

**ADDENDUM # 1**

**SOUTH BROWARD DRAINAGE DISTRICT**  
***SW 145<sup>TH</sup> AVENUE CULVERT EXTENSION***

**DATE OF ADDENDUM:** January 29, 2014

**TO ALL PROSPECTIVE BIDDERS:**

**PLEASE NOTE THE FOLLOWING CHANGES:**

1. The following documents have been revised and are attached as part of this Addendum:
  - Information for Bidders
  - Bid Proposal Form
  - Agreement
  - Supplementary Conditions
  - Special Provisions
  - Exhibit “C” - Trench Safety Act Compliance Form
  - Exhibit “E” - Payment and Performance Bond
  
2. The following documents have been added to the Bid Documents and are attached as part of this Addendum:
  - Exhibit “H” - Anti-Kickback Affidavit
  - Exhibit “I” - Non-Discrimination Affidavit
  - Exhibit “J” - Sworn Statement Pursuant to Section 287.133(3)(a), F.S. on Public Entity Crimes
  - Exhibit “K” - Drug Free Work Place Affidavit
  - Exhibit “L” - Form W-9
  
3. Each Bid is required to include the following forms (refer to Section 10 of Information For Bidders):
  - Bid Proposal Form
  - Exhibit “A” – Bid Bond
  - Exhibit “B” - OSHA Acknowledgement Form
  - Exhibit “C” - Trench Safety Act Compliance Form
  - Exhibit “D” - Water Use/Dewatering Form
  - Exhibit “F” – Non-Collusion Affidavit
  - Exhibit “G” - Qualifications of Bidders
  - Exhibit “H” - Anti-Kickback Affidavit
  - Exhibit “I” - Non-Discrimination Affidavit

- Exhibit "J" - Sworn Statement Pursuant to Section 287.133(3)(a), F.S. on Public Entity Crimes
  - Exhibit "K" - Drug Free Work Place Affidavit
4. A fully executed copy of the Payment and Performance Bond must be recorded in the Broward County Public Records prior to the start of construction. The Contractor shall be responsible for all costs associated with the recordation of the Payment and Performance Bond as part of the lump sum price for the project; and there will be no separate payment for this item.

**PLEASE NOTE THE FOLLOWING CLARIFICATIONS:**

1. The Engineer's estimate for this project is \$48,125.00. A copy of the Engineer's Estimate is attached to this Addendum.

**PLEASE NOTE THE FOLLOWING ADDITIONS/DELETIONS:**

1. A copy of the 2007 edition of the Standard General Conditions of the Construction Contract prepared by the Engineers Joint Contract Documents Committee are attached as part of this Addendum.

## INFORMATION FOR BIDDERS

### 1. CONTRACT DOCUMENTS

The following constitute the Contract Documents: Agreement; Standard General Conditions of the Construction Contract prepared by the Engineers Joint Contract Document Committee; Supplementary Conditions; Bid Proposal Form; Special Provisions; Item Notes; Technical Specifications; Exhibit A – Bid Bond; Exhibit B - Acknowledgment of Compliance with OSHA Standards Form; Exhibit C - Trench Safety Act Form; Exhibit D - Water Use/Dewatering Form; Exhibit E – Payment and Performance Bond; Exhibit F – Non- Collusion Affidavit; Exhibit H – Anti-Kickback Affidavit; Exhibit I – Non-Discrimination Affidavit; Exhibit J – Sworn Statement Pursuant to Section 287.133(3)(a), F.S. on Public Entity Crimes; Exhibit K – Drug Free Workplace Affidavit; Exhibit L – Form W-9; and Sheets 1 through 5 of the SBDD SW 145<sup>th</sup> Avenue Culvert Extension Project plans, date stamped January 16, 2014.

### 2. BIDDER

Any person, persons, firm or corporation submitting a Proposal for the project so stated.

### 3. OWNER

The "Owner", hereinafter referred to, is the South Broward Drainage District located at 6591 S.W. 160 Avenue, Southwest Ranches, Florida 33331. Whenever the term "Owner" is used within the Contract Documents, it shall be deemed to mean "Owner, Owner's Employee or Owner's Agent".

### 4. GENDER STATEMENT

Whenever the term "he" is used in the document, it refers to all genders.

### 5. ENGINEER

The term Engineer refers to the South Broward Drainage District Director or his designee.

### 6. CONTRACTOR

The person, persons, firm, or corporation with whom the Agreement has been executed by the Owner.

### 7. EQUAL OPPORTUNITY

The South Broward Drainage District recognizes fair and open competition as a basic tenet of public procurement. Contractors doing business with the District are prohibited from discriminating on the basis of race, color, religion, sex, national origin, age, handicap or marital status.

8. SITE INVESTIGATION

Bidders must familiarize themselves with the project area and inform themselves of the conditions that exist and make their own estimate of the facilities and difficulties attending to the execution of the work. The project location is the northwest corner of Pembroke Road and SW 145<sup>th</sup> Avenue in Pembroke Pines, FL.

Bidders are encouraged to perform additional subsurface investigations including soil borings, test holes and other types of investigation to familiarize themselves with the site conditions and specifically, the hardness and porosity of the rock to be excavated and the ground water conditions that may be encountered. Bidders are required to obtain all required approvals/permits for subsurface investigations within the public right-of-way. Permission must be obtained through the District prior to accessing and performing subsurface investigations on private properties. All test holes must be back filled prior to leaving the site the same day they are dug unless approved otherwise by the District and the private property owners. Under no circumstances will the hardness of the rock to be excavated or the groundwater conditions encountered be considered justification for a change order to the Agreement.

All Bidders are encouraged to attend the prebid meeting on Wednesday, January 29, 2014 at 10:00 AM at SBDD Headquarters.

9. BONDS

A Bid Bond in an amount equal to 5 percent (5%) of the total bid price is required.

A Payment and Performance Bond in an amount equal to 100% of the contract price shall be required, guaranteeing the completion and performance of the work covered under the Contract Documents as well as full payment of all suppliers, material men, laborers, or subcontractors employed pursuant to the project. Such bond shall continue in effect for one year after final completion and acceptance of the work with liability equal to 50% of the Contract price, or a replacement bond shall be conditioned that the Contractor will, upon notification by the Owner, correct any defective or faulty work or materials which appear within one year after completion of the Contract.

The cost of the bonds shall be included in the lump sum price for the work. There will be no separate payment for providing the required bonds.

10. PREPARATION AND SUBMISSION OF A BID

A. Preparation/Submission.

1. The Bid Proposal Form shall be used when submitting a bid. Use of any other form shall result in the rejection of the Bidder's bid.
2. The Bid will either be typed or completed legibly in ink. The Bidder's authorized agent will sign the Bid Form in ink, and all corrections made by the Bidder shall be initialed in ink by the authorized agent. The use of pencil or erasable ink or failure to comply with any of the foregoing may result in the rejection of the Bid.

3. Where there is a discrepancy between the actual total of the prices for each item and the stated total Lump Sum Bid Price, the actual total of the individual prices for each item shall prevail.
4. The Bidder shall not charge tax, as the Owner is exempt from all State, Excise, Federal and Local sales tax. Notwithstanding the foregoing, any tax on materials and/or supplies which are purchased by the Bidder, in conjunction with this Solicitation and which are subject to the Florida State Sales Tax, in accordance with Section 212.08 of Florida Statutes, and all addenda thereto, shall be borne solely by the Bidder. When the materials or supplies are not manufactured by the Bidder, taxes must be incorporated in the Bid price, not as a separate item. When materials or supplies are manufactured by the Bidder and are not for resale, the Owner is exempt from all taxes.

Upon request, the Owner will provide a tax exemption certificate, if applicable.

Any special tax requirements will be specified either in the General or Supplemental Terms and Conditions or in the Contract Documents.

5. Any telegraphic, email or facsimile Bid shall not be considered.
6. The Bidder shall incorporate in its Bid price all costs related to this Solicitation.
7. The apparent silence of the Contract Documents and any addendum regarding any details or the omission from the Contract Documents of a detailed description concerning any materials or services requested, shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials and workmanship of first quality are to be used. All interpretations of the Contract Documents shall be made upon the basis of this Solicitation.

**B. Criminal Conviction Disclosure.**

Any individual who has been convicted of a felony during the past ten (10) years and any corporation, partnership, joint venture or other legal entity having an officer, director, or executive who has been convicted of a felony during the past ten (10) years shall disclose this information prior to entering into a Contract with or receiving funding from the Owner.

**C. Sworn Statement on Public Entity Crimes.**

Pursuant to Florida Statutes s.287.133 (2)(a), " 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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list." Bidders shall submit the duly signed and notarized form entitled "**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES ON PUBLIC ENTITY CRIMES**" (Exhibit J).

D. Drug-Free Workplace Preference.

All Public Bids or Proposals are subject to the Owner's Preference to Businesses with Drug-free Workplace Program, which grants a preference to a business with drug-free workplace program, whenever two (2) or more Bids are equal with respect to price, quality, and services. The Drug-free Workplace Vendor shall have the burden of demonstrating that its program complies with Section 287.087 of the Florida Statutes, and any other applicable state law. Bidders shall submit the form entitled "**DRUG-FREE WORKPLACE AFFIDAVIT**" (Exhibit K).

E. Anti-Kickback Affidavit.

All Bidders shall submit the duly signed and notarized form entitled "**ANTI-KICKBACK AFFIDAVIT**" (Exhibit H).

F. Non-Collusion Affidavit.

All Bidders shall submit the duly signed form entitled "**NON-COLLUSION AFFIDAVIT**" (Exhibit F).

G. Non-Discrimination Affidavit.

All Bidders shall affirm that their organization shall not discriminate against any person in its operations, activities or delivery of services. Bidders shall also affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery. All Bidders shall submit the duly signed and notarized form entitled "**NON-DISCRIMINATION AFFIDAVIT**" (Exhibit I).

H. Request for Taxpayer Identification Number and Certification.

All Bidders shall provide the Owner with their Taxpayer Identification Number prior to being recommended for award of any Contract resulting from this Solicitation.

I. Antitrust Laws.

By acceptance of a Contract, the Successful Bidder acknowledges compliance with all antitrust laws of the United States and the State of Florida, in order to protect the public from restraint of trade, which illegally increases prices.

J. Conflicts of Interest.

The award of the Contract hereunder is subject to the provisions of Chapter 112, of Florida Statutes. Bidders shall disclose the name of any Officer, Director, Partner, Associate, or Agent who is also an Officer, Appointee, or Employee of the Owner.

K. Collection of Fees, and Taxes

By acceptance of a Contract, the Successful Bidder acknowledges compliance with the requirement that all delinquent and currently due fees, and taxes have been paid. The Owner may require verification and satisfaction of all delinquencies and currently due fees, and taxes prior to recommending a Bidder for the award of any Contract.

11. PRINTED FORM FOR PROPOSALS

If the Proposal is made by an individual, his name, post office address, and telephone number must be shown. If the Proposal is made by a firm or partnership, the name and post office address of each member of the firm or partnership and the telephone number of the firm or partnership must be shown. If the Proposal is made by a corporation, the person signing the Proposal shall show the name of the state under the laws of which the corporation was chartered, also the name, business address, and telephone number of its president, secretary, and treasurer. The Proposal shall bear the seal of the corporation attested by the secretary. Anyone signing the Proposal as an agent shall file with the Proposal, legal evidence of his authority to do so.

The Proposal shall be signed by the individual or one member of a partnership or an officer of a corporation or company.

12. LUMP SUM CONTRACT

This is a lump sum contract. Unit prices shall be utilized only in calculating the cost of change orders resulting from changes to the design. The field measurement of quantities shall not affect the lump sum contract price.

Each Bidder is responsible for verifying all quantities shown on the Bid Proposal Form. Any bidder finding a discrepancy between the plans and the quantities listed in the Bid Proposal Form shall bring that discrepancy to the Owner's attention prior to the bid opening so that such discrepancies can be addressed in an addendum to the bid documents. Failure by Owner to address any such discrepancies in an addendum shall not be cause for a Change Order due to field measurement of quantities or other such discrepancies discovered during construction.

Each Bidder/Contractor shall be paid a lump sum for the work completed. Any changes to the lump sum contract price or contract time shall be through an approved Change Order only.

13. CONTENTS OF PROPOSAL

A. General Conditions.

1. It is the sole responsibility of the Bidder to become thoroughly familiar with the Solicitation requirements and all terms and conditions affecting the performance of this Solicitation. Pleas of ignorance by the Bidder of conditions that exist, or that may exist, will not be accepted as a basis for varying the requirements of the Owner or the compensation to be paid to the Bidder.
2. The Bidder is advised that this Solicitation is subject to all legal requirements and all other applicable City and County Ordinances and State and Federal Statutes.

