



**CONTRACT DOCUMENTS AND  
SPECIFICATIONS  
FOR  
SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

**BID NO. 2020054**

**PROJECT NO: IRC-1926**

PREPARED FOR  
THE BOARD OF COUNTY COMMISSIONERS  
INDIAN RIVER COUNTY, FLORIDA  
SUSAN ADAMS, CHAIRMAN  
JOSEPH E. FLESCHER, VICE CHAIRMAN  
COMMISSIONER PETER D. O'BRYAN  
COMMISSIONER BOB SOLARI  
COMMISSIONER TIM ZORC  
JASON E. BROWN, COUNTY ADMINISTRATOR  
JEFFREY R. SMITH, CLERK OF COURT AND COMPTROLLER  
DYLAN REINGOLD., COUNTY ATTORNEY  
RICHARD B. SZPYRKA, P.E., PUBLIC WORKS DIRECTOR  
JAMES W. ENNIS, P.E., PMP ASSISTANT PUBLIC WORKS DIRECTOR

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**BOARD OF COUNTY COMMISSIONERS**

1801 27<sup>th</sup> Street  
Vero Beach, Florida 32960



Telephone: (772) 567-8000

FAX: (772) 770-5140

**ADVERTISEMENT FOR BIDS  
INDIAN RIVER COUNTY**

Sealed bids will be received by Indian River County until 2:00 P.M. on **Thursday, September 3, 2020**. Each bid shall be submitted in a sealed envelope and shall bear the name and address of the bidder on the outside and the words "**SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**" and **Bid No. 2020054**". Bids should be addressed to Purchasing Division, Room B1-301, 1800 27th Street, Vero Beach, Florida 32960. All bids will be opened publicly and read aloud at 2:00 P.M. All bids received after 2:00 P.M., on the day specified above, will not be accepted or considered.

**INDIAN RIVER COUNTY PROJECT NO. IRC-1926  
INDIAN RIVER COUNTY BID NO. 2020054**

**PROJECT DESCRIPTION:** The Project entails re-nourishment of the County's Sector 7 Beach & Dune Restoration Project via placement of about 295,000 cubic yards of beach-compatible sand fill and about 53,000 native dune plants over 2.2 miles of Atlantic Ocean beach in southern Indian River County. Sand fill is proposed to be obtained from either (a) the County's Offshore Borrow Area, or (b) an upland sand source pre-qualified by the County, or (c) an upland sand source separately approved by Florida Department of Environment Protection. To avoid adverse impacts to nesting sea turtles, construction is expected to be completed during the period from November 1, 2020 and April 30, 2021.

All material and equipment furnished and all work performed shall be in strict accordance with the plans, specifications, and contract documents pertaining thereto. Detailed specifications are available at: [www.demandstar.com](http://www.demandstar.com) or by selecting "Current Solicitations" at <http://www.ircgov.com/Departments/Budget/Purchasing>. All communications concerning this bid shall be directed to IRC Purchasing Division at [purchasing@ircgov.com](mailto:purchasing@ircgov.com).

All bidders shall submit one (1) original and one (1) copy of the Bid Proposal forms provided within the specifications. Please note that the questionnaire must be filled out completely including the financial statement. BID SECURITY must accompany each Bid, and must be in the form of an AIA Document A310 Bid Bond, properly executed by the Bidder and by a

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qualified surety, or a certified check or a cashier's check, drawn on any bank authorized to do business in the State of Florida. Bid Security must be in the sum of not less than **Five Percent (5%)** of the total amount of the bid, made payable to Indian River County Board of County Commissioners. In the event the Contract is awarded to the Bidder, Bidder will enter in a Contract with the County and furnish the required 100% Public Construction Bond and certificates of insurance within the timeframe set by the County. If Bidder fails to do so, the Bid Security shall be retained by the County as liquidated damages and not as penalty.

The County reserves the right to delay awarding of the Contract for a period of **ninety (90)** days after the bid opening, to waive informalities in any bid, or reject any or all bids in whole or in part with or without cause/or to accept the bid that, in its judgement, will serve the best interest of Indian River County, Florida. The County will not reimburse any Bidder for bid preparation costs.

A Pre-Bid Conference will be held on **August 14, 2020 at 3:00 PM.**, in the first-floor conference room of the Public Works Office (A1-303) inside the Indian River County Administration Building located at 1801 27<sup>th</sup> Street, Vero Beach, Florida, 32960. ATTENDANCE AT THIS CONFERENCE IS HIGHLY ENCOURAGED.

INDIAN RIVER COUNTY

By: Jennifer Hyde  
Purchasing Manager

For Publication in the Indian River Press Journal

Dates: **July 26, 2020**

For: Indian River Press Journal

Please furnish tear sheet and Affidavit of Publication to:

INDIAN RIVER COUNTY  
PURCHASING DIVISION  
1800 27th Street  
Building "B"  
Vero Beach, FL 32960

**\*\* END OF SECTION \*\***

**SECTION 00101 – Statement of No Bid**

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**Statement of No Bid**

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Should you elect not to bid, please complete and send this page by email ([purchasing@ircgov.com](mailto:purchasing@ircgov.com)), fax (772-770-5140) or by mail to Indian River County Purchasing, 1800 27<sup>th</sup> Street, Vero Beach, FL 32960.

Please select all of the following that apply. Our decision not to bid on the subject project was based on:

- Project is located too far from our base of operations
- Project value too low
- Project specifications unclear (please explain below)
- Material availability may be a challenge
- Our current schedule will not allow us to perform
- Unable to meet insurance requirements
- Other:
- Other:

General comments regarding the bid and/or plans and specifications:

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# SECTION 00200 - Instructions to Bidders

## ARTICLE 1 - DEFINED TERMS

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1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:

- A. Bidder--The individual or entity who submits a Bid directly to OWNER.
- B. Issuing Office--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- C. Successful Bidder--The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.
- D. ENGINEER – References Project Engineer or their designee.

## ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

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2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement for Bids or Invitation to Bid may be obtained from the Issuing Office.

2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

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

## ARTICLE 3 - QUALIFICATIONS OF BIDDERS

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3.01 To demonstrate Bidder's qualifications to perform the Work, within five days of OWNER's request Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.

- A. Bidder must have at least five years' experience in the construction of similar projects of this size and larger.
- B. Bidder must have successfully constructed, as prime CONTRACTOR, at least three projects similar in scope to this project.
- C. Bidder must have good recommendations from at least three clients similar to the OWNER.
- D. The Bidder's superintendent and assistants must be qualified and experienced in similar projects in all categories.

E. Bidder must be able to provide evidence of authority to conduct business in the jurisdiction in which the project is located.

3.02 Each bid must contain evidence of Bidder's qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the contract.

3.03 The OWNER reserves the right to reject bids from Bidders that are unable to meet the listed required qualifications.

#### ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

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##### 4.01 Subsurface and Physical Conditions

A. The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents.

2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.01.A will be made available by OWNER to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

##### 4.02 Underground Facilities

A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to OWNER and ENGINEER by OWNERS of such Underground Facilities, including OWNER, or others.

##### 4.03 Hazardous Environmental Condition

A. The Supplementary Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that ENGINEER has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.03.A will be made available by OWNER to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.06 of the General Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and

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Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in paragraph 4.06 of the General Conditions.

4.05        “[This paragraph has been deleted intentionally]”

4.06        “[This paragraph has been deleted intentionally]”

4.07        It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;

**B. VISIT THE SITE AND BECOME FAMILIAR WITH AND SATISFY BIDDER AS TO THE GENERAL, LOCAL, AND SITE CONDITIONS THAT MAY AFFECT COST, PROGRESS, AND PERFORMANCE OF THE WORK;**

C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;

D. carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and carefully study all reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions;

E. obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (overhead, surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;

F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;

G. become aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents;

H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

I. promptly give ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by ENGINEER is acceptable to Bidder; and

J. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by ENGINEER are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

## ARTICLE 5 - PRE-BID CONFERENCE

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5.01 The date, time, and location for a Pre-Bid conference is specified in the Advertisement for Bids. Representatives of OWNER and ENGINEER will be present to discuss the Project. Bidders are **HIGHLY ENCOURAGED** to attend and participate in the conference. ENGINEER will transmit to all prospective Bidders of record such Addenda as ENGINEER considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

## ARTICLE 6 - SITE AND OTHER AREAS

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6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.

## ARTICLE 7 - INTERPRETATIONS AND ADDENDA

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7.01 CONE OF SILENCE. Potential bidders and their agents shall not communicate in any way with the Board of County Commissioners, County Administrator or any County staff other than Purchasing personnel in reference or relation to this solicitation. This restriction shall be effective from the time of bid advertisement until the Board of County Commissioners meets to authorize award. Such communication may result in disqualification.

7.02 All questions about the meaning or intent of the Bidding Documents are to be submitted to PURCHASING ([purchasing@ircgov.com](mailto:purchasing@ircgov.com)) in writing. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda mailed or delivered to all parties through the Issuing Office as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not

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be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.03 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ENGINEER.

## ARTICLE 8 - BID SECURITY

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8.01 Each Bid must be accompanied by Bid Security made payable to OWNER in the amount of five percent of the Bidder's maximum base bid price and in the form of a certified check; cashier's check; or an AIA Document A310 Bid Bond issued by a surety meeting the requirements of Paragraph 5.01 of the General Conditions. The Bid Bond shall be executed by such sureties as are named in the current 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. The Surety must be authorized to issue surety bonds in Florida. The Bidder shall require the attorney-in-fact who executes any Bond, to affix to each a current certified copy of their Power of Attorney, reflecting such person's authority as Power of Attorney in the State of Florida. Further, at the time of execution of the Contract, the Successful Bidder shall for all Bonds, provide a copy of the Surety's current valid Certificate of Authority issued by the United States Department of the Treasury under 31 United States Code sections 9304-9308. The Surety shall also meet the requirements of paragraphs 5.01 and 5.02 of the General Conditions.

8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be retained by the owner. The Bid Security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of seven days after the Effective Date of the Agreement or 91 days after the Bid opening, whereupon Bid Security furnished by such Bidders will be returned.

8.03 Bid Security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

## ARTICLE 9 - CONTRACT TIMES

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9.01 The work is to be Substantially Completed by April 30, 2021 – as expected to be required to avoid adverse impacts on nesting sea turtles. The number of calendar days within which, and the dates by which, the Work is to be completed and ready for final payment are to be identified in the Bidder's bid and set forth in the Agreement.

