _____		
<u>X</u>	<u>Builder's Risk/Installation Floater</u> (*To be completed by Bidder)		
	* Flood included \$ _____ Limit	\$ _____	100% of Completed or Installed Value, All-Risk Form
	* Transportation included \$ _____ Limit		
	* Storage included \$ _____ Limit		
	City must be a named insured. Copy of policy will be required.		
_____	<u>Other</u>		
	_____	\$ _____	
<u>X</u>	The Certificate of Insurance must show "The City of SOUTH DAYTONA, elected officials and employees" as an additional insured.		
<u>X</u>	Certificates must give to the City of SOUTH DAYTONA 30 days' prior written notice of cancellation, non-renewal, or adverse change.		
<u>X</u>	Certificates must identify bid number and bid title.		
<u>X</u>	A Waiver of Subrogation shall be provided to the City.		

**Statement of Bidder:**

We understand the requirements requested and agree to comply fully.

\_\_\_\_\_  
Bidder - Authorized Signature

A complete copy of this form with original signature must accompany bid.



<b>SECTION 00840 CONTRACTOR REQUEST FOR INFORMATION (RFI)</b>
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PROJECT NAME: **Reed Canal Park Stormwater Pond Pump**  
**BID NO. 22-B-007**

OWNER: \_\_\_\_\_

ENGINEER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

RFI NO. \_\_\_\_\_ SPEC. SECTION \_\_\_\_\_ DRAWING NO. \_\_\_\_\_

RFI SHORT TITLE: \_\_\_\_\_

CONTRACTOR QUESTION/ISSUE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

ENGINEER/OWNER REPLY: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

CC:

- ☐ CONTRACTOR
- ☐ FIELD (INSPECTOR)
- ☐ OWNER
- ☐ ARCHITECT
- ☐ OTHER:

END OF SECTION

<b>SECTION 00843</b>	<b>CHANGE ORDER FORM</b>
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PROJECT: **Reed Canal Park Stormwater Pond Pump**  
**BID NO. 22-B-007**

CHANGE ORDER NO. \_\_\_\_\_ DATE: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

The following changes are hereby made to the Contract Documents:

THIS COLUMN REFERS TO A CHANGE IN CONTRACT PRICE:	THIS COLUMN REFERS TO A CHANGE IN CONTRACT TIMES:
Original Contract Price: \$ _____	Original Substantial Completion Date: _____ Original Final Completion Date: _____
Net Contract Price Changes from Previous Change Orders No. _____ to No. _____ \$ _____	Change in Contract Time from Previous Change Orders No. _____ to No. _____ Days: _____
Contract Price Prior to this Change Order: \$ _____	Contract Dates prior to this Change Order: Substantial Completion: _____ Final Completion: _____
Net Increase (Decrease) of this Change Order: \$ _____	Changes in Contract Time Requested by this Change Order: Days: _____
New Contract Price with all Approved Change Orders: \$ _____	New Contract Dates with all Approved Change Orders: Substantial Completion: _____ Final Completion: _____

00843-1

CHANGES ORDERED:

I. GENERAL

This change order is necessary to cover changes in the work to be performed under this Contract. The General Conditions, Supplementary Conditions, Specifications and all parts of the Project Manual listed in Article 1, Definitions, of the General Conditions apply to and govern all work under this change order.

The change in price and/or delivery date described, is considered to be fair and reasonable and has been mutually agreed upon in full agreement and final settlement of all claims arising out of the modification including all claims for delays and disruptions resulting from, caused by, or incident to such modifications and change orders.

II. REQUIRED CHANGES:

III. JUSTIFICATION:

IV. PAYMENT:

00843-2

Acknowledgments:



**SECTION 00848****CERTIFICATE OF SUBSTANTIAL COMPLETION**

OWNER'S Project No.: \_\_\_\_\_ ENGINEER's Project No.: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

Contract Date: \_\_\_\_\_

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof.

To: \_\_\_\_\_  
Owner

And To: \_\_\_\_\_  
Contractor

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on:

\_\_\_\_\_  
Date of Substantial Completion

A tentative list of items to be completed or corrected is attached hereto. This list may not be all inclusive, and the failure to include an item therein does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract documents. When this Certification applies to a specified part of the Work the items in the tentative list shall be completed or corrected by CONTRACTOR within \_\_\_\_\_ days of the above date of Substantial Completion.

The date of Substantial Completion is the date upon which all guarantees, and warranties begin, except as follows:

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

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities and insurance shall be as follows:

RESPONSIBILITIES:

OWNER \_\_\_\_\_

\_\_\_\_\_

CONTRACTOR \_\_\_\_\_

\_\_\_\_\_

The following documents are attached to and made a part of this Certificate:

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

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

Executed by ENGINEER on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Engineer

By: \_\_\_\_\_  
Name and Title

The CONTRACTOR accepts this Certificate of Substantial Completion on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_  
Name and Title

END OF SECTION

**SECTION 00849****CONTRACTOR'S FINAL RELEASE OF LIEN**

Before me the undersigned authority in said County and State, appeared \_\_\_\_\_ who, being first duly sworn, deposes and says that he is \_\_\_\_\_ of \_\_\_\_\_, a company and/or corporation authorized to do business under the laws of Florida, which is the Contractor on the Contract described as: **Reed Canal Park Stormwater Pond Pump, BID NO. 22-B-007**, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that the said deponent is duly authorized to make this affidavit by resolution of the Board of Directors of said company and/or corporation; that deponent knows of his own knowledge that said Contract has been complied with in every particular by said Contractor and that all parts of the work have been approved by the Owner's Engineers; that there are no bills remaining unpaid for labor, material, or otherwise, in connection with said Contract and work, and that there are no suits pending against the undersigned as Contractor or anyone in connection with the work done and materials furnished or otherwise under said Contract. Deponent further says that the final estimate which has been submitted to the owner simultaneously with the making of the affidavit constitutes all claims and demands against the Owner on account of said Contract or otherwise, and the acceptance of the sum specified in said final estimate will operate as full and final release and discharge of the Owner from any further claims, demands or compensation by Contractor under the above Contract. Deponent further agrees that all guarantees under this Contract shall be in full force from the date of this release as spelled out in the Contract Documents.

Sworn to and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

We, the \_\_\_\_\_ having heretofore executed a Performance Bond for the above-mentioned Contractor covered Project and Section as described above in

the sum of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), hereby agree that the Owner may make full payment of the final estimate, including the retained percentage, to said Contractor.

It is fully understood that the granting of the right to the Owner to make payment of the final estimate to said Contractor and/or his assigns, shall in no way release the surety company of its obligations under its bond, as set forth in the Specifications, Contract and Bond pertaining to the above Project.





IN WITNESS WHEREOF, the \_\_\_\_\_ has caused this instrument to be executed on its behalf by its \_\_\_\_\_ and/or its duly authorized attorney in fact, and its corporate seal to be hereunto affixed, all of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Attorney in Fact

(Power of Attorney must be attached if executed by Attorney in Fact)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me the undersigned authority, personally appeared to me well known as the person described in and who executed the foregoing instrument in the name of \_\_\_\_\_ and/or authority to execute the same on behalf of said \_\_\_\_\_, a corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires:

END OF SECTION