B. Additional Information/Addenda

1. Requests for additional information, explanation, clarification or interpretation must be made in writing to the Owner at the address identified above. All requests must be received by the Owner no later than seven days prior to the bid opening date at 4:00 PM. Any request received after that time may not be reviewed for inclusion in this Solicitation. The request shall contain the requester's name, address, telephone number, and e-mail address.
2. The Owner will issue a response to any inquiry if it deems it necessary, by written addenda to the Solicitation, issued prior to the Solicitation Opening Date & Time. The Bidder shall not rely on any representation, statement or explanation other than those made in this Solicitation document or in any addenda issued. Where there appears to be a conflict between this Solicitation and any addendum issued, the last addendum issued will prevail.
3. It is the Bidder's responsibility to ensure receipt of all addenda and substitute Bid Forms. It is the Bidder's further responsibility to verify with the Owner, prior to submitting a Bid, that all addenda have been received. The Bidder shall complete the "**ADDENDA ACKNOWLEDGMENT**" statement in the Bid Proposal Form.

14. UNIT PRICES

The unit prices are to include the furnishing of all materials, plant equipment, tools, equipment and all other facilities and the performance of all labor and services necessary or proper for the completion of the work, except such as may be otherwise expressly provided in the Contract Documents.



Bidders shall include unit prices for the following items. These unit prices are to be used for the purposes of bid evaluation, progress payments and to determine the cost of change orders.

<u>Item No.</u>	<u>Item</u>	<u>Unit</u>
1.	Mobilization	Lump Sum
2.	Install 48" RCP	Linear Foot
3.	Install 6' Diameter Drainage Structure	Each
4.	Connect to Exist Structure	Each
5.	Restoration	Lump Sum
6.	Erosion/Pollution Control	Lump Sum

#### 15. QUALIFICATIONS OF BIDDERS

The Contract will be awarded only to a responsible and eligible bidder(s), qualified by experience and capable of performing the required work and in a financial position to do the work specified herein and to complete the work within the time schedule specified.

At the time of bid or proffer of bid, the Bidder shall hold all Contractor and other qualification certificates and licenses required to be held by the Contractor by Florida Statutes or ordinances of the City of Pembroke Pines and/or Broward County.

All license, certificate, insurance and experience requirements must be met by the Bidder as opposed to a Subcontractor. Contractor (as opposed to subcontractor) must have prior experience installing 48" diameter drainage culverts as evidenced on Exhibit "G." Bids submitted by Bidders who do not directly hold the required licenses, insurance and certificates or who rely on a Subcontractor to meet the experience criteria will be rejected.

When requested, a Bidder shall present evidence of such certificates, insurance and licenses to the District within three (3) business days of such request. Failure to provide such evidence may render the Bid invalid and cause its rejection.

#### 16. DISQUALIFICATION OF BIDDERS

No Bidder shall submit more than one Proposal, and reasonable grounds for believing that a Bidder is interested in more than one Proposal for the same work will cause rejection of all Proposals in which such Bidder or Bidders are believed to have an interest. Any or all Proposals will be rejected if there is reason to believe that collusion exists among the Bidders. No participants in such collusion will be considered in future Proposals for the same work. Proposals in which the prices are unbalanced may be rejected.

#### 17. SUBCONTRACTORS AND SUPPLIERS

Bidders shall include in their Proposal on Exhibit "G", the names and addresses of all subcontractors who will perform work representing a value of ten (10) percent or more of the Contract Price. **FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL RENDER THE BID NON-RESPONSIVE**

This list shall be submitted with the intent that the Bidder shall employ these subcontractors for the trades noted. Should the Owner voice an objection to any of the listed firms, the Bidder shall

submit for the Owner's approval and selection, the name or names of other subcontractors which may be employed in lieu thereof and shall at the same time indicate the change to the price or prices, if any, on his Proposal for each selection.

18. OMISSIONS; DISCREPANCIES; INTERPRETATIONS AND ADDENDUM

Should a Bidder find discrepancies in, or omissions from, the Contract Documents, he shall within a reasonably practical time, notify the District Director of the South Broward Drainage District. No oral interpretations shall be made to any bidder as to the meaning of any of the Contract Documents, Specifications or Plans, or be effective to modify any of the provisions of the Contract Documents. Every request for an interpretation shall be submitted in writing to the District and will be answered in the form of an addendum and addressed and forwarded to all parties who have received a set of Bid Documents. Receipt of each addendum shall be acknowledged in the Proposal.

19. INSTRUCTIONS FOR SUBMITTING A BID IN RESPONSE TO THE INVITATION FOR BIDS

Each Bid submitted to The Owner will have the following information clearly marked on the face of the envelope:

- a. Bidder's name and return address;
- b. The Solicitation Opening Date & Time; and
- c. Title of the Solicitation. "SBDD SW 145<sup>th</sup> Avenue Culvert Extension"

Failure to include this information may result in your Bid being deemed "Non-Responsive."

All Bids must be submitted on 8 ½" by 11" paper, neatly typed or printed, with normal margins and spacing. The original document package must not be bound, although, the document package copies should be individually bound. An unbound original and two (2) bound copies (**a total of three [3]**) of the complete Bid must be received by the deadline for receipt of Bid specified in the Solicitation Timetable. The original and all copies must be submitted in a sealed envelope or container stating on the outside the Bidder's name, address, the Solicitation title, and the Solicitation Opening Date & Time, to:

South Broward Drainage District  
6591 SW 160<sup>th</sup> Avenue  
Southwest Ranches, Florida 33331

**THE RESPONSIBILITY FOR OBTAINING AND SUBMITTING A PROPOSAL TO THE OWNER ON OR BEFORE THE STATED DATE AND TIME IS SOLELY AND STRICTLY THE RESPONSIBILITY OF THE BIDDER. THE OWNER IS NOT RESPONSIBLE FOR DELAYS CAUSED BY ANY MAIL, PACKAGE OR COURIER SERVICE, INCLUDING THE U.S. MAIL, OR CAUSED BY ANY OTHER OCCURRENCE. ANY PROPOSAL RECEIVED AFTER THE DATE AND TIME STATED IN THE SOLICITATION TIMETABLE IN THE INVITATION FOR BIDS**

**WILL NOT BE OPENED AND WILL NOT BE CONSIDERED. TELEGRAPHIC, FACSIMILE OR EMAIL PROPOSALS SHALL NOT BE CONSIDERED.**

Hand-carried Bids may be delivered to the above address only between the hours of 9:00 AM and 4:00 PM (or 9:00 AM and 2:00 PM on the bid opening date), Mondays through Friday, excluding holidays observed by the Owner. Bidders are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required information appears on the outer wrapper or envelope used by such service. Bidders are advised to contact Kevin Hart, P.E., District Director at 954-680-3337 or email at (kevin@sbdd.org) prior to submitting their bid to satisfy themselves as to the existence of all addendums.

The Bid must be signed by an authorized officer of the Bidder who is legally authorized to enter into a contractual relationship in the name of the Bidder. The submittal of a Bid by a Bidder will be considered by the Owner as constituting an offer by the Bidder to perform the required services, and provide the required goods, at the stated price.

**20. WITHDRAWAL OF BIDS**

Any bidder may withdraw their bid, any time prior to the opening of the bids, by either appearing personally with positive identification or by a proper notarized written request. No bidder may withdraw their bid for ninety (90) days after the bid opening.

**21. MODIFICATION OF A BID**

Any modification of a Bid by the Bidder shall be submitted to the Owner prior to the Solicitation Opening Date & Time. The Bidder shall submit the new Bid and a letter, on company letterhead, signed by an authorized agent of the Bidder stating that the new submittal supersedes the previously submitted Bid. The sealed envelope shall contain the same information as required for submitting the original Bid. In addition the envelope shall be marked with a statement that this Bid replaces the previously submitted Bid. No modifications of a Bid shall be accepted after the Solicitation Opening Date & Time.

**22. POSTPONEMENT OF DATE FOR PRESENTING AND OPENING PROPOSALS**

The Owner reserves the right to postpone the date for presentation and opening of Proposals and will give telephone, email and written notice of any such postponement to each party receiving a set of Bid Documents.

**23. ACCEPTANCE OR REJECTION OF PROPOSALS**

The Owner reserves the right to waive any informalities and to reject any or all Proposals. Without limiting the generality of the foregoing, any Proposal which is incomplete, obscure or irregular may be rejected; any Proposal having erasures or corrections in the Bid Schedule may be rejected; any Proposal which omits a bid on any one or more items in the Bid Schedule may be rejected.

Owner reserves the right to waive minor variations to the specifications. Final award of Bid shall be made by the Owner's Board of Commissioners.

24. COSTS OF BIDS

All expenses involved with the preparation and submission of Bids to the Owner, or any work performed in connection therewith, shall be borne by the Bidder(s). No payment shall be made for any responses received, nor for any other effort required of or made by the Bidder(s) prior to commencement of work as defined by a contract duly approved by the Owner.

25. PROPRIETARY/CONFIDENTIAL INFORMATION

Bidders are hereby notified that all information submitted as part of, or in support of Bids, will be available for public inspection after opening of the Bids, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law". Any person wishing to view the Bids must make an appointment by calling the District Director at 954-680-3337.

All Bids submitted in response to this solicitation become the property of the Owner. Unless the information submitted is proprietary, copywritten, trademarked, or patented, the Owner reserves the right to utilize any or all information, ideas, conceptions, or portions of any Bid, in its best interest. Acceptance or rejection of any Bid shall not nullify the Owner's rights hereunder.

26. EVALUATION OF BIDS

A. Rejection of Bid

1. The Owner may reject any Bidder's Bid and award to the next lowest, responsive, responsible Bidder;

or

The Owner may reject and re-advertise for all or any part of this Solicitation, whenever it is deemed in the best interest of the Owner. The Owner shall be the sole judge of what is in its "best interest."

2. The Owner may reject any Bid if prices are not fair and reasonable, as determined by the Owner, or exceed the Owner's estimated budget for this Solicitation;

or

If the Bidder does not accept, or attempts to modify the terms and conditions of this Solicitation.

B. Elimination from Consideration

No Contract shall be awarded to any person or firm that is in default to the Owner as a result of any debt, taxes, or any other obligation whatsoever.

C. Waiver of Informalities

The Owner reserves the right to waive any informalities or irregularities in this Solicitation. It will be considered irregular if there are omissions, or unauthorized alterations on any forms, additions not called for, unauthorized alternate bids, or other irregularities of any kind.

D. Demonstration of Competency

1. A Bid will only be considered from a firm that is regularly engaged in the business of providing the goods and services required by this Solicitation. The Bidder must be able to demonstrate a good record of performance and have sufficient financial resources, equipment and organization to ensure that they can satisfactorily provide the goods and services if awarded the Contract as a result of this Solicitation.
2. The Owner may conduct a pre-award inspection of the Bidder's business site or hold a pre-award qualification hearing to determine if the Bidder possesses the requirement(s) as outlined in the above paragraph, and is capable of performing the requirement of this Solicitation. The Owner may consider any evidence available regarding the financial, technical and other qualifications and abilities of the Bidder, including past performance (experience) with the Owner or any other private entity in making the award of any Contract.
3. The Owner may require the Bidder to show evidence that it has been designated as an authorized representative of a manufacturer, supplier or distributor if required by this Solicitation.
4. The Owner reserves the right to audit all records pertaining to and resulting from any award as a result of this Solicitation, financial or otherwise.

E. Copy of Bid Tabulation Sheet

The Bidder who desires to receive a copy of the Bid Tabulation Sheet, shall enclose a self-addressed/stamped envelope (correct size of envelope and postage is a must depending on the amount of information involved,) when submitting its Bid. Unless adequate postage accompany the Bid or a subsequent request, a copy of the Bid Tabulation Sheet will not be sent. A copy may be requested from Owner at 6591 SW 160<sup>th</sup> Ave, Southwest Ranches, Florida 33331, 954-680-3337. Bid results will not be given out by telephone or facsimile. In the alternative, the Bid Tabulation Sheet will be provided by email upon request.

27. AWARD OF A CONTRACT

A. Contract

This Solicitation contains a sample of the Contract entitled "AGREEMENT". After award, a Contract **similar** to that, inclusive of all attachments and any modifications that the Owner, in its sole discretion may make, will constitute the entire Contract between

the parties. No rights shall inure to the benefit of any Bidder pursuant to this Solicitation until the Contract has been executed by both parties thereto.