## ARTICLE 10 - LIQUIDATED DAMAGES

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10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

## ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS

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11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, application for such acceptance will not be considered by ENGINEER until after the Effective Date of the Agreement. The procedure for submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in the General Conditions and may be supplemented in the General Requirements.

## ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

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12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to OWNER in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within seven (7) days after Bid opening, submit to OWNER a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by OWNER. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, OWNER may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.

12.02 If apparent Successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 6.06 of the General Conditions.

12.03 CONTRACTOR shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom CONTRACTOR has reasonable objection.

## ARTICLE 13 - PREPARATION OF BID

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13.01 The Bid form is included with the Bidding Documents.

13.02 All blanks on the Bid form shall be completed by printing in ink or by typewriter and the Bid signed. A Bid price shall be indicated for each section, Bid item, alternative, adjustment unit price item, and unit price item listed therein, or the words "No Bid," "No Change," or "Not Applicable" entered.

13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate

seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.

13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.

13.06 A Bid by an individual shall show the Bidder's name and official address.

13.07 A Bid by a joint venture shall be executed by each joint venturor in the manner indicated on the Bid form. The official address of the joint venture must be shown below the signature.

13.08 All names shall be typed or printed in ink below the signatures.

13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid form.

13.10 The address and telephone number for communications regarding the Bid shall be shown.

13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor license number or county registration number for the state or county of the Project, if any, shall also be shown on the Bid form.

13.12 All supporting information requested in the Bid Form must be furnished. Do not leave any questions or requests unanswered.

13.13 In accordance with Florida Statutes Section 218.80, the "Public Bid Disclosure Act", Indian River County as OWNER is obligated to disclose all license, permit, impact, or inspection fees that are payable to Indian River County in connection with the construction of the Work by the accepted bidder. All permit, impact, or inspection fees payable to Indian River County in connection with the work on this County project will be paid by Indian River County, with the exception of re-inspection fees. The Bidder shall not include ANY PERMIT, IMPACT, NOR INSPECTION FEES payable to **Indian River County** in the bid.

13.14 CONTRACTOR shall furnish all labor, materials, equipment and incidentals necessary to perform additional work not covered on the Contract Drawings. The **FORCE ACCOUNT** is intended as a contingency for unforeseen work. Lump sum amount for **FORCE ACCOUNT** work is included in the bid schedule. The value of force account work will be determined in accordance with Article 12 of the General Conditions.

## ARTICLE 14 - BASIS OF BID; EVALUATION OF BIDS

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### 14.01 Unit Price

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.

B. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price Bid for the item. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

14.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in paragraph 11.02 of the General Conditions.

14.03 The Bidder's attention is called to the fact that any estimate of quantities of work to be done and materials to be furnished under the Specifications as shown on the Bid Schedule, or elsewhere, is approximate only and not guaranteed. The OWNER does not assume any responsibility that the final quantities shall remain in strict accordance with the estimated quantities, nor shall the Bidder plead misunderstanding or deception because of such estimate of quantities or of the character, location of the work, or other conditions pertaining thereto.

## ARTICLE 15 - SUBMITTAL OF BID

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15.01 The Bid form is to be completed and submitted with the Bid security and the following data:

- A. Sworn Statement under Section 105.08, Indian River County Code, on Disclosure of Relationships.
- B. Sworn Statement under the Florida Trench Safety Act.
- C. Qualifications Questionnaire.
- D. List of Subcontractors.
- F. Certification Regarding Prohibition Against Contracting with Scrutinized Companies
- G. Contractor Equipment Schedule
- H. Certification Regarding Lobbying

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project Title and Bid Number (and, if applicable, the designated portion of the Project for which the Bid is submitted), Bid Number, the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If mail or other delivery system sends a Bid, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to Indian River County, Purchasing Division, 1800 27<sup>th</sup> Street, Vero Beach, Florida, 32960.



## ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

---

16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

## ARTICLE 17 - OPENING OF BIDS

---

17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

## ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

---

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

## ARTICLE 19 - AWARD OF CONTRACT

---

19.01 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsive. OWNER may also reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder. OWNER also reserves the right to waive all technicalities and informalities not involving price, time, or changes in the work and to negotiate contract terms with the Successful Bidder. The County will not reimburse any Bidder for bid preparation costs. Owner reserves the right to cancel the award of any Contract at any time before the execution of such Contract by all parties without any liability to the Owner. For and in consideration of the Owner considering Bids submitted, the Bidder, by submitting its Bid, expressly waives any claim to damages, of any kind whatsoever, in the event the Owner exercises its right to cancel the award in accordance herewith.

19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

19.03 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award. It is the OWNER's intent to accept alternates (if any

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are accepted) in the order in which they are listed on the Bid form, but OWNER may accept them in any order or combination.

19.04 In evaluating Bidders, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.

19.05 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, OWNER will award the Contract to the Bidder whose Bid is in the best interests of the Project.

19.07 OWNER has no local ordinance or preferences, as set forth in FS 255.0991 (2) in place, therefore no preference prohibited by that section will be considered in the acceptance, review or award of this bid.

19.08 Any actual or prospective bidder or proposer who is aggrieved in connection with the bidding and/or selection process may protest to the OWNER's Purchasing Manager. The protest shall be submitted in writing to the Purchasing Manager within seven (7) calendar days after the bidder or proposer knows or should have known of the facts giving rise to the protest.

19.09 CONTRACTOR certifies that it and its related entities as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and its related entities as defined above by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

OWNER may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

OWNER may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

Accordingly, firms responding to this solicitation shall return with their response an executed copy of the attached "Certification Regarding Prohibition Against Contracting With Scrutinized Companies." Failure to return this executed form with submitted bid/proposal/statement of qualifications will result in the response being deemed non-responsive and eliminated from consideration.

## ARTICLE 20 - CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to Public Construction Bond and insurance. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by the required insurance certificate(s) and Bond, unless the Bond has been waived due to the total contract being less than \$100,000.

## ARTICLE 21 - SIGNING OF AGREEMENT

---

21.01 When OWNER gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within fifteen (15) days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER.

21.02 OWNER shall return one fully signed counterpart to Successful Bidder.

21.03 Should Bidder to whom the Contract has been awarded refuse or fail to complete the requirements of Article 21.01 above, the additional time in calendar days, required to correctly complete the documents will be deducted, in equal amount, from the Contract time. Or, the OWNER may elect to revoke the Award and the OWNER shall hold the Bid Bond for consequential damages incurred, and the Contract may be awarded as the OWNER desires.

**\*\* END OF SECTION \*\***

## SECTION 00300 - Bid Package Contents

### THIS PACKAGE CONTAINS:

<u>SECTION TITLE</u>	<u>SECTION NUMBER</u>
Bid Form	00310
Bid Bond	00430
Sworn Statement on Disclosure of Relationships	00452
Sworn Statement Under the Florida Trench Safety Act	00454
Qualifications Questionnaire	00456
List of Subcontractors	00458
Certification Regarding Prohibition Against Contracting with Scrutinized Companies	00460
Contractor Equipment Schedule	00462
Certification Regarding Lobbying	00474

**SUBMIT ONE (1) ORIGINAL AND ONE (1) COPY OF THIS COMPLETE PACKAGE WITH YOUR BID**

**\* \* END OF SECTION \* \***

**SECTION 00310 - Bid Form**

**PROJECT IDENTIFICATION:**

Project Name: **SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**  
County Project Number: **IRC-1926**  
Bid Number: **2020054**  
Project Description: **The Project entails re-nourishment of the County's Sector 7 Beach & Dune Restoration Project via placement of about 295,000 cubic yards of beach-compatible sand fill and about 53,000 native dune plants over 2.2 miles of Atlantic Ocean beach in southern Indian River County. Sand fill is proposed to be obtained from either (a) the County's Offshore Borrow Area, or (b) an upland sand source pre-qualified by the County, or (c) an upland sand source separately approved by Florida Department of Environment Protection. To avoid adverse impacts to nesting sea turtles, construction is expected to be completed during the period from November 1, 2020 and April 30, 2021.**

**THIS BID IS SUBMITTED TO:**

**INDIAN RIVER COUNTY  
PURCHASING DIVISION  
1800 27<sup>th</sup> Street, BUILDING B  
VERO BEACH, FLORIDA 32960**

- 1.01** The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.
- 2.01** Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 90 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of OWNER.
- 3.01** In submitting this Bid, Bidder represents, as set forth in the Agreement, that:
  - A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged.

Addendum Date

Addendum Number

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

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

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of a Hazardous Environmental Condition, if any, which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.

F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.

G. Bidder is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.

H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.

I. Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to Bidder.

J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

**4.01** Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

**5.01** Bidder shall complete the Work in accordance with the Contract Documents for the price(s) contained in the Bid Schedule:

**ITEMIZED BID SCHEDULE**  
**PROJECT NAME: SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

PROJECT NO. IRC-1926

BID NO. 2020054

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

Item No.	Description	Quantity	Unit	Unit Price	Amount
1	MOBILIZATION/DEMOBILIZATION	1	LS		
2	FURNISH & INSTALL SAND	294,496	CY		
3	PAY PROFILES	1	LS		
4	PERMIT COMPLIANCE / TURBIDITY MONITORING	1	LS		
5	BEACH TILLING	14	AC		
6	FURNISH & INSTALL NATIVE PLANTS	53,000	EA		
<b>SECTOR 7 BEACH AND DUNE RESTORATION</b>				<b>SUB TOTAL</b>	
<b>FORCE ACCOUNT</b>					\$990,000.00
<b>TOTAL AMOUNT OF BID (INCLUDING FORCE ACCOUNT)</b>					

LS=Lump Sum AC=Acre EA=Each CY = Cubic Yard

**NOTE: IF THERE IS A DISCREPANCY BETWEEN THE PLANS (SUMMARY OF PAY ITEMS) AND THE ITEMIZED BID SCHEDULE, THE BID SCHEDULE WILL BE UTILIZED FOR BIDDING PURPOSES.**

**TOTAL PROJECT BID AMOUNT IN WORDS** \_\_\_\_\_

\_\_\_\_\_

*BID ITEM NOTE: ITEM #1 MOBILIZATION/DEMOBILIZATION SHALL INCLUDE ALL THE COSTS ASSOCIATED WITH THE CONTRACTORS SELECTED METHODOLOGY FOR SAND PLACEMENT*

*BID ITEM NOTE: ITEM #4 PERMIT COMPLIANCE/TURBIDITY MONITORING: SHALL INCLUDE ALL THE COSTS ASSOCIATED WITH THE CONTRACTORS SELECTED METHODOLOGY FOR SAND PLACEMENT*

- A. The Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.
- B. The Owner reserves the right to omit or add to the construction of any portion or portions of the work heretofore enumerated or shown on the plans. Furthermore, the Owner reserves the right to omit in its entirety any one or more items of the Contract without forfeiture of Contract or claims for loss of anticipated profits or any claims by the Contractor on account of such omissions.
- C. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided. The quantities actually required to complete the contract and work may be less or more than so estimated, and, if so, no action for damages or for loss of profits shall accrue to the Contractor by reason thereof.
- D. Unit Prices have been computed in accordance with paragraph 11.03.B of the General Conditions.
- E. If Bidder believes that the cost of any item of the Work has not been established by the Bid Form, then Bidder shall include that cost in some other applicable bid item, so that Bidder's proposal for the project reflects Bidder's total price for completing the Work in its entirety.