The bidder to whom the award is made, shall, within ten (10) calendar days after receipt of the Contract, execute the contract in substantially the form attached, entering into a contract with the District. The executed Contract shall be returned to the District accompanied by the required certificate(s) of insurance and the Payment and Performance Bond as set forth herein. If the bidder fails to execute the Contract or fails to provide the certificate of insurance and the Payment and Performance Bond within ten (10) calendar days, there shall be just cause for the annulment of the award. The award may then be made to the next lowest responsible and responsive bidder or the work may be re-advertised at the District's sole discretion.

B. Additional Information

The award of a Contract may be preconditioned on the subsequent submission of other documents, as specified in the General and Supplemental Conditions or Contract Documents. The Successful Bidder shall be deemed "Non-Responsive" if such documents are not submitted in a timely manner and in the form required by the Owner. Where the Successful Bidder is deemed "Non-Responsive" as a result of such failure to provide the required documents, the Owner, may award any Contract to the next lowest, responsive, responsible Bidder.

C. Independent Contractor

The Successful Bidder shall be an experienced contractor having performed similar projects and operating independently from the Owner. All employees and sub-contractors to the Successful Bidder shall be considered to be, at all times, the sole employees or contractors of the Successful Bidder under its sole discretion and not an employee, sub-contractor, or agent of the Owner. Nor shall employees and sub-contractors to the Successful Bidder enjoy any privities of contract with the Owner. Neither the Successful Bidder nor any of its employees shall receive any benefits available to employees of the Owner. The Successful Bidder shall supply competent and physically capable employees and sub-contractors. The Owner may require the Successful Bidder to remove any employee or sub-contractor it deems careless, incompetent, insubordinate, or otherwise objectionable and whose continued performance of the services is not in the best interest of the Owner.

D. Contract Extension

The Owner reserves the right to automatically extend any Contract for up to thirty (30) calendar days beyond the stated Contract term, under the same terms and conditions of said Contract. The Owner shall notify the Successful Bidder in writing of such extensions. Additional extensions over the first thirty (30) day extension may occur, if, the Owner and the Successful Bidder are in mutual agreement of such extensions.

E. Limited Contract Extension

Any specific work assignment which commences prior to the termination date of any Contract and which will extend beyond the termination date shall, unless terminated by mutual written agreement by both parties, continue until completion at the same prices, terms and conditions as set forth in any Contract.

F. Warranty

Any implied warranty granted under the Uniform Commercial Code shall apply to all goods purchased under any Contract.

G. Non-Exclusive Contract

Although the purpose of this Solicitation is to secure a Contract that can satisfy the total needs of the Owner, it is hereby agreed and understood that any Contract does not constitute the exclusive rights of the Successful Bidder to receive all orders that may be generated by the Owner in connection with the types of products and/or services requested herein.

H. If awarded the contract, the bidder shall maintain insurance coverage uninterrupted for the duration of the contract in accordance with the minimum amounts and conditions specified in the general and supplemental conditions. Misrepresentations of any material fact, whether intentional or not, regarding insurance coverage, policies or capabilities may be grounds for rescission of the contract.

28. RIGHT OF APPEAL

A. After a notice of intent to award a contract is posted, any actual or prospective bidder who is aggrieved in connection with the pending award of the contract or any element of the process leading to the award of the contract may protest to the Owner. A protest must be filed within five (5) business days after posting or any right to protest is forfeited. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest is received by the Owner.

B. The Owner shall require a deposit from a protester to compensate the Owner for the expenses of administering the protest. If the protest is decided in the protester's favor, the entire deposit shall be returned to the protester. If the protest is not decided in the protester's favor, the deposit shall be forfeited to the Owner. The deposit shall be in the form of cash or a cashier's check, and shall be the greater of one percent (1%) of the amount of the pending award or five thousand (\$5,000.00) dollars.

29. BIDDER AND RESULTING CONTRACTOR OBLIGATIONS

A. Rules, Regulations, Licensing, and Other Requirements

The Bidder shall comply with all laws and regulations applicable to the goods and services contained in this Solicitation. The Bidder is presumed to be familiar with all Federal, State and local laws, ordinances, codes and regulations that may in any way affect the goods and/or services offered.



**BID PROPOSAL FORM**

South Broward Drainage District

Gentleman:

**Re: SBDD SW 145<sup>TH</sup> Avenue Culvert Extension Project**

The undersigned hereby declares that he has examined the site and has fully informed himself of the conditions that exist at the project site. He further declares that he has examined all Contract Documents and fully familiarized himself with the said Documents and also any Local, State, County, and Federal laws pertaining to this project.

The undersigned, as Bidder, hereby declares that the only person or persons interested in the bid as Principal or Principals is or are named herein and that no other person than herein mentioned has any interest in this Bid or in the Agreement to be entered into; that this Bid is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud.

The Bidder shall furnish prices for all bid items. Failure to do so may render the Bid invalid and cause its rejection.

All representations made by Bidder in this Bid are made under penalty of perjury.

As to all the foregoing, including all Bid Schedule(s) and Information Required of Bidder contained in this Bid Form, said Bidder further agrees to complete the Work required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept as full payment for said work, the Contract Price based on the Total Lump Sum Bid Price stated herein.

The Owner shall award one lump sum contract for this project.

ADDENDUM ACKNOWLEDGMENT (if necessary):

The Bidder has received Addendum N<sup>o</sup> \_\_\_\_\_ dated \_\_\_\_\_.

The Bidder has received Addendum N<sup>o</sup> \_\_\_\_\_ dated \_\_\_\_\_.

The Bidder has received Addendum N<sup>o</sup> \_\_\_\_\_ dated \_\_\_\_\_.

The Bidder has received Addendum N<sup>o</sup> \_\_\_\_\_ dated \_\_\_\_\_.

Company Name \_\_\_\_\_

**BID PROPOSAL FORM**

The undersigned hereby proposes to furnish all labor, equipment and materials necessary to complete the work in strict accordance with the Contract Documents, schedules and plans, and all addendums, if issued, for the lump sum price shown below.

<u>Item No.</u>	<u>Item</u>	<u>Unit</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Price</u>
1.	Mobilization	LS	1	\$ _____	\$ _____
2.	Install 48" RCP	LF	170	\$ _____	\$ _____
3.	Install 6'Dia. Drainage Structure	EA	2	\$ _____	\$ _____
4.	Connect to Exist. Structure	EA	1	\$ _____	\$ _____
5.	Restoration	LS	1	\$ _____	\$ _____
6.	Erosion/Pollution Control	LS	1	\$ _____	\$ _____

**Total Lump Sum Bid Price**    \$ \_\_\_\_\_

Company Name \_\_\_\_\_

Included in this lump sum bid as consideration for the Contractor's indemnification obligations in order to comply with Fla. Stat. Section 725.06 is \$100.00. This amount is not to be added to, or subtracted from the above stated lump sum bid price for the District's determination of the lowest acceptable bid.

SBDD reserves the right to accept or reject any and all bids, to waive any informality, irregularities or technicalities, to re-advertise for bids, or take any other actions that may be deemed to be in the best interest of SBDD. SBDD also reserves the right to waive minor variations to the specifications. Final acceptance of Bid(s) shall be made by the SBDD Board of Commissioners.

Bidder acknowledges that the various items of the bid proposal and in the total base bid price total are costs for complying with the Florida Trench Safety Act, Fla. Stat. §553.60-553.64. The bidder by signing and submitting the Trench Safety Act Compliance Statement is in writing assuring that it will perform any trench excavation in accordance with the applicable Trench Safety Standards.

Contract award shall be based on the Total Lump Sum Bid Price, as identified above by the lowest responsive, responsible bidder. If the total of Bid Items 1 through 6 does not add up to the Total Lump Sum Bid Price, the actual total of each bid item will be considered as the Total Lump Sum Bid Price.

**All applicable, if any, federal, state and local taxes are included in the Total Lump Sum Bid Price. The District as a governmental entity is not required to pay sales tax on any items provided by contractor as part of this bid.**

Bidder understands and agrees that the Total Lump Sum Bid Price includes the furnishing and installation of work and materials depicted on the contract drawings complete in place. Each bidder is responsible for performing their own independent quantity take off and for confirming the completeness of the work items included in the contract documents. All work shall be included in the Total Lump Sum Bid Price.

If this Bid is accepted, it is understood that the terms and conditions of the bid provisions and documents relative thereto, as herein, stated shall be binding upon the parties; however, the undersigned Bidder agrees, upon acceptance, to execute the contract with Owner as a written memorial and formalization of said Bid provisions and matters relative thereto, as set forth in herein, together with the Invitation for bids, Instructions to Bidders, Bid Forms, General Conditions, Supplemental Conditions, Technical Specifications, and Drawings which shall be made a part, for the performance of work described therein; to furnish all necessary materials, equipment, machinery, tools, apparatus, transportation, supervision, labor, and all means necessary to construct and complete the work specified in this Bid and Contract as called for in the Drawings and to commence work within ten (10) consecutive calendar days after the effective date of the Notice to Proceed with Contract Work from the Owner's Director or authorized representative and to complete all contract services according to the terms set forth in the Contract and Specifications.

The Bidder understands that this Bid does not constitute a contract between the Owner and the Bidder. There is no official contract between the parties until: (1) bids are reviewed and accepted by designated Owner's representative; (2) the Contract has been approved by the Owner's Board of Commissioners; (3) the Contract has been executed by both parties.

The undersigned agrees that, in the case of failure on Contractor's part to execute and deliver the said Contract within ten (10) days after receipt of the Contract, the Owner shall have the right to cancel the Contract and award the Contract to the next most responsible bidder as determined in the Owner's sole discretion. In this event, the bidder shall forfeit his bid bond.

The Corporation, Partnership, or Business name and signature of an authorized Corporate Officer, Partner, or Individual making this Bid, together with the signature of the licensed qualifying Bidder, must appear on the signature page of this Bid.

The Bidder understands and agrees that he must perform all work necessary to complete the job as described in the Drawings and Specifications. Payment to the Contractor will be made only for the Lump Sum Bid Price in accordance with the Contract. All work and materials not specified in the Bid shall be considered incidental to the Contract.

Consideration for Contractor's indemnification obligations for Owner's and Engineer's liability (or their employees or agents) for damages to persons or property caused in whole or in part by any act, omission

or default of owner or engineer (or their employees or agents) arising from the contract or its performance and to comply with Fla.Stat.§725.06 is included in the Total Lump Sum Bid Price.

Both the Bidder and the licensee shall fill in the information below, pursuant to Chapter 489, Florida Statutes. Licensee is defined as the person who is the licensed Contractor who qualifies the Bidding Company, Corporation or Partnership. If the Bidder is an individual, he must be licensed. (Please print or type, excluding signatures).

NAME: \_\_\_\_\_

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

FEIN OR SOCIAL SECURITY NUMBER: \_\_\_\_\_

LICENSE NUMBER: \_\_\_\_\_

STATE OR COUNTY: \_\_\_\_\_

LICENSE TYPE: \_\_\_\_\_

(Attach copy of license)

LICENSE LIMITATIONS, IF ANY: \_\_\_\_\_

(Attach a separate sheet, if necessary)

LICENSEE SIGNATURE: \_\_\_\_\_

LICENSEE NAME: \_\_\_\_\_

BIDDER'S SIGNATURE: \_\_\_\_\_

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

BIDDER'S ADDRESS: \_\_\_\_\_

BIDDER'S PHONE NUMBER: Office: \_\_\_\_\_ Cell: \_\_\_\_\_

BIDDER'S E-MAIL ADDRESS: \_\_\_\_\_

**SIGNATURE PAGE**

\_\_\_\_\_  
Signature of Owner or Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

(If the Bidder is a CORPORATION, fill in the name of the Corporation, followed by the signature of the President or Vice President)

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Address of Corporation

\_\_\_\_\_  
Signature of President/Vice President

By: \_\_\_\_\_  
Name of President/Vice President

(IF THE BIDDER IS A CORPORATION, AFFIX CORPORATE SEAL)



## AGREEMENT

This "Agreement" made this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the South Broward Drainage District located at 6591 S.W. 160 Avenue, Southwest Ranches, Florida 33331 (hereinafter called the "Owner") and \_\_\_\_\_ located at \_\_\_\_\_ (hereinafter called the "Contractor").

WITNESSETH THAT:

### I. GENERAL

- A. The name of this project is the **SBDD SW 145<sup>TH</sup> Avenue Culvert Extension Project.**
- B. Wherever the pronoun he is used in the Contract Documents, it shall refer to all genders.
- C. The term Engineer refers to the South Broward Drainage District Director or his designee.
- D. All references to a number of days for the completion of this project shall mean consecutive calendar days, unless specifically specified otherwise.
- E. All tasks stated in the Contract Documents to be performed by the Engineer may be performed by the Owner or other authorized representatives of the Owner as may be determined and so designated by the Owner.
- F. The Contractor has agreed and by these presents does hereby agree with the Owner, that he will duly perform, carry out and be bound by each and every one of the terms, provisions, conditions, covenants and agreements as set out and contained in this Agreement and the other Contract Documents, for the consideration herein mentioned, at his own cost and expense, to furnish all permits, equipment, tools, materials and labor of every description necessary for and to carry out and complete in a good, firm, substantial, and workmanlike manner and in strict conformity with the specifications, the work shown on and described in the Contract Documents.
- G. The Contractor acknowledges that he has investigated and correlated his observations with the requirements of this Agreement and satisfied himself as to the conditions affecting the work. These conditions include, but are not restricted to, those bearing upon transportation, traffic control, disposal, handling and storage of materials, availability of labor, water, electrical power, roads and uncertainties of weather, canal stages or similar physical conditions at the site and the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Contractor or the Owner, as well as from information presented by the Drawings and Specifications made a part of this Agreement. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Owner, its officers or employees, prior to the execution of this Agreement, unless such information has been stated expressly in the Contract Documents.
- H. The following constitute the Contract Documents: Agreement; Standard General Conditions of the Construction Contract prepared by the Engineers Joint Contract Document Committee;

Supplementary Conditions; Bid Proposal Form; Special Provisions; Item Notes; Technical Specifications; Exhibit A – Bid Bond; Exhibit B - Acknowledgment of Compliance with OSHA Standards Form; Exhibit C - Trench Safety Act Form; Exhibit D - Water Use/Dewatering Form; Exhibit E – Performance and Payment Bond; Exhibit F – Non-Collusion Affidavit; Exhibit “H” – Anti-Kickback Affidavit; Exhibit “T” – Non-Discrimination Affidavit; Exhibit “J” – Sworn statement Pursuant to Section 287.133(3)(a), F.S. on Public Entity Crimes; Exhibit “K” – Drug Free Workplace Affidavit; Exhibit “L” – Form W-9; and Sheets 1 through 5 of the SBDD SW 145<sup>th</sup> Avenue Culvert Extension Project plans, date stamped January 16, 2014.

- I. Owner hereby agrees to pay to the Contractor for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications or Bid Proposal, in lawful money of the United States, the lump sum amount of \_\_\_\_\_ based on the prices stated in the Bid Proposal Form.
- J. The Contractor hereby agrees that it is the Contractor's absolute responsibility to comply with each and every requirement and regulation of any and all applicable governmental entities.
- K. Notwithstanding any provisions of the Contract Documents to the contrary, the scope of the work shall include, but not be limited to, the following: installation of 48” RCP; 6’ diameter drainage structures; connection to existing structure, erosion protection, and restoration.
- L. Contractor acknowledges the provisions of Section 287.133 of the Florida Statutes that Contractor has been notified that a person or affiliate who has been placed on the State Department of Management Services convicted vendor list following a conviction for a public entity crime may not submit a bid, work on a contract or 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 in excess of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO (\$35,000.00) for a period of 36 months from the date of being placed on the convicted vendor list.
- M. The Contractor shall maintain drainage from the project site from commencement of work until said work is accepted by the District.
- N. The Contractor acknowledges that time is of the essence for all work to be performed under this Agreement.

## II. WAGES

- A. The rate of wages of all laborers, mechanics and apprentices employed by the Contractor or any Subcontractor on the work covered by this Agreement shall not be less than the prevailing rate for wages for similar skills or classifications.
- B. The Contractor shall fully comply with all laws and regulations concerning labor, work hours, wage rates, labor conditions and related matters.

## III. PAYMENT

- A. Upon faithful performance of this Agreement in all respects by the Contractor, the Owner agrees to pay the Contractor for all items of work performed and materials furnished, the lump sum price shown in the Bid Proposal Form and in Section I.I above.



- B. When the Contractor is in full compliance with the terms and conditions of this Agreement, the Contractor will be paid 100% of the value of the work completed and in place in a good and workmanlike manner in accordance with the terms and provisions of the Contract Documents and as shall have been approved by the Owner.
- C. The Contractor shall submit by the 25th day of each month the Contractor's completed application for payment. Each pay application shall include the contract amount, the work completed for the current pay period, the work completed to date, and the balance to complete the contract. Progress payments shall be based on the percentage of work completed for each pay period. The cut-off date for work completed is the close of the work day of the 20<sup>th</sup> day of each month.
- D. The Owner shall withhold 10% retainage for each pay application until the final completion of the project.
- E. The Contractor will furnish the Owner with each application for payment, Partial Releases of Liens for all Subcontractors and suppliers, a Partial Release of Lien for that portion of work for which payment has been received and an affidavit stating the Contractor's outstanding obligations to any subcontractors and suppliers.
- F. No final payment will be made or become due to the Contractor until evidence has been submitted by the Contractor of the payment to all subcontractors and suppliers involved in the performance of the Work, and said subcontractors and suppliers have furnished affidavits that such obligations have been paid, or if not paid, what outstanding obligations exist and as to such outstanding obligations, satisfactory releases must be furnished.
- G. Progress payments for the work will become due and payable within thirty (30) days after receipt of proper payment applications and all required back-up documentation.
- H. Final payment for the work will become due and payable within thirty (30) days after receipt of the final payment application and all required back-up documentation, and acceptance of the work thereof by the Owner, and all applicable governmental or quasi-governmental authorities.
- I. Final payment will not be made or become due to the Contractor until the Contractor has submitted, and the Owner has approved as-built drawings of the project.
- J. The Contractor shall be responsible for reimbursing the Owner in addition to liquidated damages, for all costs incurred by the Engineer administering the construction of the project beyond the completion date specified above or beyond an approved extension of time granted to the Contractor, whichever is later. Such costs shall be deducted from the monies due the Contractor for performance of WORK under this contract by means of unilateral change orders issued periodically by the Owner as costs are incurred by the Engineer and agreed to by the Owner. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds the amount set forth in the Bid Schedule
- K. The making and acceptance of the final payment shall constitute a waiver of all claims by the District other than those arising from unsettled liens, from faulty work, or latent defects appearing within twelve (12) months after final payment, or from requirements of the specifications. It shall also constitute a waiver of all claims by the Contractor, except those previously made in writing and still unsettled.
- L. Each payment application shall include a duly executed document from the Contractor's Surety Company consenting to the amount requested by the Contractor.

#### IV. TRANSFER OF OBLIGATIONS

The Contractor agrees that he will not transfer or assign this Agreement without written approval from the Owner (which may be arbitrarily withheld). Should the Contractor assign this Agreement without written approval from the Owner, this Agreement shall become null and void. In this event, the Contractor shall continue to be responsible for obligations ascribed to him by this contract.

#### V. SCHEDULE

- A. The Owner shall issue a notice to proceed within sixty (60) days of the date of execution of this Agreement and the Contractor agrees, to commence with the work within ten (10) days of the date of the notice to proceed and to faithfully prosecute the same in a continuous and uninterrupted manner and to have the same substantially completed in all respects in accordance with the Contract Documents, within **forty-five (45) consecutive calendar days** from the date of the Notice to Proceed. Final completion of the work shall be achieved within fifteen (15) consecutive calendar days from the date of Substantial Completion.
- B. Failure by the Contractor to commence work within ten (10) days of the date of the notice to proceed shall entitle SBDD to render the Contract null and void; and to seek compensation from Contractor for any damages associated with said failure to perform.
- C. The Owner and the Contractor recognize and agree that time is of the essence in this Agreement and that the Owner will suffer financial loss if the Work is not completed within the schedule specified in this Agreement, plus any extensions thereof allowed in accordance with the Contract Documents. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding, the actual loss suffered by the Owner if the work is not completed on time. Accordingly, the Owner and the Contractor agree that as liquidated damages and for delay (but not as a penalty) the Contractor shall pay the Owner five hundred dollars (\$500.00) for each consecutive calendar day after the completion dates specified in this Agreement until the work is complete. The Owner shall have the right to deduct from the final payment all such amounts with the Contractor being liable to the Owner for any deficiency. For the purpose of this clause "Substantial Completion" shall mean the date on which the work or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the work for its intended use and "Final Completion" shall mean the date on which the last element of the construction work performed by the Contractor pursuant to this Agreement is approved by the Owner in writing. Notwithstanding, the above liquidated damages, if applicable, shall begin to accrue daily beginning the day after the completion dates specified in this Agreement; however, the maximum liquidated damages amount under this Agreement shall not exceed a total of \$500.00 per day.
- D. Should the Owner be prohibited by governmental order or enjoined from proceeding with the work, or from authorizing its prosecution, either before or after its commencement, the Contractor shall not be entitled to make any claims for damage.
- E. Contractor shall coordinate inspection with governmental agencies which require approval of Contractor's work and provide at least 24 hours notice to the applicable agencies, Owner and Engineer prior to the inspection.

- F. Contractor shall maintain all work required by this contract in good condition and repair until final acceptance by the Owner.

## VI. ATTORNEY FEES

In the event either party brings suit for enforcement of this Agreement to resolve any issues, the prevailing party shall be entitled to attorney fees and court costs in addition to any other remedy afforded by law.

## VII. WARRANTY

The Contractor shall warrant all work performed by him and materials provided by him for a period of one year from the date of final acceptance by the Owner. Any faulty work will be restored to the approved condition at no cost to the Owner and said restored work will further be warranted for a period of one year from the date of restored acceptance.

The Contractor shall be required to perform a warranty inspection with the Owner eleven (11) months after the final completion date to determine if any repairs are required as part of the warranty. The Contractor's failure to schedule the warranty inspection will extend the warranty period until such time as the warranty inspection has been performed and all work has been accepted by the Owner.

The Performance Bond will remain in full force and effect for 1-year after completion of the work and until completion of the 1-year warranty period and final acceptance of the work by the Owner. The Contractor may reduce the value of the Payment and Performance Bond by 50% for the warranty period.

## VIII. CONFLICT

In the event of a conflict between the terms of this Agreement and the Standard General Conditions or the Supplemental Conditions, the terms and provisions of this Agreement shall take precedence.

## IX. FLORIDA LAW/VENUE

In the event either party commences legal proceedings, any such proceedings shall be commenced in the Broward County, Florida courts and all proceedings shall be governed by State of Florida law.

## X. INSURANCE

Contractor shall obtain and keep in effect during the term of this Agreement, liability and worker's compensation insurance in an amount as required by the District.

## XI. MISCELLANEOUS

- A. Terms used in this Agreement which are defined in the General Conditions will have the meanings indicated in the General Conditions.

- B. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- C. Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

THIS AREA LEFT INTENTIONALLY BLANK

In witness whereof, the parties hereto have executed this Agreement on the day first written above, and three (3) counterparts, each of which shall without proof or accounting for the other counterparts, be deemed an original Agreement.

WITNESSES:

\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Signature

CONTRACTOR:

\_\_\_\_\_  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date \_\_\_\_\_

WITNESSES:

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name

SOUTH BROWARD DRAINAGE DISTRICT:

By: \_\_\_\_\_  
Scott Hodges, Chairperson  
  
By: \_\_\_\_\_  
Robert E. Goggin IV, Secretary  
  
Date: \_\_\_\_\_

Contract Amount:

\$ \_\_\_\_\_

Approved as to Form and Correctness

\_\_\_\_\_  
Douglas R. Bell, District Attorney

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



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*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).