**6.01** Bidder agrees that the Work will be substantially completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

**6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified, which shall be stated in the Agreement.**

**7.01** The following documents are attached to and made a condition of this Bid:

- A. Itemized Bid Schedule;
- B. Required Bid security in the form of \_\_\_\_\_;
- C. Section 00452 - Sworn Statement under Section 105.08, Indian River Code, on Disclosure of Relationships;
- D. Section 00454 - Sworn Statement Under the Florida Trench Safety Act;
- E. Section 00456 - Qualifications Questionnaire;
- F. Section 00458 - List of Subcontractors;
- G. Section 00460 - Certification Regarding Prohibition Against Contracting with Scrutinized Companies;
- H. Section 00462 – Contractor Equipment Schedule; and



I. Section 00474 – Certification Regarding Lobbying

J. (List other documents as pertinent).

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

**8.01** The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

**9.01** By signing this form, Bidder acknowledges that it has read and understood all information contained herein.

SUBMITTED on \_\_\_\_\_, 20\_\_\_\_.

State Contractor License No. \_\_\_\_\_

If Bidder is:

**An Individual**

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
*(Individual's signature)*

Doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Email: \_\_\_\_\_

**A Partnership**

Partnership Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
*(Signature of general partner -- attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Email: \_\_\_\_\_

**A Corporation**

Corporation Name: \_\_\_\_\_ (SEAL)

State of Incorporation: \_\_\_\_\_

Type (General Business, Professional, Service, Limited Liability): \_\_\_\_\_

By: \_\_\_\_\_  
*(Signature -- attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

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

(CORPORATE SEAL)

Attest \_\_\_\_\_

(Signature of Corporate Secretary)

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Email: \_\_\_\_\_

Date of Qualification to do business is \_\_\_\_\_.

**A Joint Venture**

Joint Venture Name: \_\_\_\_\_ (SEAL)

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

*(Signature of joint venture partner -- attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

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

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Email: \_\_\_\_\_

Joint Venture Name: \_\_\_\_\_ (SEAL)

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

*(Signature -- attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

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

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Email: \_\_\_\_\_

Phone and FAX Number, and Address for receipt of official communications:

\_\_\_\_\_

\_\_\_\_\_

(Each joint venturor must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

**\*\* END OF SECTION \*\***

**SECTION 00430**

**AIA DOCUMENT A310 BID BOND**

The Contractor shall use the document form entitled "AIA Document A310 Bid Bond."

END OF SECTION

**SECTION 00452**

**SWORN STATEMENT UNDER SECTION 105.08, INDIAN RIVER COUNTY CODE,  
ON DISCLOSURE OF RELATIONSHIPS**

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

1. This sworn statement MUST be submitted with Bid, Proposal or Contract No. 2020054  
for **SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

2. This sworn statement is submitted by: \_\_\_\_\_  
\_\_\_\_\_

(Name of entity submitting Statement)

whose business address is:

\_\_\_\_\_

3. My name is \_\_\_\_\_  
(Please print name of individual signing)

and my relationship to the entity named above is \_\_\_\_\_

4. I understand that an “affiliate” as defined in Section 105.08, Indian River County Code, means:

The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of the entity.

5. I understand that the relationship with a County Commissioner or County employee that must be disclosed as follows:

Father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, or grandchild.

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

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, have any relationships as defined in section 105.08, Indian River County Code, with any County Commissioner or County employee.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents, who are active in management of the entity have the following relationships with a County Commissioner or County employee:

Name of Affiliate or entity	Name of County Commissioner or employee	Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

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

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of 20\_\_\_\_, by \_\_\_\_\_ (name of person making statement).

\_\_\_\_\_  
(Signature of Notary Public - State of Florida)  
(Print, Type, or Stamp Commissioned Name of Notary Public)

who is personally known to me or  who has produced \_\_\_\_\_ as identification.

**SECTION 00454 - Sworn Statement Under the Florida Trench Safety Act**

**THIS FORM MUST BE SIGNED BY THE BIDDER WHO WILL BE RESPONSIBLE FOR THE EXCAVATION WORK ("BIDDER"), OR ITS AUTHORIZED REPRESENTATIVE, IN THE PRESENCE OF A NOTARY PUBLIC AUTHORIZED TO ADMINISTER OATHS.**

1. This Sworn Statement is submitted with Project No. IRC-1926 for the SECTOR 7 BEACH AND DUNE RESTORATION PROJECT.

2. This Sworn Statement is submitted by \_\_\_\_\_  
(Legal Name of Entity Submitting Sworn Statement)

hereinafter "BIDDER". The BIDDER's address is \_\_\_\_\_

BIDDER's Federal Employer Identification Number (FEIN) is \_\_\_\_\_.  
3. My name is \_\_\_\_\_ and my relationship to the BIDDER  
(Print Name of Individual Signing)  
is \_\_\_\_\_  
(Position or Title)

I certify, through my signature at the end of this Sworn Statement, that I am an authorized representative of the BIDDER.

4. The Trench Safety Standards that will be in effect during the construction of this Project are contained within the Trench Safety Act, Section 553.60 et.seq. Florida Statutes and refer to the applicable Florida Statute(s) and/or OSHA Regulation(s) and include the "effective date" in the citation(s). Reference to and compliance with the applicable Florida Statute(s) and OSHA Regulation(s) is the complete and sole responsibility of the BIDDER. Such reference will not be checked by OWNER or ENGINEER and they shall have no responsibility to review or check the BIDDER's compliance with the Trench Safety Standards.

5. The BIDDER assures the OWNER that it will comply with the applicable Trench Safety Standards.

6. The BIDDER has allocated and included in its bid the total amount of \$ \_\_\_\_\_, based on the linear feet of trench to be excavated over five (5) feet deep, for compliance with the applicable Trench Safety Standards, and intends to comply with said standards by instituting the following specific method(s) of compliance on this Project: \_\_\_\_\_

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

The determination of the appropriate method(s) of compliance is the complete and sole responsibility of the BIDDER. Such methods will not be checked by the OWNER or ENGINEER for accuracy, completeness, or any other purpose. The OWNER and ENGINEER shall have no responsibility to review or check the BIDDER's compliance with the Trench Safety Standards.

7. The BIDDER has allocated and included in its bid the total amount of \$ \_\_\_\_\_ based on the square feet of shoring to be used for compliance with shoring safety requirements and intends to comply with said shoring requirements by instituting the following specific method(s) of compliance on this Project: \_\_\_\_\_

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

The determination of the appropriate method(s) of compliance is the complete and sole responsibility of the BIDDER. Such methods will not be checked by the OWNER or ENGINEER for accuracy, completeness or any other purpose. The OWNER and ENGINEER shall have no responsibility to review or check the BIDDER's compliance with the Trench Safety Standards.

8. The BIDDER, in submitting this bid, represents that it has obtained and considered all available geotechnical information, has utilized said geotechnical information and that, based on such information and the BIDDER's own information, the BIDDER has sufficient knowledge of the Project's surface and subsurface site conditions and characteristics to assure BIDDER's compliance with the applicable Trench Safety Standards in designing the trench safety system(s) for the Project.

BIDDER: \_\_\_\_\_

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

Position or Title: \_\_\_\_\_

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

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

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of 20\_\_\_\_, by \_\_\_\_\_ (name of person making statement).

\_\_\_\_\_  
(Signature of Notary Public - State of Florida)  
(Print, Type, or Stamp Commissioned Name of Notary Public)

who is personally known to me or  who has produced \_\_\_\_\_ as identification.

**\*\* END OF SECTION \*\***

## **SECTION 00456 – QUALIFICATIONS QUESTIONNAIRE**

NOTICE: THE OWNER RETAINS THE DISCRETION TO REJECT THE BIDS OF NON-RESPONSIBLE BIDDERS.

**Documentation Submitted with Project No: IRC-1926**

**Project Name: SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

1. Bidder's Name / Address: \_\_\_\_\_  
\_\_\_\_\_
2. Bidder's Telephone & FAX Numbers: \_\_\_\_\_  
\_\_\_\_\_
3. Licensing and Corporate Status:
  - a. Is Contractor License current? \_\_\_\_\_
  - b. Bidder's Contractor License No: \_\_\_\_\_ [Attach a copy of Contractor's License to the bid]
  - c. Attach documentation from the State of Florida Division of Corporations that indicates the business entity's status is active and that lists the names and titles of all officers.
4. Number of years the firm has performed business as a Contractor in construction work of the type involved in this contract: \_\_\_\_\_
5. What is the last project OF THIS NATURE that the firm has completed?  
\_\_\_\_\_  
\_\_\_\_\_
6. Has the firm ever failed to complete work awarded to you? \_\_\_\_\_  
  
[If your answer is "yes", then attach a separate page to this questionnaire that explains the circumstances and list the project name, Owner, and the Owner's telephone number for each project in which the firm failed to complete the work.]
7. Has the firm ever been assessed liquidated damages? \_\_\_\_\_  
  
[If your answer is "yes", then attach a separate page to this questionnaire that explains the circumstances and list the project name, Owner, and the Owner's telephone number for each project in which liquidated damages have been assessed.]
8. Has the firm ever been charged by OSHA for violating any OSHA regulations? \_\_\_\_\_  
  
[If your answer is "yes", then attach a separate page to this questionnaire that explains the circumstances and list the project name, Owner, and the Owner's telephone number for each project in which OSHA violations were alleged.]
9. Has the firm implemented a drug-free workplace program in compliance with Florida Statute 287.087? \_\_\_\_\_



(In the case of a tie, preference will be given to businesses with drug-free workplace programs)

10. Has the firm ever been charged with noncompliance of any public policy or rules?  
\_\_\_\_\_

[If your answer is "yes", then attach a separate page to this questionnaire that explains the circumstances and list the project name, Owner, and the Owner's telephone number for each project.]