Copyright © 2007 National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

Associated General Contractors of America  
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308  
(703) 548-3118  
[www.agc.org](http://www.agc.org)

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## TABLE OF CONTENTS

	<b>Page</b>
Article 1 – Definitions and Terminology .....	1
1.01 Defined Terms.....	1
1.02 Terminology .....	5
Article 2 – Preliminary Matters .....	6
2.01 Delivery of Bonds and Evidence of Insurance.....	6
2.02 Copies of Documents.....	6
2.03 Commencement of Contract Times; Notice to Proceed.....	6
2.04 Starting the Work .....	7
2.05 Before Starting Construction .....	7
2.06 Preconstruction Conference; Designation of Authorized Representatives .....	7
2.07 Initial Acceptance of Schedules.....	7
Article 3 – Contract Documents: Intent, Amending, Reuse .....	8
3.01 Intent.....	8
3.02 Reference Standards.....	8
3.03 Reporting and Resolving Discrepancies.....	8
3.04 Amending and Supplementing Contract Documents.....	9
3.05 Reuse of Documents .....	10
3.06 Electronic Data.....	10
Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points.....	10
4.01 Availability of Lands .....	10
4.02 Subsurface and Physical Conditions .....	11
4.03 Differing Subsurface or Physical Conditions.....	11
4.04 Underground Facilities .....	13
4.05 Reference Points .....	14
4.06 Hazardous Environmental Condition at Site.....	14
Article 5 – Bonds and Insurance .....	16
5.01 Performance, Payment, and Other Bonds .....	16
5.02 Licensed Sureties and Insurers .....	16
5.03 Certificates of Insurance .....	16
5.04 Contractor’s Insurance .....	17
5.05 Owner’s Liability Insurance .....	18
5.06 Property Insurance .....	18
5.07 Waiver of Rights .....	20
5.08 Receipt and Application of Insurance Proceeds.....	21



5.09	Acceptance of Bonds and Insurance; Option to Replace .....	21
5.10	Partial Utilization, Acknowledgment of Property Insurer .....	21
Article 6 – Contractor’s Responsibilities .....		22
6.01	Supervision and Superintendence.....	22
6.02	Labor; Working Hours.....	22
6.03	Services, Materials, and Equipment .....	22
6.04	Progress Schedule .....	23
6.05	Substitutes and “Or-Equals” .....	23
6.06	Concerning Subcontractors, Suppliers, and Others.....	25
6.07	Patent Fees and Royalties .....	27
6.08	Permits.....	27
6.09	Laws and Regulations .....	27
6.10	Taxes .....	28
6.11	Use of Site and Other Areas .....	28
6.12	Record Documents.....	29
6.13	Safety and Protection .....	29
6.14	Safety Representative.....	30
6.15	Hazard Communication Programs .....	30
6.16	Emergencies .....	30
6.17	Shop Drawings and Samples .....	30
6.18	Continuing the Work.....	32
6.19	Contractor’s General Warranty and Guarantee.....	32
6.20	Indemnification .....	33
6.21	Delegation of Professional Design Services .....	34
Article 7 – Other Work at the Site.....		35
7.01	Related Work at Site .....	35
7.02	Coordination.....	35
7.03	Legal Relationships.....	36
Article 8 – Owner’s Responsibilities.....		36
8.01	Communications to Contractor.....	36
8.02	Replacement of Engineer.....	36
8.03	Furnish Data .....	36
8.04	Pay When Due .....	36
8.05	Lands and Easements; Reports and Tests.....	36
8.06	Insurance .....	36
8.07	Change Orders.....	36
8.08	Inspections, Tests, and Approvals .....	37
8.09	Limitations on Owner’s Responsibilities .....	37
8.10	Undisclosed Hazardous Environmental Condition .....	37
8.11	Evidence of Financial Arrangements .....	37
8.12	Compliance with Safety Program.....	37
Article 9 – Engineer’s Status During Construction .....		37
9.01	Owner’s Representative .....	37
9.02	Visits to Site .....	37

9.03	Project Representative .....	38
9.04	Authorized Variations in Work .....	38
9.05	Rejecting Defective Work .....	38
9.06	Shop Drawings, Change Orders and Payments.....	38
9.07	Determinations for Unit Price Work .....	39
9.08	Decisions on Requirements of Contract Documents and Acceptability of Work.....	39
9.09	Limitations on Engineer’s Authority and Responsibilities .....	39
9.10	Compliance with Safety Program.....	40
Article 10 – Changes in the Work; Claims .....		40
10.01	Authorized Changes in the Work .....	40
10.02	Unauthorized Changes in the Work .....	40
10.03	Execution of Change Orders.....	41
10.04	Notification to Surety.....	41
10.05	Claims.....	41
Article 11 – Cost of the Work; Allowances; Unit Price Work .....		42
11.01	Cost of the Work .....	42
11.02	Allowances .....	45
11.03	Unit Price Work .....	45
Article 12 – Change of Contract Price; Change of Contract Times .....		46
12.01	Change of Contract Price .....	46
12.02	Change of Contract Times .....	47
12.03	Delays.....	47
Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work .....		48
13.01	Notice of Defects .....	48
13.02	Access to Work .....	48
13.03	Tests and Inspections .....	48
13.04	Uncovering Work.....	49
13.05	Owner May Stop the Work.....	50
13.06	Correction or Removal of Defective Work .....	50
13.07	Correction Period.....	50
13.08	Acceptance of Defective Work.....	51
13.09	Owner May Correct Defective Work .....	51
Article 14 – Payments to Contractor and Completion .....		52
14.01	Schedule of Values.....	52
14.02	Progress Payments .....	52
14.03	Contractor’s Warranty of Title .....	55
14.04	Substantial Completion.....	55
14.05	Partial Utilization .....	56
14.06	Final Inspection.....	56
14.07	Final Payment.....	57
14.08	Final Completion Delayed.....	58
14.09	Waiver of Claims .....	58

Article 15 – Suspension of Work and Termination .....	58
15.01 Owner May Suspend Work .....	58
15.02 Owner May Terminate for Cause .....	58
15.03 Owner May Terminate For Convenience.....	60
15.04 Contractor May Stop Work or Terminate .....	60
Article 16 – Dispute Resolution .....	61
16.01 Methods and Procedures .....	61
Article 17 – Miscellaneous .....	61
17.01 Giving Notice .....	61
17.02 Computation of Times .....	61
17.03 Cumulative Remedies .....	62
17.04 Survival of Obligations .....	62
17.05 Controlling Law .....	62
17.06 Headings.....	62

## 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, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
  11. *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.

12. *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.
13. *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).
14. *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.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *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.
18. *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.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *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.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *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.
23. *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.
24. *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.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *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.

27. *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.
28. *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.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *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.
32. *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.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *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.
35. *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.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *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.
38. *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.
39. *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.

40. *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.
41. *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.
42. *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.
43. *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.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, 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.
48. *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.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *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.
51. *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. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

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

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

## 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.

## 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 therefor.

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.

#### **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 therefor 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, promptly 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 therefor 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 therefor 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 (except in an emergency as required by

Paragraph 6.16.A); 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 therefor 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 therefor 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.

## **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.
- 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.

### *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 coverages 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. 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 therefrom; 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 coverages 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. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

#### 5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner 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 the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss 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 stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- 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. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property

insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective 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 or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
  - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery

against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

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 and 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. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but 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.

### 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.

### 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 in Engineer's sole discretion 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 Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - 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.

2. *Substitute Items:*

- a. If in Engineer's sole discretion 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 Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer 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 approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer 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. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer'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." 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 Engineer'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 Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer 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. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or

other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer 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.

## 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.

## 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 therefor 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.

- 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*

- 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.
- 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).

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.

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 General 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. 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.
- 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's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
  6. any inspection, test, or approval by others; or
  7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

- A. 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 therefrom 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. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) 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, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor,

Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- 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 therefor, 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 therefor 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. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  2. the specific matters to be covered by such authority and responsibility will be itemized; and
  3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### 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. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

### 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 therefor 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 determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

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 thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. 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.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. 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. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

#### 9.10 *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 Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- 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 therefor 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 or in the case of uncovering Work as provided in Paragraph 13.04.D.

### 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 of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- 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 30 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 60 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 30 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 is 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**

### *12.01 Change of Contract Price*

- A. The Contract Price may only be changed by a 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 15 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 15 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 Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times 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. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 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, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- 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 Price or the Contract Times, or both. 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. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the

control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

- D. 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.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. 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. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.

- 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### 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.

### 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 therefrom.
- 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 therefrom) 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.

#### 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 therefor 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 therefor 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.
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 with respect to progress payments will be as stipulated in the Agreement.

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. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*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;
  - 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; 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 immediate 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.

#### 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. When 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 Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner 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. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- 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. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- 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 therefor. 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.
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 Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
  2. 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 therefor as provided in Paragraph 10.05.

#### 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 persistent 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 fair and reasonable sums for overhead and profit on such Work;
  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, plus fair and reasonable sums for overhead and profit on such expenses;
  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. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer’s action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
  - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
  - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## **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.

## SUPPLEMENTARY CONDITIONS

### I. ARTICLE 1

1.01 Amend 1.01.A.15 to read as follows:

Wherever the term "Contractor" is used in the Contract Documents it shall mean the Contractor that enters into the Agreement to perform the work for this project.

Amend 1.01.A.19 to read as follows:

Wherever the term "Engineer" is used it shall refer to the registered professional engineers who have prepared the plans included in the Contract Documents or the designees of those engineers.

Amend 1.01.A.29 to read as follows:

Wherever the term "Owner" is used in the Contract Documents it shall mean the South Broward Drainage District.

Amend 1.01.A.44 to read as follows:

Substantial Completion is the stage in the progress of the work when the work, or designated portion thereof, is sufficiently complete in accordance with the Contract so the Owner (District) can occupy or utilize the work for its intended use. (See Paragraph 14.04 of these Supplemental Conditions)

### II. ARTICLE 2

2.02 Delete Paragraph 2.02.A in its entirety and insert the following in its place:

A. Owner shall furnish to Contractor up to 3 printed or hard copies of the Drawings and Project Manual and one set in electronic format. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Delete Paragraph 2.03 of the General Conditions in its entirety and insert the following in its place.

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

Delete Paragraph 2.07.A.3 in its entirety:

### III. ARTICLE 3

3.03 Add the following paragraphs immediately after Paragraph 3.03.A.2.

The Contractor shall check all Drawings furnished to him immediately upon their receipt and shall promptly notify the Owner of all errors, inconsistencies, omissions and discrepancies. Figures marked on Drawings shall, in general, be followed in preference to scale measurements. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of a difference between the Drawings and the Specifications, the Specifications shall govern. In case of a discrepancy either in the figures, in the Drawings or in the Specifications, the matter shall be submitted to the Owner who shall

make a determination in writing. Any adjustment by the Contractor without such a determination by the Owner shall be at his own risk and expense. All deviations made by the Contractor from the Specifications and Drawings will be compiled and provided to the Owner. The Owner may furnish, from time to time, such detailed Drawings and other information considered necessary to clarify the Contract.

Omissions from the Drawings or Specifications or the misidentification of details of work which are manifestly necessary to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misidentified details of the work as if fully and correctly described in the Drawings and Specifications. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without providing written notice to the Owner, the Contractor shall assume responsibility for such performance and shall be responsible for all costs associated with said performance and correction of same.

The Contractor or Contractor's Surveyor shall not rely on scaling or measurements of line work, symbols, etc. on AutoCAD files or other computer files provided by the Owner or Engineer. The Contractor or Contractor's Surveyor shall perform all required calculations, reviews, confirmations and other office work necessary to properly lay-out and as-built the project in accordance with the Contract Documents. Any inconsistencies or discrepancies found between the Drawings and the measurements or other information on a computer file shall be brought to the attention of the Owner. Information shown on the Drawings shall take precedent to scaling or measurements obtained from a computer file.

Delete Paragraph 3.03.A.3. in its entirety and insert the following in its place:

In the event of a conflict in the Drawings, Specifications, or other portions of the Contract Documents, which were not reported prior to the Bidding of the Contract, the Contractor shall be deemed to have included the most expensive item, system, procedure, etc in his Bid.

#### IV. ARTICLE 4

4.01 Delete 4.01.B.

4.02 Add the following language to 4.02.A.

Refer to Attachment "A" for available geotechnical information.

4.03 Delete 4.03.A through 4.03C and replace it with the following:

"Under no circumstances will the hardness of the rock, the depth of the rock or the elevation of the rock to be excavated or the ground water conditions encountered be considered justification for a change order to the Agreement."

4.04.B. Change the first sentence in the paragraph of General Condition 4.04.B.1 to read as follows:

"... Documents, then Contractor shall, within three (3) days, after becoming aware thereof and before further..."

4.06 Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

B. Not Used.

4.06.E Add the following immediately after Paragraph 4.06.E of the General Conditions:

“The provisions of paragraphs 4.06.A, 4.06.B, 4.06.C, 4.06.D and 4.06.E shall not apply where the Work is performed upon public lands, rights-of-way, easements or other properties of which the Owner does not own. In such case, Contractor’s sole remedy shall be an extension of contract time.”

- 4.07. Add a new paragraph immediately after Paragraph 4.06 of the General Conditions which is to read as following:
- 4.07 No claim of the Contractor under paragraphs 4.03, 4.04 and 4.06 shall be allowed unless, (1) the Contractor has given the notice required in sub-paragraph 4.06 above, 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 General Conditions.

V. ARTICLE 5

- 5.01. Add the following requirements to 5.01.B. and C. which shall be met by all surety companies furnishing bid, payment and performance or other type of Bonds:

5.01.B.1 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., of 75 Fulton Street, New York, New York, 10038.

5.01.B.2 All Surety Companies are subject to approval and may be rejected by the Owner without cause.

5.01.B.3 Limitations: Bonding limits or bonding capacity refer to the limit or amount of Bond acceptable on any one (1) risk.

5.01.B.4 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).

5.01.C.1 Policyholders surplus is required to be five (5) times the amount of any one bond.

- 5.01.C.2 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.5.02 Add the following language to 5.02A.

Additional liability coverage for the Owner shall be provided by endorsement as an additional insured on the Contractor's General Liability Policy. Add the Owner as follows:

Owner - South Broward Drainage District  
6591 SW 160th Avenue  
Southwest Ranches, Florida 33331

- 5.03 Make the following modifications to Paragraph 5.03 *Certificates of Insurance*.

A. Add the following language to the end of the last sentence of Paragraph 5.03.A:

"in accordance with Paragraph 5.04 and as amended in these Supplementary Conditions."

B. Delete Paragraph 5.03.B in its entirety.

- 5.04 Add the following after Paragraph 5.04.B.6

The Contractor shall, at his own expense, purchase and maintain such insurance as will protect the Owner and the Contractor from any claims under workers' compensation laws; disability benefit laws or other similar employee laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees, or any person other than his employees including claims insured by usual personal injury liability coverage; from claims for injury to or destruction of tangible property including loss of use resulting therefrom – any or all of which may arise out of or result from the Contractor's operations under the Contract Documents, whether such operations be by any subcontractor or anyone directly or indirectly employed by any of them or for whose acts may be legally liable.

- A. Said insurance shall include all major divisions of coverage and be on a comprehensive basis including:
  - 1. Premises Operations (including X, C and U coverage as applicable).
  - 2. Independent Contractor's Protective.
  - 3. Products and Completed Operations.
  - 4. Personal Injury Liability with Employment Exclusion deleted.
  - 5. Contractual Liability.
  - 6. Owned, non-owned and hired motor vehicles.
  - 7. Broad Form Property Damage including Completed Operations.
- B. The limits of liability of said insurance shall provide coverage for not less than the following amounts:
  - 1. Workers' Compensation, etc.
    - a. State Statutory
    - b. Applicable Federal (e.g. Longshoreman's and/or Maritime) Statutory
    - c. Employer's Liability
      - \$ 1,000,000.00 /by accident – each accident
      - \$ 100,000.00 /by disease – employee
      - \$ 500,000.00 /by disease – policy limits
  - 2. Contractor's Liability Insurance which will also include completed operations, product liability coverage, elimination of the exclusion with respect to property under the care, custody and control of the Contractor and independent contractors; contractual broad form property damage:
    - a. General Aggregate (Except Products -Completed Operations) \$ 2,000,000.00
    - b. Products - Completed Operations Aggregate \$ 1,000,000.00
    - c. Personal and Advertising Injury (Per Person/Organization) \$ 1,000,000.00
    - d. Each Occurrence (Bodily Injury and Property Damage) \$ 1,000,000.00

- e. Property Damage liability insurance will provide Explosion, Collapse and Underground coverage where applicable. \$ 1,000,000.00
  - f. Excess Liability
    - General Aggregate \$ 2,000,000.00
    - Each Occurrence \$ 2,000,000.00
  - g. Fire Damage (Any one fire) \$ 50,000.00
3. Automobile Liability
- a. Bodily Injury:
    - Each Person \$ 1,000,000.00
    - Each Accident \$ 2,000,000.00
  - b. Property Damage:
    - Each Occurrence \$ 1,000,000.00
- OR
- c. Bodily Injury and Property Damage
    - Combined Single Limit:
      - Each Occurrence \$ 2,000,000.00
      - Aggregate \$ 2,000,000.00
4. The Contractual Liability coverage required shall provide coverage for not less than the following amounts:
- a. General Aggregate \$ 3,000,000.00
  - b. Bodily Injury and Property Damage
    - Combined Each Occurrence \$ 3,000,000.00
5. Acceptance of a Certificate of Insurance by District for coverage of limits less than specified herein shall not waive the requirements of this section or reduce the Contractor's liability below the limits specified herein.
6. Subject to any limitations which may be provided by Florida Statutes, Section 725.06, the Contractor shall indemnify and hold harmless the Owner for liability for damages to persons or property caused in whole or in part by any act, omission or default of the Owner arising from the Agreement or its performance, an amount which shall not be less than \$1,000,000.00 per occurrence. Pursuant to Florida Statutes Section 725.06(2), the Contractor shall indemnify and hold harmless the Owner, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent 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 Agreement.
- C. The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this Article, except such rights as they may have to the proceeds of such insurance. The Contractor shall require similar waivers by subcontractors.
- D. It is understood and agreed that insurance coverage required herein shall specifically include, any claim for damages for personal injury, including wrongful and accidental death, and

property damages which may arise by reason of the Contractor, its agent or representatives or subcontractors, depositing spoil material on lands within the Project limits and/or on property located adjacent to the Project limits.

- E. Prior to commencing the Work, the Contractor shall procure and maintain at its own expense, until one year after completion and final acceptance of the Work, the following insurance that shall protect the Contractor from and indemnify and hold harmless the Owner from:
  - 1. Any claims under Workers Compensation, disability benefits, and other similar employee benefit acts.
  - 2. Any claims for damage because of bodily injury, sickness, disease or death of any person other than his employees.
  - 3. Any claim for damages insured by usual personal liability coverage which are sustained by (1) any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor or (2) by any other person.
  - 4. Any claim for damages because of injury to, or destruction of tangible property including loss of use resulting therefrom.
- F. The Contractor shall provide: Workers Compensation and employer's liability insurance in accordance with the laws of the State of Florida. Exempt status will not be accepted.
- G. Prior to commencing the work, the Contractor shall furnish certificates from all insurance companies showing the above insurance in force, stating policy number, dates of expiration and limits of liabilities thereunder and copies of all insurance policies.
- H. The Contractor agrees that neither he nor his insurance company will subrogate any loss or claim to the Contractor's equipment or personnel against the Owner and further providing that the insurance will not be canceled or changed prior to at least thirty (30) days after written notice of such cancellation or change has been mailed to the Owner and showing the Owner as a loss payee under such policies.

5.06 Delete this section in its entirety.

5.07 Delete this section in its entirety.

5.10 Delete Paragraph 5.10 of the General Conditions in its entirety and insert the following in its place:

The Contractor shall maintain all insurance as required 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 insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

5.11 Make the following modifications to ARTICLE 5 - BONDS AND INSURANCE.

A. Add the following new paragraph immediately after Paragraph 5.10:

*"5.11 Owner's Insurance for Project*

- A. Owner shall not be responsible for purchasing and maintaining any insurance to protect the interest of the Contractor, Subcontractors, or other in the Work. The stated limits of insurance required are minimum only. Contractor shall determine the limits that are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, Contractor is fully responsible for all losses arising out of, resulting from or connected with operations under this Contract, whether or not said losses are covered by insurance. The acceptance of certificates or other evidence of insurance by the Owner, Engineer, and others

listed as additional insureds that in any respect does not comply with the Contract requirements does not release the Contractor from compliance herewith."

VI. ARTICLE 6

6.02 Add the following sub-paragraphs immediately after Paragraph 6.02.B of the General Conditions which are to read as follow:

A. 6.02.B.1. Maintenance work may be performed during hours other than regular working hours. Regular working hours are defined as daylight hours between one-half hour after sunrise to one-half hour before sunset but not more than ten (10) hours per day fifty (50) hours per week during weekdays. Requests to Work during other than regular working 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.

B. 6.02.B.2 The Owner will pay for charges of Engineer and construction observation performed during regular working hours. The Contractor shall pay for additional engineering and construction observation charges required during irregular hours which may be authorized under the provisions of Paragraph 6.02.B.1.

C. 6.02.B.3 The Contractor shall also pay for the costs of 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 subsidiary obligation of the Contractor and no extra payment shall be made by the Owner on account of such Work.

6.06 Make the following modifications to Paragraph 6.06 *Concerning Subcontractors, Suppliers and Others*

A. Amend Paragraph 6.06.B by deleting the words "Supplementary Conditions" and inserting words "Contract Documents" in their place.

6.08A Delete paragraph 6.08A in its entirety and insert the following paragraph:

The lump sum price shall not include the cost for any permit fees except the cost of a permit fee for a dewatering permit, if applicable. If any other permit fees are required for any work, the Owner will pay the actual cost of said permit either directly or as an extra to the Agreement. The Contractor shall be responsible to pay any dewatering permit fees under the lump sum contract price.

6.10 Make the following modifications to Paragraph 6.10 *Taxes*.

A. Add the following to Paragraph 6.10.A.

"The Owner qualifies as an exempt agency as defined by the statutes of the State of Florida. The contractor shall comply with all statutes and rulings of the State Comptroller."

6.11 Add the following Paragraphs immediately after 6.11.A.1.

The Contractor recognizes that its work activities may generate complaints from adjacent property owners and property owners in the vicinity of the Project. The Contractor agrees that should such complaints be forwarded to the Contractor, whether by the Owner or otherwise, the Contractor will respond in an appropriate manner within 24 hours. The Contractor further agrees that if the Contractor receives complaints from any entity other than the Owner, it will notify the Owner, in writing, of the complaint within 24 hours.



The Contract Documents depict the project limits and the approved staging area. The Contractor is prohibited from entering, encroaching upon or storing material on any property outside the project limits or approved staging area without the express written permission of the affected property owner(s).

The Contractor shall restore all damages to existing wetlands, uplands, rights-of-way, easements, private properties, South Broward Drainage District facilities and surface and underground facilities resulting directly or indirectly from his construction operations to a condition equal to or better than the condition existing prior to construction.

6.13 Add the following Paragraphs immediately after 6.13.A.

The Contractor accepts complete and total responsibility for all aspects of safety related to work under the Agreement. Furthermore, the Contractor agrees that neither the Owner nor the Engineer have any responsibility for any aspect of safety related to work performed under the Agreement.

The Contractor agrees that during the progress of work under the Agreement, he will, at all times, comply with the safety requirements of OSHA, The Florida Trench Safety Act, The City of Pembroke Pines and Broward County and Contractor does hereby save and hold harmless Owner, Owner's agents and employees from any liability, damages, costs, or expenses, attorneys' fees and court costs through all trial and appellate levels arising out of any injury to persons or property sustained by reason of the default or neglect of the Contractor to properly comply with any of the above safety requirements or any other applicable safety requirements and to protect the work covered by this Agreement.

In compliance with the applicable provisions of the Rules of the Florida Department of Commerce, the Contractor shall provide adequate and sufficient barricades and maintain safe conditions at the job site at all times.

The Contractor shall be responsible for providing first-aid services and medical care to all his employees. The Contractor shall be responsible for development and maintenance of an effective fire protection and prevention program at the job site throughout all the phases of construction, repair, alterations or demolition work. The Contractor shall establish and maintain good housekeeping practices throughout all phases. The Contractor shall be responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions, including safety belts, lifelines and lanyards.

Nothing contained herein shall be construed to shift responsibility or risk of loss for injuries or damage sustained as a result of a violation of this section from the Contractor to the Owner. The Contractor shall remain solely and exclusively responsible for compliance with all safety requirements and for the safety of all persons and property at the project site. Employees required to handle or use toxins, caustics and other harmful substances shall be instructed regarding the safe handling and use and be made aware of the potential hazards, personal hygiene and personal protective measures required. All work shall meet and be in compliance with standards and regulations set forth by Occupational Safety and Health Administration (OSHA), Florida Department of Labor and Employment Security and any and all other appropriate Federal, State, Local or District safety health standards, including but not limited to, OSHA Excavation Safety Standards as enumerated in the "Trench Safety Act" Section 553.60-553.64, Florida Statutes. The Contractor is and shall remain throughout the duration of the Contract, responsible for all OSHA Safety Standards and all requirements of the Trench Safety Act.

6.16 Amend 6.16.A as follows:

Insert the words "without special instruction or authorization" between the words "act" and "to" in the 2<sup>nd</sup> line.

In the 3<sup>rd</sup> and 5<sup>th</sup> lines, replace the word "Engineer" with "Owner".

Add the following paragraph immediately after Paragraph 6.16.A.