11. Attach to this questionnaire, a notarized financial statement and other information that documents the firm's financial strength and history.

12. Has the firm ever defaulted on any of its projects? \_\_\_\_\_

[If your answer is "yes", then attach a separate page to this questionnaire that explains the circumstances and list the project name, Owner, and the Owner's telephone number for each project in which a default occurred.]

13. Attach a separate page to this questionnaire that summarizes the firm's current workload and that demonstrates its ability to meet the project schedule.

14. Name of person who inspected the site of the proposed work for the firm:

Name: \_\_\_\_\_ Date of Inspections: \_\_\_\_\_

15. Name of on-site Project Foreman: \_\_\_\_\_

Number of years of experience with similar projects as a Project Foreman: \_\_\_\_\_

16. Name of Project Manager: \_\_\_\_\_

Number of years of experience with similar projects as a Project Manager: \_\_\_\_\_

17. State your total bonding capacity: \_\_\_\_\_

18. State your bonding capacity per job: \_\_\_\_\_

19. Please provide name, address, telephone number, and contact person of your bonding company: \_\_\_\_\_

[The remainder of this page was left blank intentionally]

19. Complete the following table for SIMILAR projects:

<b>Name of Project</b>	<b>Date Completed</b>	<b>Owner</b>	<b>Contact Person: Name/ Email Address/Phone</b>	<b>Original Contract Amount</b>	<b>Final Contract Amount</b>

## SECTION 00458 - LIST OF SUBCONTRACTORS

The Bidder **MUST** list below the name and address of each Subcontractor who will perform work under this Contract in excess of one-half percent of the total bid price, and shall also list the portion of the work which will be done by such Subcontractor. After the opening of Bids, additions, changes or substitutions will not be allowed unless approved by Indian River County after a request for such a change has been submitted in writing by the Contractor, which shall include reasons for such request. Subcontractors must be properly licensed and hold a valid Certificate of Competency.

Documentation Submitted for the Project No. IRC-1926 for SECTOR 7 BEACH AND DUNE RESTORATION PROJECT

	<b>Work to be Performed</b>	<b>Subcontractor's Name/Address</b>	<b>Portion of Work (%)</b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			

Note: Attach additional sheets if required.

\* \* END OF SECTION \* \*

**SECTION 00460 – CERTIFICATION REGARDING PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES**

I hereby certify that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit have been placed on the Scrutinized Companies that Boycott Israel List created pursuant to s. 215.4725 of the Florida Statutes, or are engaged in a boycott of Israel.

In addition, if this solicitation is for a contract for goods or services of one million dollars or more, I hereby certify that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473 of the Florida Statutes, or are engaged in business operations in Cuba or Syria as defined in said statute.

I understand and agree that the County may immediately terminate any contract resulting from this solicitation upon written notice if the undersigned entity (or any of those related entities of respondent as defined above by Florida law) are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

Name of Respondent: \_\_\_\_\_

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

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

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

**Section 00462**

**CONTRACTOR EQUIPMENT SCHEDULE**

The BIDDER is requested to state below the number and types of equipment proposed for use in the Project. This schedule shall include equipment owned/rental and/or operated by the BIDDER and by any Subcontractor responsible for more than ten percent (10%) of the total work. Indicate on the form below if the equipment is owned or operated by the BIDDER or a Subcontractor.

Documentation Submitted for the Project No. IRC-1926 for SECTOR 7 BEACH AND DUNE RESTORATION PROJECT

<b>EQUIPMENT ITEM</b>	<b>NUMBER</b>	<b>CAPACITY</b>	<b>OWNER/OPERATOR OR STATE RENTAL</b>

00474

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**CERTIFICATION REGARDING LOBBYING**

---

Certification for Contracts, Grants, Loans, and Cooperative Agreements  
(This form MUST be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

**BOARD OF COUNTY COMMISSIONERS**



Month Day, 20\_\_

VIA OVERNIGHT DELIVERY

Persons Name  
Vendor name  
Vendor address  
City/State, Zip

**NOTICE OF AWARD**

Reference: Indian River County Bid # 2020054

**Project Name: SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

Dear Mr. \_\_\_\_\_,

I am pleased to inform you that on XXX, 20\_\_, the Board of County Commissioners awarded the above referenced project to your company. The following documents are required before the applicable County department can issue a "Notice to Proceed" letter.

1. Payment and Performance Bonds each in the amount of **100%** of the contract amount. (\$XXXX.00)
2. Certificate of Insurance, **must** name Indian River County as an additional insured and **must** provide for a 30 day Notice of Cancellation.
3. Agreement, execute the enclosed **two (2)** copies.

In accordance with section 255.05(1)(a), Florida Statutes, you are required to execute a Public Construction Bond for the above referenced project. Please submit the Bond and the Certificate of Insurance to this office at the address provided below no later than Date XX, 20. Failure to comply with the established deadline for submittal of required documents may be grounds for cancellation of the award.

Enclosed are two copies of the Agreement. Please execute both copies and return them together with the required bonds and Certificate of Insurance to the Purchasing Office.

Thank you for your prompt attention and if you have any questions, please do not hesitate to contact our office.

Sincerely,

\_\_\_\_\_  
Jennifer Hyde, Purchasing Manager

cc: Eric Charest., Coastal Engineering Division

**Office of Management & Budget • Purchasing Division**  
1800 27<sup>th</sup> Street, Vero Beach, Florida 32960 • (772) 567-8000 Ext. 1416 • Fax: (772) 770-5140  
E-mail: [purchasing@ircgov.com](mailto:purchasing@ircgov.com)

**SECTION 00520 - Agreement (Public Works)**

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## **SECTION 00520 - Agreement (Public Works)**

**THIS AGREEMENT** is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called OWNER)

and \_\_\_\_\_  
(hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **ARTICLE 1 - WORK**

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

***Project Description:*** The Project entails re-nourishment of the County's Sector 7 Beach & Dune Restoration Project via placement of about 295,000 cubic yards of beach-compatible sand fill and about 53,000 native dune plants over 2.2 miles of Atlantic Ocean beach in southern Indian River County. Sand fill is proposed to be obtained from either (a) the County's Offshore Borrow Area, or (b) an upland sand source pre-qualified by the County, or (c) an upland sand source separately approved by Florida Department of Environment Protection. To avoid adverse impacts to nesting sea turtles, construction is expected to be completed during the period from November 1, 2020 and April 30, 2021.

### **ARTICLE 2 - THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Name: **SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**  
County Project Number: **IRC-1926**  
Bid Number: **2020054**

### **ARTICLE 3 – ENGINEER**

3.01 The Indian River County Public Works Department is hereinafter called the ENGINEER and will act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

### **ARTICLE 4 - CONTRACT TIMES**

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion, Final Completion and Final Payment*

- A. The Work will be substantially completed on or before the main part of sea turtle nesting season begins in the County on April 30th, 2021 as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before the day after the date when the Contract Times commence to run. Substantial completion is defined as completion of the heavy equipment portion of the project on the beach, meaning sand hauling processing, testing, compaction, placement and grading. Heavy equipment work will not be allowed on the beach after April 30th, but dune vegetation planting will be allowed (please refer to FDEP permit and CONTRACT Technical Specifications for permit allowed working dates). Heavy equipment work not completed by April 30, 2021 will need to cease and all equipment removed from the beach and CONTRACTOR will not be allowed to perform Beach Nourishment activities again until after the sea turtle nesting season ends on October 31, 2021.

4.03 *Liquidated Damages*

- A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. Liquidated damages will commence for this portion of work on November 1, 2021, which excludes the time CONTRACTOR is not allowed to work based on sea turtle nesting season as identified in FDEP Permit. The parties also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$3,756 for each calendar day that expires after the time specified in paragraph 4.02 for Substantial Completion (excluding the period between May 1 and October 31, 2021) until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$3,756 for each calendar day that expires after the time specified in paragraph 4.02 (excluding the period between May 1 and October 31, 2021) for completion and readiness for final payment until the Work is completed and ready for final payment. In the event the CONTRACTOR fails to substantially complete the project by April 30, 2021 and must return to substantially complete the Project after October 31, 2021, the CONTRACTOR shall not be compensated for any remobilization or demobilization costs.

**ARTICLE 5 - CONTRACT PRICE**

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 5.01.A and summarized in paragraph 5.01.B, below:

- A. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit.
- B. THE CONTRACT SUM subject to additions and deductions provided in the Contract:

Numerical Amount: \$ \_\_\_\_\_

Written Amount: \_\_\_\_\_

## **ARTICLE 6 - PAYMENT PROCEDURES**

### **6.01 *Submittal and Processing of Payments***

- A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions and the Contract Documents.

### **6.02 *Progress Payments.***

- A. The OWNER shall make progress payments to the CONTRACTOR on the basis of the approved partial payment request as recommended by ENGINEER in accordance with the provisions of the Local Government Prompt Payment Act, Florida Statutes section 218.70 et. seq. The OWNER shall retain ten percent (10%) of the payment amounts due to the CONTRACTOR until fifty percent (50%) completion of the work. After fifty percent (50%) completion of the work is attained as certified to OWNER by ENGINEER in writing, OWNER shall retain five percent (5%) of the payment amount due to CONTRACTOR until final completion and acceptance of all work to be performed by CONTRACTOR under the Contract Documents. Pursuant to Florida Statutes section 218.735(8)(b), fifty percent (50%) completion means the point at which the County as OWNER has expended fifty percent (50%) of the total cost of the construction services work purchased under the Contract Documents, together with all costs associated with existing change orders and other additions or modifications to the construction services work provided under the Contract Documents.