The Contractor shall be required to secure or remove from the site, prior to a named storm event, any materials or equipment which could cause bodily injury, damage to the work, the Owner's installations, public property and private property. Site excavations shall be required to be secured and backfilled. The Contractor is responsible for preparing for all storm events. The Contractor shall take the necessary precautions to protect the walking and motoring public from harm due to construction activity. Contractor shall maintain stormwater and drainage flow as may be required to prevent adverse effects of stormwater which would normally flow through the existing and proposed facilities. The Contractor will not be paid additional for any measures related to this item, however, a time extension may be added to the contract for the time delay.

6.17 Delete the paragraph 6.17.A.1.a in its entirety and insert the following in its place:

The Contractor shall submit four (4) sets of each required shop drawing to the Owner.

6.18 Make the following modifications to Paragraph 6.18 *Continuing the Work*.

A. Add the following language to the end of Paragraph 6.18.A.

"Contractor assumes and bears responsibility for all costs and time delays associated with any variation from the requirements of the Contract Documents."

6.20 Delete Paragraphs 6.20.A, 6.20.B, 6.20.C.1, and 6.20.C.2. in their entirety.

6.22 Add the following new paragraphs after Paragraph 6.21 of the General Conditions to read as follows:

6.22 Additional Costs: The Contractor shall reimburse the Owner for services rendered by the Engineer when made necessary by the following:

6.22.1. Work damaged by fire or other cause during construction.

6.22.2. Default by Contractor or any Subcontractor.

## VII. ARTICLE 7

7.01 Add the following paragraph immediately after Paragraph 7.01.B.

Contractor shall fully cooperate with such other contractors and Owner's employees and carefully coordinate his own work with such additional work as may be directed by the Owner. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by the Owner's employees.

## VIII. ARTICLE 8

8.04 Delete Paragraph 8.04 in its entirety.

8.06 Delete Paragraph 8.06 in its entirety.

## IX. ARTICLE 9

9.03 Delete Paragraph 9.03 in its entirety and insert the following in its place.

---

SBDD SW 145<sup>th</sup> Avenue Culvert Extension Project

Addendum No. 1

1/29/14

9.03 Engineer may furnish a Resident Project Representative to assist Engineer in observing the performance of the Work. The duties, responsibilities and limitations of authority of this Resident Project Representative and assistants are set forth in paragraph 9.09.

## X. ARTICLE 10

10.05 Add the following Paragraph immediately after 10.05.A.

The Owner shall have the right to decide all questions as to the performance and acceptability of the Work covered by the Agreement and as to the completion of the Work specified herein.

Add the following Paragraph immediately after 10.05.E.

In the event the District is named a Defendant in a suit or suits, action, or actions, claim or claims for injuries, death or damages, the District in its sole discretion may retain such money as is due to the Contractor under the Agreement as the District determines to be required for payment of such suit or suits, action, or actions, claim or claims for injuries, death or damages, as aforesaid until said suit or suits, action, or actions, claim or claims for injuries, death or damages, shall have been settled and suitable evidence to that effect furnished to the Owner.

## XI. ARTICLE 12

12.02 Delete Paragraph 12.02 of the General Conditions in its entirety and insert the following in its place:

12.02.A The Contract Time may be changed only by a Change Order or a Written Amendment. Any claim for an extension or shortening in the Contract Time shall be based on written notice delivered to the Owner and Engineer within fifteen (15) 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. Within thirty (30) days of any such detection or beginning of event, the Contractor shall provide the analysis and documentation required to ascertain the facts which support the request and shall provide a written statement that the adjustment claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. No claim by the Contractor under this provision shall be allowed unless the Contractor has given the notice and the analysis and documentation required in this paragraph, or if asserted after final payment.

12.02.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.

12.02.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.

12.02.D No extensions of Contract Time or increases in Contract Price shall be granted for Nonprejudicial Delays of any type or for Inexcusable Delays, unless otherwise agreed to by the Owner at its sole discretion.

## XII. ARTICLE 13

13.03 Delete Paragraphs 13.03.B. Add the following Paragraphs immediately after 13.03.A

All laboratory and density tests required for compliance with these specifications shall be performed by an independent testing laboratory under contract to and as directed by the Contractor and acceptable to the Owner and Engineer.

Contractor shall be responsible for arranging and obtaining and shall pay all costs associated with all laboratory and density tests required for compliance with these specifications and required for Owner's and Engineer's acceptance of the Work.

13.07 Add the following sentence to the end of Paragraph 13.07.B:

"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."

### XIII. ARTICLE 14

14.01 Delete Paragraph 14.01 in its entirety.

14.02 Delete Paragraph 14.02.C.1. in its entirety.

14.04 Delete Paragraph 14.04 in its entirety and insert the following Paragraph in its place:

Substantial Completion is the stage in the progress of the work when the work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the work for its intended use.

When the Contractor considers that the work, or a portion thereof, which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such a list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Owner will make an inspection to determine whether the work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not in compliance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion by the Owner, complete or bring into compliance such item upon notification by the Owner. The Contractor shall then submit a request for another inspection by the Owner to determine Substantial Completion. When the work, or designated portion thereof, is substantially complete, the Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, and shall establish the responsibilities between the Owner and Contractor for security, maintenance, utilities, damage to the work and insurance, as applicable and shall fix the time within which the Contractor shall finish all items on the list accompanying this Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the work, or designate portion otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contractor for written acceptance of responsibilities assigned to it in such Certificate.

If, after Substantial Completion of the work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor and without terminating the Agreement, make payment of the balance due for that portion of the work fully completed and accepted. If the value of the remaining balance for work not fully completed or corrected is less than retainage stipulated in the Contract Documents, the written consent of surety to payment of the balance due for that portion of the work fully completed and accepted shall be

submitted by the Contractor to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Payments of the retained percentage shall not become due until the Contractor has fulfilled all requirements of the Contract Documents, the Owner has accepted the work and the Contractor has submitted to the Owner a waiver of liens as described herein.

XIV. ARTICLE 15

15.01 Add a new subparagraph immediately after Paragraph 15.01.A of the General Conditions to read as follows:

15.01.B Notwithstanding this paragraph 15.01, if the Owner stops Work under paragraph 13.05 or suspends the Contractor's services under paragraph 13.06 of the 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.

15.04 Delete Paragraph 15.04 in its entirety.

XV. ARTICLE 16

Article 16. Delete this section in its entirety.

XVI. ARTICLE 17

17.02 Delete Paragraph 17.02A and replace with the following.

When any period of time is referred to in the Contract Documents by days, it will be computed as consecutive calendar days and will be computed to exclude the first and include the last day of such period. The computation of time shall omit any legal holiday by the law of the applicable jurisdiction.

17.05 Delete Paragraph 17.05A and replace with the following.

This Contract and the Contract Documents shall be governed by the laws of Broward County and the State of Florida.

Any and all legal proceedings relating to the Agreement shall be under the jurisdiction of and shall take place in the courts of Broward County, Florida.

17.07 Add the following two paragraphs immediately after paragraph 17.06 of the General Conditions:

17.07 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.

17.08 All representations, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of the Agreement.

## SPECIAL PROVISIONS

### I. AUTHORITY OF THESE PROVISIONS

All statements under this provision are intended to supplement or to modify the information for bidders, the General Conditions, Supplementary Conditions, the Item Notes, the Technical Specifications and the Plans and such statements herein stated in these provisions shall govern.

### II. CONSTRUCTION SCHEDULE

The total contract time for this project shall be 45 consecutive calendar days.

The Owner and the Contractor recognize and agree that time is of the essence in this Agreement and that the Owner will suffer financial loss if the Work is not completed within the schedule specified in this Agreement, plus any extensions thereof allowed in accordance with the Contract Documents. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding, the actual loss suffered by the Owner if the work is not completed on time. Accordingly, the Owner and the Contractor agree that as liquidated damages and for delay (but not as a penalty) the Contractor shall pay the Owner five hundred dollars (\$500.00) for each consecutive calendar day after the completion dates specified in this Agreement until the work is complete. The Owner shall have the right to deduct from the final payment all such amounts with the Contractor being liable to the Owner for any deficiency. For the purpose of this clause "Substantial Completion" shall mean the date on which the work or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the work for its intended use and "Final Completion" shall mean the date on which the last element of the construction work performed by the Contractor pursuant to this Agreement is approved by the Owner in writing. Notwithstanding the above, liquidated damages, if applicable, shall begin to accrue daily beginning the day after the completion dates specified in this Agreement; however, the maximum liquidated damages amount under this Agreement shall not exceed a total of \$500.00 per day.

### III. ACCOMMODATION OF LOCAL TRAFFIC

The Contractor shall comply with all of the requirements of the Broward County Traffic Engineering Division (BCTED) and the Manual of Uniform Traffic Control Devices (MUTCD) at all times.

If the Contractor proposes to impact any local traffic as a result of any construction activities associated with this project, he shall be required to submit a Maintenance of Traffic (MOT) Plan to SBDD, the City of Pembroke Pines and the Broward County Traffic Engineering Division (BCTED) for approval, prior to starting the work.

The MOT costs for this project are considered to be incidental, and the lump sum price for this project shall include any and all provisions that are required for any and all MOT activities associated with the project.

#### IV. SURVEYS, LINES AND GRADES

The Contractor shall furnish all original and replacement surveys necessary for construction of the project, including detailed stake-out, line and grade stakes, and bench marks as required.

Prior to beginning construction, the Contractor shall provide the Owner with all information related to the survey bench mark(s) to be used by the Contractor including: location, source and identification number.

Contractor shall provide documentation of reference points being used for construction and confirmation that they are correct.

The Contractor shall not rely on scaling or measurements of line work, symbols, etc. on AutoCAD files or other computer files provided by the Owner or Engineer. The Contractor or Contractor's Surveyor shall perform all required calculations, reviews, confirmations and other office work necessary to properly lay-out and/or as-built the project in accordance with the Contract Documents.

As-built surveys shall be performed by a surveyor under contract to the Contractor. All as-built surveys that reflect work performed in accordance with the Contract Documents shall be included in the lump sum contract price. There will be no separate payment for providing the required stake-out, line and grade, bench marks, as-built drawings or other surveying work.

#### V. TESTING

All laboratory and density tests required for compliance with these specifications shall be performed by an independent testing laboratory under contract to and as directed by the Contractor, and acceptable to the Owner.

Contractor shall be responsible for arranging and obtaining and shall pay all costs associated with laboratory and density tests required for compliance with these specifications and required for Owner's and Engineer's acceptance of the Work.

There will be no separate payment for providing the required laboratory and density tests for this project.

#### VI. POLLUTION CONTROL

During the entire course of construction operations, the Contractor shall control and conduct such operations and institute maintenance procedures to prevent pollution of adjacent lands and surface waters and deposition of solids caused by either material runoff or pumped discharges from the construction area. The Contractor shall use turbidity screens or other best management practices that may be necessary to maintain water quality standards. Pollution Control measures shall apply to both the work area and the staging area, as applicable.

The Contractor shall submit a Notice of Intent to the Florida Department of Environmental Protection prior to starting construction.

The Contractor shall take all necessary measures to prevent dust and airborne sand from impacting adjacent properties. These measures may include watering and the application of calcium chloride or any other approved legal method.

The Contractor shall not receive any additional compensation for pollution control activities.

If any fines or penalties are incurred as a result of the Contractor's actions or inactions, the Contractor shall be fully and solely responsible for those fines or penalties whether they were levied against the Contractor, Owner or Engineer.

The Contractor shall apply for, secure and abide by the terms of a dewatering permit if any of his activities, or those of his subcontractors warrant a dewatering permit from any government agency. The Contractor shall pay for all costs associated with the dewatering permit under the total lump sum price for the project.

If any pollution of the land or water occurs, directly or indirectly, as a result of the Contractor's work, the Owner shall have the right, but not the obligation to clean up the pollution or to hire a company to clean up the pollution and to back charge the Contractor for the cost of the clean up. The Owner shall have the option to require the Contractor to reimburse him for the cost of such clean up or to deduct the cost from the Contractor's pay requests.

## VII. DISPOSAL OF WASTE MATERIALS AND DEBRIS

Contractor shall remove from the job site, all demolition debris, waste materials and debris resulting from his construction activities in accordance with the Contract Documents. The Contractor shall provide all means of protecting the work area and other surrounding properties from any hazardous waste by methods approved by all governmental agencies having jurisdiction.

## VIII. SAFETY – LOSS CONTROL PROVISIONS

The Contractor shall be responsible for providing safe and healthful working conditions for employees of the Contractor, subcontractors, the District, or its invitees. The Contractor shall initiate and maintain an accident prevention program which should include, but is not limited to, the following: establish and supervise programs for the education and training of employees in the recognition, avoidance, and prevention of unsafe conditions and acts.