### **6.03 *Pay Requests.***

- A. Each request for a progress payment shall be submitted on the application for payment form supplied by OWNER and the application for payment shall contain the CONTRACTOR'S certification. All progress payments will be on the basis of progress of the work measured by the schedule of values established, or in the case of unit price work based on the number of units completed. After fifty percent (50%) completion, and pursuant to Florida Statutes section 218.735(8)(d), the CONTRACTOR may submit a pay request to the County as OWNER for up to one half (1/2) of the retainage held by the County as OWNER, and the County as OWNER shall promptly make payment to the CONTRACTOR unless such amounts are the subject of a good faith dispute; the subject of a claim pursuant to Florida Statutes section 255.05; or otherwise the subject of a claim or demand by the County as OWNER or the CONTRACTOR. The CONTRACTOR acknowledges that where such retainage is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Contractor shall timely remit payment of such retainage to those subcontractors and suppliers. Pursuant to Florida Statutes section 218.735(8)(c), CONTRACTOR further acknowledges and agrees that: 1) the County as OWNER shall receive immediate written notice of all decisions made by CONTRACTOR to withhold retainage on any subcontractor at greater than five percent (5%) after fifty percent (50%) completion; and 2) CONTRACTOR will not seek release from the County as OWNER of the withheld retainage until the final pay request.

- 6.04 Paragraphs 6.02 and 6.03 do not apply to construction services work purchased by the County as OWNER which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the

00520 - Agreement (Public Works) REV 10-18

Local Government Prompt Payment Act. In such event, payment and retainage provisions shall be governed by the applicable grant requirements and guidelines.

6.05 *Acceptance of Final Payment as Release.*

- A. The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER from all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with the work under this Contract and for every act and neglect of the OWNER and others relating to or arising out of the work. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the Contract Documents or the Public Construction Bond.

## **ARTICLE 7 - INDEMNIFICATION**

7.01 CONTRACTOR shall indemnify OWNER, ENGINEER, and others in accordance with paragraph 6.20 (*Indemnification*) of the General Conditions to the Construction Contract.

## **ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS**

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
- E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any,

expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto

- F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 9 - CONTRACT DOCUMENTS**

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 00520-1 to 00520-15, inclusive);
  - 2. Notice to Proceed (page 00550-1);
  - 3. Public Construction Bond (pages 00610-1 to 00610-3, inclusive);
  - 4. Sample Certificate of Liability Insurance (page 00620-1);
  - 5. Contractor's Application for Payment (pages 00622-1 to 00622-6 inclusive);
  - 6. General Conditions (pages 00700-1 to 00700-44 inclusive);
  - 7. Technical Specifications (By Coastal Tech – G.E.C. Inc.);
  - 8. Drawings consisting of a cover sheet and sheets numbered 1 through 6, inclusive, with each sheet bearing the following general title: Sector 7 Beach and Dune Restoration Project;
  - 9. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  - 10. Attachments to this Agreement (enumerated as follows):

ATTACHMENT 1 Sediment Quality Assurance/Quality Control Plans

1A Offshore Borrow Area Sediment QA/QC Plan  
1B Upland Sand Source Sediment QA/QC Plan

ATTACHMENT 2 Environmental Protection

ATTACHMENT 3 Daily Reports

3A Offshore Sand Source Daily Report  
3B Upland Sand Source Daily Report

ATTACHMENT 4 Environmental Permits

11. CONTRACTOR'S BID (pages 00310-1 to 00310-6, inclusive);
12. Bid Bond (page 00430-1);
13. Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships (pages 00452-1 to 00452-2, inclusive);
14. Sworn Statement Under the Florida Trench Safety Act (pages 00454-1 to 00454-2, inclusive);
15. Qualifications Questionnaire (pages 00456-1 to 00456-3, inclusive);
16. List of Subcontractors (page 00458-1);
17. Certification Regarding Prohibition Against Contracting with Scrutinized Companies (page 00460-1);
18. Contractor Equipment Schedule (page 00462-1);
19. Certification Regarding Lobbying (page 00474-1);
20. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a) Written Amendments;
  - b) Work Change Directives;
  - c) Change Order(s);
21. Contractor's Final Certification of the Work (pages 00632-1 to 00632-2, inclusive);
22. Professional Surveyor and Mapper's Certification as to Elevations and Locations of Work (page 00634-1).

**ARTICLE 10 - MISCELLANEOUS**

10.01 *Terms*

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

#### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys 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.

#### 10.03 *Successors and Assigns*

- A. 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 to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 *Venue*

- A. This Contract shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Contract shall be in Indian River County, Florida, or, in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

#### 10.06 *Public Records Compliance*

- A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.

(4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

**B. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**(772) 226-1424**

**[publicrecords@ircgov.com](mailto:publicrecords@ircgov.com)**

**Indian River County Office of the County Attorney**

**1801 27<sup>th</sup> Street**

**Vero Beach, FL 32960**

C. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

**ARTICLE 11 – FEDERAL CLAUSES**

11.01 OWNER and CONTRACTOR will adhere to the following, as applicable to this work.

A. Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.



(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

**B. Compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708):**

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The OWNER shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor

for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

C. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the CONTRACTOR, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

(4) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(5) The contractor agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the CONTRACTOR, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(6) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

D. Energy Policy and Conservation Act – The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### E. Suspension and Debarment

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

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

(3) This certification is a material representation of fact relied upon by Indian River County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (FEMA serving as recipient and Indian River County), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

F. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any

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agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

G. Procurement of Recycled/Recovered Materials:

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

H. Access to Records: The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), Indian River County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

I. DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

J. Compliance with Federal Law, Regulations, and Executive Orders: This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

K. No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

L. Program Fraud and False or Fraudulent Statements or Related Acts: The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

M. AFFIRMATIVE STEPS: CONTRACTOR shall take the following affirmative steps to ensure minority business, women's business enterprises and labor surplus area firms are used when possible:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

- (2) Ensuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

## **ARTICLE 12 - TERMINATION OF CONTRACT**

A. The occurrence of any of the following shall constitute a default by CONTRACTOR and shall provide the OWNER with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which the OWNER may have under this Contract or under law:

- (1) if in the OWNER's opinion CONTRACTOR is improperly performing work or violating any provision(s) of the Contract Documents;
- (2) if CONTRACTOR neglects or refuses to correct defective work or replace defective parts or equipment, as directed by the Engineer pursuant to an inspection;
- (3) if in the OWNER's opinion CONTRACTOR's work is being unnecessarily delayed and will not be finished within the prescribed time;
- (4) if CONTRACTOR assigns this Contract or any money accruing thereon or approved thereon; or
- (5) if CONTRACTOR abandons the work, is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONTRACTOR or for any of his property.

B. OWNER shall, before terminating the Contract for any of the foregoing reasons, notify CONTRACTOR in writing of the grounds for termination and provide CONTRACTOR with ten (10) calendar days to cure the default to the reasonable satisfaction of the OWNER.

C. If the CONTRACTOR fails to correct or cure within the time provided in the preceding Sub-Article B, OWNER may terminate this Contract by notifying CONTRACTOR in writing. Upon receiving such notification, CONTRACTOR shall immediately cease all work hereunder and shall forfeit any further right to possess or occupy the site or any materials thereon; provided, however, that the OWNER may authorize CONTRACTOR to restore any work sites.

D. The CONTRACTOR shall be liable for:

- (1) any new cost incurred by the OWNER in soliciting bids or proposals for and letting a new contract; and
- (2) the difference between the cost of completing the new contract and the cost of completing this Contract;
- (3) any court costs and attorney's fees associated with any lawsuit undertaken by OWNER to enforce its rights herein.

E. **TERMINATION FOR CONVENIENCE:** OWNER may at any time and for any reason terminate CONTRACTOR's services and work for OWNER's convenience. Upon receipt of notice of such termination CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue the work and immediately cease ordering of any materials, labor, equipment, facilities, or supplies in connection with the performance of this Contract. Upon such termination Contractor shall be entitled to payment only as follows:

- (1) the actual cost of the work completed in conformity with this Contract and the specifications; plus,

(2) such other costs actually incurred by CONTRACTOR as are permitted by the prime contract and approved by the OWNER.

Contractor shall not be entitled to any other claim for compensation or damages against the County in the event of such termination.

F. TERMINATION IN REGARDS TO F.S. 287.135: TERMINATION IN REGARDS TO F.S. 287.135: CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

OWNER may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

OWNER may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

[The remainder of this page was left blank intentionally]

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20\_\_ (the date the Contract is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

**OWNER:**

**CONTRACTOR:**

INDIAN RIVER COUNTY

\_\_\_\_\_

By: \_\_\_\_\_  
Susan Adams, Chairman

By: \_\_\_\_\_  
(Contractor)

By: \_\_\_\_\_  
Jason E. Brown, County Administrator

(CORPORATE SEAL)

Attest \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Dylan Reingold, County Attorney

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Jeffrey R. Smith, Clerk of Court and Comptroller

License No. \_\_\_\_\_  
(Where applicable)

Attest: \_\_\_\_\_  
Deputy Clerk  
(SEAL)

Agent for service of process: \_\_\_\_\_

Designated Representative:  
Name: James W. Ennis, P.E. PMP  
Title: Assistant Public Works Director  
1801 27th Street  
Vero Beach, Florida 32960  
(772) 226-1221  
Facsimile: (772) 778-9391

Designated Representative:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

**\*\* END OF SECTION \*\***

**SECTION 00550 - Notice to Proceed**

Dated \_\_\_\_\_

TO:

\_\_\_\_\_  
(BIDDER)

ADDRESS:

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

Contract For:

**SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

Project No: **IRC-1926**

IRC Bid No. **2020054**

You are notified that the Contract Times under the above contract will commence to run on \_\_\_\_\_. By that date, you are to start performing your obligations under the Contract Documents. The contract has allocated \_\_\_ calendar days for Substantial Completion of this project and \_\_\_ calendar days for Final Completion. In accordance with Article 4 of the Agreement the date of Substantial Completion is \_\_\_\_\_ and the date of readiness for final payment is \_\_\_\_\_.