The Contractor shall be responsible for providing first-aid services and medical care to all his employees. The Contractor shall be responsible for development and maintenance of an effective fire protection and prevention program at the job site throughout the construction, repair, alterations, or demolition work. The Contractor shall be responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is exposure to hazardous conditions, including safety belts, lifelines and lanyards.

Nothing contained herein shall be construed to shift responsibility or risk of loss for injuries or damages sustained as a result of a violation of this section from the Contractor to the District and the Contractor shall remain solely and exclusively responsible for compliance with all safety requirements and for the safety of all person and property at the project site. Employees required to handle or use toxins, caustics, and other harmful substances shall be instructed regarding the safe handling and use, and be made aware of the potential hazards, personal hygiene, and personal protective measures required. All work shall meet and be in compliance with standards and regulations set forth by Occupational Safety and Health Administration (OSHA), Florida Department of Labor and Employment Security, and any and all other appropriate federal, state, local or District safety and health standards including, but not limited to OSHA, Excavation Safety Standards as enumerated in the "Trench Safety Act" Section 553.60, Florida. Statutes.



The Contractor is and shall remain throughout the duration of the Contract responsible for all OSHA safety and all requirements of the Trench Safety Act.

**EXHIBIT "C"**

**TRENCH SAFETY ACT COMPLIANCE STATEMENT**

Project Name: SBDD SW 145<sup>TH</sup> AVENUE CULVERT EXTENSION PROJECT

Project Location: PEMBROKE PINES, FLORIDA

Instructions

Fla.Stat. §553.60-553.64 requires all contractors engaged by South Broward Drainage District to comply with the Florida Trench Safety Act and to comply with the Occupational Safety and Health Administrative Standards 29 C.F.R.s.1926.650 subpart P. All prospective contractors are required to sign the compliance statement and provide compliance cost information where indicated below. The costs for complying with the Trench Safety Act must be incorporated into this project's base bid as shown on page 1 of this document.

Certify this form in the presence of a notary public or other officer authorized to administer oaths.

CERTIFICATION

1. I understand that §553.60-553.64, Fla.Stat. (The Trench Safety Act) requires my company to comply with OSHA Standards 29 C.F.R.s.1926.650 subpart P. I will comply with the Trench Safety Act, my company will comply with the Trench Safety Act and we will comply with the applicable safety standards at all trench excavations in excess of 5 feet in depth for this project
  
2. The estimated cost imposed by compliance with the Trench Safety Act will be:  

	\$	
(Written)		(Figures)

which is based on the lineal feet of trench to be excavated and the square feet of shoring to be used.
  
3. The method of compliance is as follows: \_\_\_\_\_  
\_\_\_\_\_
  
4. The amount listed above has been included within the applicable items of the schedule of prices and in the Lump Sum Bid Price.
  
5. The bidder is, and the District and Engineer are not responsible to review or assess all safety precautions, programs and costs, and means, methods, techniques or technique adequacy, reasonableness of cost, sequences and procedures of any safety precaution, including, but not limited to, compliance with any and all requirements of Fla.Stat.§553.60-553.64, cited as the Trench Safety Act. Contractor is responsible to determine any safety or safety related standards that apply to the project.

WITNESSES:

Contractor: \_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Print Name

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

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date

**NOTARY CERTIFICATE**

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.:  
\_\_\_\_\_ }

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, to me known to be the person who signed the foregoing instrument, as such officer, and whom acknowledged the execution thereof to be his/her free act and deed as such officer for the uses and purposes therein mentioned, and that the said instrument is the act and deed of said company. He (she) is \_\_\_personally known to me or \_\_\_ has produced \_\_\_\_\_ as identification.

WITNESS my signature and official seal at said County and State, the Day and Year last aforesaid.

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_

My Commission Expires:

**EXHIBIT "E"**

**PAYMENT AND PERFORMANCE BOND**

BOND # \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That, pursuant to the requirement of Florida Statute 255.05, we, \_\_\_\_\_, whose address is \_\_\_\_\_ and whose telephone number is \_\_\_\_\_ as Principal, hereinafter called Contractor, and \_\_\_\_\_, whose address is \_\_\_\_\_ and whose telephone number is \_\_\_\_\_ as Surety, are bound to the South Broward Drainage District, whose address is 6591 Southwest 160<sup>th</sup> Avenue, Southwest Ranches, Florida 33331 and whose telephone number is 954-680-3337 as Obligee, hereinafter called Owner, in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, personal representatives, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, Contract # \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with Owner for South Broward Drainage District SW 145<sup>th</sup> Avenue Culvert Extension located at SW 145<sup>th</sup> Avenue in Pembroke Pines, Florida in accordance with Contract Drawings (plans or drawings and specifications) prepared by South Broward Drainage District which Contract is by reference made a part hereof, and is hereafter referred to as the Contract;

THE CONDITION OF THIS BOND is that if the Principal (Contractor):

1. Fully performs the Contract dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the Contractor and the Owner for construction of South Broward Drainage District SW 145<sup>th</sup> Avenue Culvert Extension. 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 payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Contractor with labor, material or supplies used directly or indirectly by Contractor in the prosecution of the work provided for in the Contract; and
3. Indemnifies and pays Owner all losses, damages (specifically including, but not limited to, damages for delay and other consequential damages caused by or arising out of the acts, omissions or negligence of Contractor), expenses, costs and attorney's fees and costs, including attorney's fees incurred in appellate proceedings, that Owner sustains because of default by Contractor under the Contract; and
4. Upon notification by the Owner, corrects any and all defective or faulty work or materials which appear within one (1) year after final acceptance of the work.
5. 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.

6. Whenever the Contractor shall be, and declared by Owner to be, in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
  - 6.1 Complete the Contract in accordance with its terms and conditions; or
  - 6.2 Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the best, lowest, qualified, responsible and responsive bidder, or, if the Owner elects, upon determination by the Owner and Surety jointly of the best, lowest, qualified, responsible and responsive bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the costs of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.
7. No right of action shall accrue on this Bond to or for use of any person or corporation other than the Owner named herein and those persons or corporations provided for in Section 255.05, Florida Statutes, or their heirs, personal representatives, administrators or successors.
8. Any action instituted by a claimant under this Bond for payment must be in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), Florida Statutes.
9. 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.

{remainder of this page left intentionally blank}

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

NAME OF CONTRACTOR

WITNESSES:

\_\_\_\_\_  
Secretary  
(CORPORATE SEAL)

\_\_\_\_\_  
(Name of Contractor)

By: \_\_\_\_\_  
(Signature & Title)

\_\_\_\_\_  
(Type Name & Title signed above.)

WITNESS my hand  
and official seal

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

\_\_\_\_\_  
Printed, typed or stamped name of Notary Public  
Exactly as commissioned

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

\_\_\_\_\_  
(Type of identification produced)

Bonded by: \_\_\_\_\_

IN THE PRESENCE OF:

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

NAME OF INSURANCE COMPANY

By: \_\_\_\_\_  
Agent and Attorney-In-Fact

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No: \_\_\_\_\_

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

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

On this, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public of the State of \_\_\_\_\_, the foregoing instrument was acknowledged by \_\_\_\_\_ (name of contractor (corporate) officer), \_\_\_\_\_ (title), of \_\_\_\_\_ (name of contractor (corporation)), \_\_\_\_\_ (state of contractor) corporation, on behalf of the contractor (corporation).

WITNESS my hand and official seal

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

\_\_\_\_\_  
Printed, typed or stamped name of Notary Public  
Exactly as commissioned

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

\_\_\_\_\_  
(Type of identification produced)

Bonded by: \_\_\_\_\_

**EXHIBIT "H"**  
**ANTI-KICKBACK AFFIDAVIT**

STATE OF                    )  
                                  ) SS:  
COUNTY OF                )

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the South Broward Drainage District or its elected officials, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

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

\_\_\_\_\_  
(Title)

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

Personally known

OR Produced Identification

Notary Public- State of \_\_\_\_\_

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

\_\_\_\_\_  
(Printed typed or stamped  
Commissioned name of notary public)





**EXHIBIT "I"**

**NON-DISCRIMINATION AFFIDAVIT**

I, the undersigned, hereby duly sworn, depose and say that the organization, business or entity represented herein shall not discriminate against any person in its operations, activities or delivery of services under any agreement it enters into with the South Broward Drainage District. The same shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

WITNESSES:

Contractor: \_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Print Name

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

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date

**NOTARY CERTIFICATE**

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.:

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, to me known to be the person who signed the foregoing instrument, as such officer, and whom acknowledged the execution thereof to be his/her free act and deed as such officer for the uses and purposes therein mentioned, and that the said instrument is the act and deed of said company. He (she) is \_\_\_ personally known to me or \_\_\_ has produced \_\_\_\_\_ as identification.

WITNESS my signature and official seal at said County and State, the Day and Year last aforesaid.

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_

My Commission Expires:



**EXHIBIT "J"**

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to South Broward Drainage District

By:

\_\_\_\_\_

For:

\_\_\_\_\_

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:

\_\_\_\_\_

- 2 I understand that a "public entity crime" as defined in Section 287.133(1)(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, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
- 3 I understand that "convicted" or "conviction" as defined in Section 287.133(1)(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.
- 4 I understand that an "affiliate" as defined in Section 287.133(1)(a), Florida Statutes means:
- a. A predecessor or successor of a person convicted of a public entity crime; or

- b. 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 case 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.
5. I understand that a "person" as defined in Section 287.133(1)(e), Florida Statutes, means any natural person or any 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 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.
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement (Indicate which statement applies).

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has 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 its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the 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.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members or agents who are active in the 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. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (Attach a copy of the final order).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED OR FOR THE PERIOD OF THE CONTRACT ENTERED INTO, WHICHEVER PERIOD IS LONGER. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.





## EXHIBIT "K"

### **Drug Free Workplace Affidavit (Tie Bid Form)** **FLORIDA STATE STATUTE 287.087**

**"Identical Tie Bids:** Preference shall be given to business with drug-free workplace programs. Whenever two or more bids, proposals or replies that are equal with respect to price, quality, and service are received by the State or any political subdivision for the procurement of commodities or contractual service, a bid, proposal or reply that certifies that it or has implemented a drug-free workplace program shall be given preference in the award process. In the event an equal bid is received by two or more bidders that have a drug-free workplace program or, if none of the tied bidders have a drug-free workplace program, the District will determine who is the most responsible and responsive bidder in its sole discretion or in the alternative the District reserves the option to put this project out for rebidding. In order to have a drug-free workplace program, a business shall:

1. 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.
2. 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.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. 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 of, 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 5 days after such conviction.
5. Impose a sanction on, or require the satisfactory 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.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.





**EXHIBIT "L"**

Form <b>W-9</b> (Rev. December 2011) Department of the Treasury Internal Revenue Service	<b>Request for Taxpayer                  Identification Number and Certification</b>	Give Form to the requester. Do not send to the IRS.
---	--	---

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____	
	<input type="checkbox"/> Other (see instructions) ▶ _____	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

<b>Part I Taxpayer Identification Number (TIN)</b>	<b>Social security number</b>																																				
Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> <td style="width:10%;"> </td> </tr> <tr> <td align="center">-</td> <td> </td> <td> </td> <td align="center">-</td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>													-			-																				
-			-																																		
Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="12" style="text-align: center;"><b>Employer identification number</b></td> </tr> <tr> <td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td> </tr> <tr> <td align="center">-</td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td> </tr> </table>	<b>Employer identification number</b>																								-											
<b>Employer identification number</b>																																					
-																																					

<b>Part II Certification</b>	
Under penalties of perjury, I certify that:	
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined below).	
<b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.	

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

**General Instructions**  
 Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**  
 A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

**PRELIMINARY COST ESTIMATE**  
**SW 145th AVENUE CULVERT EXTENSION**  
**S-3 BASIN IMPROVEMENTS**

12/27/13

<b><u>DECSRIPTION</u></b>	<b><u>QTY</u></b>	<b><u>UNIT</u></b>	<b><u>UNIT PRICE</u></b>	<b><u>TOTAL COST</u></b>
1 Mobilization	1	LS	\$1,500.00	\$1,500.00
2 Install New Storm Manholes	2	EA	\$6,500.00	\$13,000.00
3 Install 48" RCP	170	LF	\$125.00	\$21,250.00
4 Connect to Existing Structure	1	EA	\$1,500.00	\$1,500.00
6 Restoration	1	LS	\$3,500.00	\$3,500.00
7 Erosoison/Pollution Control	1	LS	\$1,500.00	\$1,500.00
8 MOT	1	LS	\$1,500.00	\$1,500.00
Sub-Total				\$43,750.00
Contingency @ 10%				\$4,375.00
Total				\$48,125.00