**CONTRACTOR shall not commence work under this Contract until he has obtained all insurance required under Article 5 and such insurance has been delivered to the OWNER and approved by the OWNER, nor shall the CONTRACTOR allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with Article 13.**

Also, before you may start any Work at the Site, you must:  
(add other requirements, if applicable)

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

\_\_\_\_\_  
**INDIAN RIVER COUNTY**  
(OWNER)

By: \_\_\_\_\_  
(AUTHORIZED SIGNATURE)

\_\_\_\_\_  
(TITLE)

## 00610 - PUBLIC CONSTRUCTION BOND

### INSTRUCTION FOR PUBLIC CONSTRUCTION BOND

The front or cover page to the required public construction payment and performance bond shall contain the information required by Fla. Stat. 255.05(1)(a), and be substantially in the format shown on the first page following this instruction.

The Public Construction Bond shall be in the form suggested by Fla. Stat. 255.05(3) as shown on the second page following this instruction.

A Power of Attorney from a surety insurer authorized to do business in Florida, authorizing the signature of the Attorney in Fact who executes the Public Construction Bond shall accompany that Bond.



**Public Work  
F.S. Chapter 255.05 (1)(a)  
Cover Page**

**THIS BOND IS GIVEN TO COMPLY WITH SECTION 255.05 OR SECTION 713.23 FLORIDA STATUTES, AND ANY ACTION INSTITUTED BY A CLAIMANT UNDER THIS BOND FOR PAYMENT MUST BE IN ACCORDANCE WITH THE NOTICE AND TIME LIMITATION PROVISIONS IN SECTION 255.05(2) OR SECTION 713.23 FLORIDA STATUTES.**

**BOND NO:** \_\_\_\_\_

**CONTRACTOR NAME:** \_\_\_\_\_

**CONTRACTOR ADDRESS:** \_\_\_\_\_

**CONTRACTOR PHONE NO:** \_\_\_\_\_

**SURETY COMPANY NAME:** \_\_\_\_\_

**SURETY PRINCIPAL  
BUSINESS ADDRESS:** \_\_\_\_\_

**SURETY PHONE NO:** \_\_\_\_\_

**OWNER NAME:** \_\_\_\_\_

**OWNER ADDRESS:** \_\_\_\_\_

**OWNER PHONE NO:** \_\_\_\_\_

**OBLIGEE NAME:** \_\_\_\_\_  
(If contracting entity is different from  
the owner, the contracting public entity)

**OBLIGEE ADDRESS:** \_\_\_\_\_

**OBLIGEE PHONE NO:** \_\_\_\_\_

**BOND AMOUNT:** \_\_\_\_\_

**CONTRACT NO:** \_\_\_\_\_  
(If applicable)

**DESCRIPTION OF WORK:** \_\_\_\_\_

**PROJECT LOCATION:** \_\_\_\_\_

**LEGAL DESCRIPTION:** \_\_\_\_\_  
(If applicable)

**FRONT PAGE**

All other bond page(s) are deemed subsequent to this page regardless of any page number(s) that may be printed thereon.

PUBLIC CONSTRUCTION BOND

Bond No. \_\_\_\_\_  
(enter bond number)

BY THIS BOND, We \_\_\_\_\_, as Principal and \_\_\_\_\_, a corporation, as Surety, are bound to \_\_\_\_\_, herein called Owner, in the sum of \$ \_\_\_\_\_, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated \_\_\_\_\_, \_\_\_\_\_, between Principal and Owner for construction of \_\_\_\_\_, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
  2. Promptly makes payments to all claimants, as defined in Section [255.05\(1\)](#), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
  3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
  4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.
- Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section [255.05\(2\)](#), Florida Statutes. 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.

DATED ON \_\_\_\_\_,

\_\_\_\_\_  
(Name of Principal)

By \_\_\_\_\_  
(As Attorney in Fact)

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

**SECTION 00620 - Sample Certificate of Liability Insurance**

<b>CERTIFICATE OF LIABILITY INSURANCE</b>	
<b>PRODUCER</b>	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
	<b>COMPANIES AFFORDING COVERAGE</b>
<b>INSURED</b>	COMPANY A -
	COMPANY B -
	COMPANY C -
	COMPANY D -
	COMPANY E -

**COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN THE INSURANCE ACCORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/D/YY)	LIMITS		
A	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE - <input type="checkbox"/> OCCUR <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				EACH OCCURRENCE	\$ 1,000,000	
					FIRE DAMAGE (Any One Fire)	\$ 50,000	
					MED. EXP. (Any One Person)	\$ 5,000	
					PERSONAL & ADV INJURY	\$ 1,000,000	
					GENERAL AGGREGATE	\$ 1,000,000	
					PRODUCTS – COMP/OP AGG.	\$ 1,000,000	
						\$	
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> <input type="checkbox"/>				COMBINED SINGLE LIMIT (Ea. Occurrence)	\$ 1,000,000	
					BODILY INJURY (Per Person)	\$	
					BODILY INJURY (Per Accident)	\$	
					PROPERTY DAMAGE	\$	
	GARAGE LIABILITY <input type="checkbox"/> <input type="checkbox"/>				AUTO ONLY – EA ACCIDENT	\$	
					OTHER THAN	EA ACC	\$
						AUTO ONLY	AGG
A	EXCESS LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE		
					AGGREGATE	\$	
						\$	
						\$	
A	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY  THE PROPRIETOR/PARTNERS/ EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				<input type="checkbox"/> WC STATUTORY LIMITS		
					E.L. EACH ACCIDENT	\$ 100,000	
					E.L. DISEASE – EA	\$ 500,000	
					E.L. DISEASE-POLICY LIMIT	\$ 100,000	
	OTHER: BUILDER'S RISK				FULL REPLACEMENT COST OF THE WORK		

DESCRIPTION OF OPERATIONS/LOCATIONS VEHICLES/SPECIAL ITEMS

<b>CERTIFICATE HOLDER</b>	<b>ADDITIONAL INSURED; INSURER LETTER:</b>	<b>CANCELLATION</b>
ADDITIONAL INSURED: INDIAN RIVER COUNTY 1801 27 <sup>TH</sup> STREET, VERO BEACH, FL 32960-3388		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
		AUTHORIZED REPRESENTATIVE

**SECTION 00622 - Contractor's Application for Payment**  
**SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

Application for Payment No. \_\_\_\_\_  
 For Work Accomplished through the period of \_\_\_\_\_ through \_\_\_\_\_

To: Indian River County (OWNER)  
 From: \_\_\_\_\_ (CONTRACTOR)  
 Bid No.: 2020054  
 Project No. IRC-1926

**1) Attach detailed schedule and copies of all paid invoices.**

1.	Original Contract Price:	\$ _____
2.	Net change by Change Orders and Written Amendments (+ or -):	\$ _____
3.	Current Contract Price (1 plus 2):	\$ _____
4.	Total completed and stored to date:	\$ _____
5.	Retainage (per Agreement):	
	_____ % of completed Work:	
	_____ % of retainage:	\$ _____
	Total Retainage:	\$ _____
6.	Total completed and stored to date less retainage (4 minus 5):	\$ _____
7.	Less previous Application for Payments:	\$ _____
8.	<b>DUE THIS APPLICATION (6 MINUS 7):</b>	\$ _____

**CONTRACTOR'S CERTIFICATION:**

**UNDER PENALTY OF PERJURY**, the undersigned CONTRACTOR certifies that (1) the labor and materials listed on this request for payment have been used in the construction of this Work; (2) payment received from the last pay request has been used to make payments to all subcontractors, laborers, materialmen and suppliers except as listed on Attachment A, below; (3) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); (4) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective; and (5) If this Periodic Estimate is for a Final Payment to project or improvement, I further certify that all persons doing work upon or furnishing materials or supplies for this project or improvement under this foregoing contract have been paid in full, and that all taxes imposed by Chapter 212 Florida Statutes, (Sales and Use Tax Act, as Amended) have been paid and discharged, and that I have no claims against the OWNER.

Attached to or submitted with this form are:

1. Signed release of lien forms (partial or final as applicable) from all subcontractors, laborers, materialmen and suppliers except as listed on Attachment A, together with an explanation as to why any release of lien form is not included;

2. Updated Construction Schedule per [Specification Section 01310](#).

Dated \_\_\_\_\_

By: \_\_\_\_\_  
(CONTRACTOR – must be signed by  
an Officer of the Corporation)

\_\_\_\_\_  
Print Name and Title

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

Before me, a Notary Public, duly commissioned, qualified, and acting, personally appeared \_\_\_\_\_, who being by me first duly sworn upon oath, says that he/she is the \_\_\_\_\_ of the CONTRACTOR mentioned above and that he/she has been duly authorized to act on behalf of it, and that he/she executed the above Contractor’s Application for Payment and Contractor’s Certification statement on behalf of said CONTRACTOR; and that all of the statements contained herein are true, correct, and complete. Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ is personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC: \_\_\_\_\_

(SEAL)

Printed name: \_\_\_\_\_

Commission No.: \_\_\_\_\_

Commission Expiration: \_\_\_\_\_

**Please remit payment to:**

**Contractor’s Name:** \_\_\_\_\_

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

\*\*\*\*\*  
[The remainder of this page was left blank intentionally]

**SURETY'S CONSENT OF PAYMENT TO CONTRACTOR:**

The Surety, \_\_\_\_\_

\_\_\_\_\_, a corporation, in accordance with Public Construction Bond Number \_\_\_\_\_, hereby consents to payment by the OWNER to the CONTRACTOR, for the amounts specified in this CONTRACTOR's APPLICATION FOR PAYMENT.

**TO BE EXECUTED BY CORPORATE SURETY:**

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Corporate Surety

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

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

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

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

(Affix Corporate SEAL)

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

Before me, a Notary Public, duly commissioned, qualified, and acting, personally appeared \_\_\_\_\_, to me well known or who produced \_\_\_\_\_ as identification, who being by me first duly sworn upon oath, says that he/she is the \_\_\_\_\_ for \_\_\_\_\_ and that he/she has been authorized by \_\_\_\_\_ it to approve payment by the OWNER to the CONTRACTOR of the foregoing Contractor's Application for Payment. Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

\*\*\*\*\*

[The remainder of this page was left blank intentionally]

**CERTIFICATION OF ENGINEER:**

I certify that I have reviewed the above and foregoing Periodic Estimate for Partial Payment; that to the best of my knowledge and belief it appears to be a reasonably accurate statement of the work performed and/or material supplied by the Contractor. I am not certifying as to whether or not the Contractor has paid all subcontractors, laborers, materialmen and suppliers because I am not in a position to accurately determine that issue.

Dated \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

**CERTIFICATION OF INSPECTOR:**

I have checked the estimate against the Contractor's Schedule of Amounts for Contract Payments and the notes and reports of my inspections of the project. To the best of my knowledge, this statement of work performed and/or materials supplied appears to be reasonably accurate, that the Contractor appears to be observing the requirements of the Contract with respect to construction, and that the Contractor should be paid the amount requested above, unless otherwise noted by me. I am not certifying as to whether or not the Contractor has paid all subcontractors, laborers, materialmen and suppliers because I am not in a position to accurately determine that issue.

Dated \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\*\*\*\*\*

[The Remainder of This Page Was Left Blank Intentionally]

**ATTACHMENT A**

- 1. List of all subcontractors, laborers, materialmen and suppliers who have not been paid from the payment received from the last Pay Request and the reason why they were not paid (attach additional pages as necessary):**

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- 2. List of all subcontractors, laborers, materialmen and suppliers for which a signed release of lien form (partial or final as applicable) is not included with this Pay Request, together with an explanation as to why the release of lien form is not included (attach additional pages as necessary):**

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**SECTION 00630 - Certificate of Substantial Completion**

Date of Issuance: \_\_\_\_\_, 20\_\_\_\_

OWNER: Indian River County

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

CONTRACT FOR: **SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

Project No. **IRC-1926**

OWNER's Bid No. **2020054**

Project Description: *The Project entails re-nourishment of the County's Sector 7 Beach & Dune Restoration Project via placement of about 295,000 cubic yards of beach-compatible sand fill and about 53,000 native dune plants over 2.2 miles of Atlantic Ocean beach in southern Indian River County. Sand fill is proposed to be obtained from either (a) the County's Offshore Borrow Area, or (b) an upland sand source pre-qualified by the County, or (c) an upland sand source separately approved by Florida Department of Environment Protection. To avoid adverse impacts to nesting sea turtles, construction is expected to be completed during the period from November 1, 2020 and April 30, 2021.*

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

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

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

And To: \_\_\_\_\_  
CONTRACTOR

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

\_\_\_\_\_  
DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within **30** calendar days of the above date of Substantial Completion.

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

OWNER:

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CONTRACTOR:

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

*[For items to be attached see definition of Substantial Completion as supplemented and other specifically noted conditions precedent to achieving Substantial Completion as required by Contract Documents.]*

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

---

---

Executed by ENGINEER on: \_\_\_\_\_ (Date).

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

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

CONTRACTOR accepts this Certificate of Substantial Completion on \_\_\_\_\_ (date).

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

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

OWNER accepts this Certificate of Substantial Completion on \_\_\_\_\_ (date).

OWNER: INDIAN RIVER COUNTY

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

**\* \* END OF SECTION \* \***

**SECTION 00632 - CONTRACTOR'S FINAL CERTIFICATION**  
**OF THE WORK**

(TO ACCOMPANY CONTRACTOR'S FINAL APPLICATION FOR PAYMENT)

PROJECT NAME: **SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

PROJECT NO: **IRC-1926**

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

Personally before me the undersigned officer, authorized by the laws of said state to administer oaths, comes \_\_\_\_\_, who on oath says: That he is the CONTRACTOR with whom Indian River County, Florida, a political subdivision of said state, did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, enter into a contract for the performance of certain work, more particularly described as follows:

UNDER PENALTY OF PERJURY, affiant further says that said construction has been completed and the Contract therefore fully performed and final payment is now due and that all liens of all firms and individuals contracting directly with or directly employed by such CONTRACTOR have been paid in full EXCEPT:

Name	Description/Amount
_____	_____
_____	_____

who have not been paid and who are due the amount set forth.

Affiant further says that:

1. CONTRACTOR has reviewed the Contract Documents.
2. CONTRACTOR has reviewed the Work for compliance with the Contract Documents.
3. CONTRACTOR has completed the Work in accordance with the Contract Documents.
4. All equipment and systems have been tested in the presence of the ENGINEER or his representative and are fully operational with no defects or deficiencies except as listed below.

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

00632-1

- 5. The Work is complete and ready for final acceptance by the OWNER.
- 6. CONTRACTOR hereby certifies that it has no claims against the OWNER.

(Corporate Seal)

\_\_\_\_\_  
(Contractor)

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

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

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

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of 20\_\_\_\_, by \_\_\_\_\_  
(name of person making statement).

\_\_\_\_\_  
(Signature of Notary Public - State of Florida)  
(Print, Type, or Stamp Commissioned Name of Notary Public)

who is personally known to me or  who has produced  
\_\_\_\_\_ as identification.

+ + END OF SECTION + +

00632-2

**SECTION 00634 - PROFESSIONAL SURVEYOR AND MAPPER'S CERTIFICATION AS TO ELEVATIONS AND LOCATIONS OF THE WORK**

(TO BE COMPLETED BY A FLORIDA PROFESSIONAL SURVEYOR AND MAPPER RETAINED BY THE CONTRACTOR AND TO ACCOMPANY CONTRACTOR'S FINAL APPLICATION FOR PAYMENT)

I CERTIFY that I am a Florida Professional Surveyor and Mapper retained by:

\_\_\_\_\_

\_\_\_\_\_

(Insert name of CONTRACTOR)

Who is the CONTRACTOR for the following Project:

**PROJECT NAME: SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

**INDIAN RIVER COUNTY PROJECT # IRC-1926**

I FURTHER CERTIFY that I have personally performed the survey work for the preparation of Record Drawings for the CONTRACTOR for this project or that such work was performed under my direct control and supervision.

I FURTHER CERTIFY that all constructed elevations and locations of the Work are in conformance with the Contract Documents, except for discrepancies listed below.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Attach additional sheets as necessary]

(SURVEYOR'S SEAL)

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

Printed Name: \_\_\_\_\_

Florida Professional Surveyor and Mapper Registration Number: \_\_\_\_\_

Date Signed and Sealed by Professional Surveyor and Mapper: \_\_\_\_\_

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

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

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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AMERICAN CONSULTING ENGINEERS COUNCIL

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

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#### 1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the 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. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

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*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR 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 Substantial Completion; and (ii) 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.A 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. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.~~

21. *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.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *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 in connection with the Work.

24. *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.

25. *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.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *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.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *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.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *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.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *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.

36. *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.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *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.

39. *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.

40. *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.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *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.

43. *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.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *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 any Subcontractor.

46. *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.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed 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.

49. *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.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

## 1.02 Terminology

### A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed 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 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 9.10 or any other provision of the Contract Documents.

#### B. *Day*

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

#### C. *Defective*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or 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).

#### D. *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.

E. Unless stated otherwise in the Contract Documents, words or phrases which 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

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### 2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

### 2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. 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 ninetieth 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. *CONTRACTOR's Review of Contract Documents:* 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 may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, 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 knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its 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 Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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.

~~C. *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.~~

## 2.06 *Preconstruction Conference*

~~A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by 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.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.~~

## 2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten 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.B. CONTRACTOR shall have an additional ten 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 any specified Milestones and 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 Shop Drawing and Sample 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 called for by one is as binding as if called for 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 may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended 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, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees 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. 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 any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in

writing at once. 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; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known 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, code, or instruction (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 in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) 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: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

### 3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect



contract with OWNER: (i) shall not 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 ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of 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 adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS;  
SUBSURFACE AND PHYSICAL CONDITIONS;  
REFERENCE POINTS

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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, 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 of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general 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, ENGINEER, or any of ENGINEER's Consultants 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 at or contiguous to the Site 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 9.08 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 in respect of 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 within the time and 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, OWNER, ENGINEER, and ENGINEER's Consultants 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.

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; 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:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general 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, ENGINEER or any of ENGINEER's Consultants 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); 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.

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 to CONTRACTOR written notice: (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, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other 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.E 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, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other 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.F 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 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 - BONDS AND INSURANCE

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### 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 CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, 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 current 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 must be accompanied by a certified copy of such agent's authority to act.

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 within 20 days thereafter substitute 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 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. ~~OWNER shall deliver to CONTRACTOR, with copies to each additional insured 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.~~

#### 5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other 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: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) 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 so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER'S

Consultants, 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, partners, employees, agents, and other 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 completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty 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);

6. 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

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and 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, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;~~

~~2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, 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, 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 additional insured to whom a certificate of insurance has been issued.~~

~~B. OWNER shall purchase and maintain such boiler and machinery 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, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.~~

~~C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with 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 additional insured 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 paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written~~

~~Amendment. 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, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other 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 additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other 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, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other 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, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other 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 peril 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, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other 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 insureds, 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 or Written Amendment.~~

~~—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 2.05.C. 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

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#### 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, but 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. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

#### 6.02 Labor; Working Hours

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work 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, and CONTRACTOR will not permit overtime work or the performance of Work on 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 General Requirements, 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 warranties and guarantees specifically called for 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. 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 (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

#### 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: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, 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 that 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 procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first 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 shall certify that the proposed substitute item will

perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not 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 work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also 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, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

*B. Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and 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 procedure for review by ENGINEER will be similar to that provided in subparagraph 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 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 either a Change Order for a substitute or 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 time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such 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 or Written Amendment signed. 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 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 shall it 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 an additional insured 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, ENGINEER's Consultants, and all other individuals or entities

identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other 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. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants 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. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners

for capital costs related thereto, such as plant investment fees.

#### 6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and 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 primary 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 may 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.

B. OWNER qualifies for state and local sales tax exemption in the purchase of all material and equipment.

#### 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, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants 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 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, Written Amendments, 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. 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. 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 ENGINEER's Consultant, 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). 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 to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The 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.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, 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.

#### D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety

precautions and programs incident thereto;  
and

d. CONTRACTOR shall also have 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.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

#### E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample 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 of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.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 approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

#### F. 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, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. 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.

B. 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 acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test, or approval by others; or
8. 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, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other 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:

1. 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; and

2. is caused in whole or in part 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, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees 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 Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them 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.

## ARTICLE 7 - OTHER WORK

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### 7.01 Related Work at Site

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let 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 and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, 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 their work and will only cut or alter their 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.

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

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### 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 Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly 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 in respect of 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 in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

#### 8.06 *Insurance*

A. OWNER's responsibilities, if any, in 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 in 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. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

## ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

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### 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 and will not be changed without written consent of OWNER and ENGINEER.

### 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 9.10, and 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 responsibilities and

authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. 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 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. 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, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

#### 9.05 *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 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, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

#### 9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or 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.

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

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

#### 9.08 *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.

#### 9.09 *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. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, 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. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or

CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

#### 9.10 *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 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

## ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

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### 10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, 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.B.

### 10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) 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 notice 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) is required by the provisions of any Bond to be given to a surety, 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 and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter 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. Notice of the amount or extent of the Claim, dispute, or other matter 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, dispute, or other matter). 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 Time 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).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

### ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

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#### 11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs 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 include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

~~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 at the Site. 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, 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, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, 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, 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 and 11.01.B.

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 *Cash 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 as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the 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

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the 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.

B. 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. 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 9.08.

B. 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.

C. 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 any other item of Work; and
3. if 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

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### 12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. 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 paragraph 12.01.C.2.a 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 (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) 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 (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

## 12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) 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.

## 12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to 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.

## 12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

## 12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS;  
CORRECTION, REMOVAL OR ACCEPTANCE OF  
DEFECTIVE WORK

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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. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. OWNER, ENGINEER, ENGINEER's Consultants, 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, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site 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 said paragraph 13.04.B; 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, it must, if requested by ENGINEER, be uncovered 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. If it is found that such 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. If, however, such 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 Milestones), 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. 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).

### 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 Laws or Regulations or 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: (i) repair such defective land or areas, or~~

~~(ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) 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. If CONTRACTOR does not promptly comply with the terms of such 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, and 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.~~

~~B. 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 or by Written Amendment.~~

C. 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.

D. 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 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 and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and 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 (or Milestones) 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

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### 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 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 on the Site 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to 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: (i) 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 (ii) that 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 to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or 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 referred to 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 Written Amendment or 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 must 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

corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined 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.

### 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. Promptly thereafter, 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 therefore. ~~If ENGINEER considers the Work substantially complete, ENGINEER will prepare and 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. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRAC-~~

~~TOR 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.~~

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of 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, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. 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. 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.

2. No 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: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) 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 or OWNER's property might in any way be responsible 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. 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 will become due and, when due, 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 and recommendation of ENGINEER, and without terminating the Agreement, 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 writing which are still unsettled.

**ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

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**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 allowed 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 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 the surety, if any) seven days written notice, terminate the services of CONTRACTOR, 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), 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 finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. 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.

C. 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.

#### 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, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for 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. for 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. for 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. for 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, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, ~~or 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. 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

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### 16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

## ARTICLE 17 - MISCELLANEOUS

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### 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 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 if 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, and 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 Agreement.

### 17.05 *Controlling Law*

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

**SECTION 00800 - SUPPLEMENTARY CONDITIONS**  
**TO THE GENERAL CONDITIONS**

<b><u>Article Title</u></b>	<b><u>Article Number</u></b>
Introduction	SC – 1.00
Defined Terms	SC – 1.01
Terminology	SC – 1.02
Before Starting Construction	SC – 2.05
Preconstruction Conference	SC – 2.06
Coordination of Plans, Specifications, and Special Provisions	SC – 3.06
Subsurface and Physical Conditions	SC – 4.02
Performance, Payment and Other Bonds	SC – 5.01
Certificates of Insurance	SC – 5.03
CONTRACTOR's Liability Insurance	SC – 5.04
OWNER's Liability Insurance	SC – 5.05
Property Insurance	SC – 5.06
Waiver of Rights	SC – 5.07
Receipt and Application of Insurance Proceeds	SC – 5.08
Acceptance of Bonds and Insurance; Option to Replace	SC – 5.09
Labor; Working Hours	SC – 6.02
Concerning Subcontractors, Suppliers and Others	SC – 6.06
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Test and Inspections	SC – 13.03
OWNER May Stop the Work	SC – 13.05
Correction Period	SC – 13.07
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Substantial Completion	SC – 14.04

Final Payment	SC – 14.07
OWNER May Suspend Work	SC – 15.01
OWNER May Terminate for Cause	SC – 15.02
CONTRACTOR May Stop Work or Terminate	SC – 15.04
Mediation	SC –16.02
Liens	SC – 17.06

+++ END OF THIS SUPPLEMENTARY CONDITIONS INDEX +++

**SECTION 00800 - SUPPLEMENTARY CONDITIONS TO THE  
GENERAL CONDITIONS**

**SC-1.00 Introduction**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) and other provisions of the Contract Documents as indicated below. All provisions, which are not so amended or supplemented, remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions.

**SC-1.01 Defined Terms**

SC-1.01.A.20. *Delete paragraph GC 1.01.A.20 in its entirety.*

**SC-1.02 Terminology**

SC-1.02.D.1, 2, and 3 *Delete paragraphs GC-1.02.D.1, 2, and 3 in their entirety and insert the following paragraphs in their place:*

*D. Furnish, Install, Perform, Provide*

1. The word "furnish" shall mean to supply and deliver 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" shall mean to put into use or place in final position services, materials, or equipment complete and ready for intended use.
3. The words "perform" or "provide" shall mean to furnish and install services, materials, or equipment complete and ready for intended use.

**SC-2.05 Before Starting Construction**

SC-2.05.C. *Delete paragraph GC 2.05.C in its entirety and insert the following paragraph in its place:*

- C. *Evidence of Insurance:* CONTRACTOR shall not commence work under this Contract until he has obtained all insurance required under Article 5 and such insurance has been delivered to the OWNER and approved by the OWNER, nor shall the CONTRACTOR allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing *defective Work* in accordance with Article 13.

**SC-2.06 Preconstruction Conference**

SC-2.06 *Delete paragraph GC-2.06.A in its entirety and insert the following paragraph in its place:*

- A. Immediately after awarding the contract, but before the CONTRACTOR begins work, the Project Manager will call a preconstruction conference at a place the ENGINEER designates to establish an understanding among the parties as to the work and to discuss schedules referred to in paragraph 2.05.B, procedures

for handling Shop Drawings and other submittals, and maintaining required records. Utility companies and others as appropriate will be requested to attend to discuss and coordinate work.

- B. Per the FDOT Standard Specifications for Road and Bridge Construction, the Contractor will certify to the Engineer the following:
1. A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
  2. Actual Rate for items listed in Table 4-3.2.1 (see below),
  3. Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
  4. Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

FDOT Table 4-3.2.1	
Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation Benefits	Actual
Retirement Benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rates tables adjusted by Contractor's actual experience modification factor in effect at the time of the additional work or unforeseen work
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual
*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).	

**SC-3.06 Coordination of Plans, Specifications, and Special Provisions**

SC-3.06 *Add the following new paragraphs immediately after paragraph GC-3.05:*

SC-3.06 *Coordination of Plans, Specifications, and Special Provisions*

- A. In case of discrepancy, the governing order of the documents shall be as follows:
1. Written Interpretations
  2. Addenda
  3. Specifications
  4. Supplementary Conditions to the General Conditions
  5. General Conditions
  6. Approved Shop Drawings
  7. Drawings
  8. Referenced Standards.
- B. Written/computed dimensions shall govern over scaled dimensions.

## **SC-4.02 Subsurface and Physical Conditions**

SC-4.02 *Add the following new paragraphs immediately after paragraph GC-4.02.B:*

- C. In the preparation of Drawings and Specifications, ENGINEER or ENGINEER's Consultants relied upon the following reports of explorations and tests of subsurface conditions at the Site:  
NONE

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

SC-5.01.A. *Delete paragraph GC-5.01.A in its entirety and insert the following paragraphs in its place:*

Within fifteen (15) days of receipt of the Contract Documents for execution, the CONTRACTOR shall furnish a Public Construction Bond in an amount equal to 100% of the Contract Price.

1. In lieu of the Public Construction Bond, the CONTRACTOR may furnish an alternative form of security in the form of cash, money order, certified check, cashier's check, irrevocable letter of credit or a security as listed in Part II of F.S. Chapter 625. Any such alternative form of security shall be for the same purpose, and be for the same amount and subject to the same conditions as those applicable to the bond otherwise required. The determination of the value of an alternative form of security shall be made by the OWNER.
2. Such Bond shall continue in effect for one (1) year after acceptance of the Work by the OWNER.
3. The OWNER shall record the Public Construction Bond with the Public Record Section of the Indian River County Courthouse located at 2000 16th Avenue, Vero Beach, Florida 32960.

## **SC-5.03 Certificates of Insurance**

SC-5.03 *Delete the second sentence of paragraph GC-5.03 in its entirety.*

## **SC-5.04 CONTRACTOR's Liability Insurance**

SC-5.04 *Add the following new paragraphs immediately after paragraph GC-5.04.B:*

- C. The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
  1. Worker's Compensation: To meet statutory limits in compliance with the Worker's Compensation Law of Florida. This policy must include Employer Liability with a limit \$100,000 for each accident, \$500,000 disease (policy limit) and \$100,000 disease (each employee). Such policy shall include a waiver of subrogation as against OWNER and ENGINEER on account of injury sustained by an employee(s) of the CONTRACTOR.
  2. Commercial General Liability: Coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for:

- a. Premises/Operations
  - b. Products/Completed Operations
  - c. Contractual Liability
  - d. Independent Contractors
  - e. Explosion
  - f. Collapse
  - g. Underground.
3. Business Auto Liability: Coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for:
- a. Owned Autos
  - b. Hired Autos
  - c. Non-Owned Autos.
4. Longshoreman's Insurance: Contractor shall secure and maintain Longshoreman Insurance to the extent required by law.
5. Special Requirements:
- a. Ten (10) days prior to the commencement of any work under this Contract, certificates of insurance and endorsement forms in the exact wording and format as presented in these Contract Documents will be provided to the OWNER's Risk Manager for review and approval.
  - b. "Indian River County Florida" will be named as "Additional Insured" on both the General Liability and Auto Liability.
  - c. The OWNER will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the OWNER's Risk Manager.
  - d. An appropriate "Indemnification" clause shall be made a provision of the Contract (see paragraph 6.20 of the General Conditions).
  - e. It is the responsibility of the CONTRACTOR to insure that all subcontractors comply with all insurance requirements.
  - f. It should be remembered that these are minimum requirements, which are subject to modification in response to high hazard operation.
  - g. Insured must be authorized to do business and have an agent for service of process in Florida and have Best's Rating of A-VII or better.

D. Additional Insureds:

- 1. In addition to "Indian River County, Florida," the following individuals or entities shall be listed as "additional insureds" on the CONTRACTOR's liability insurance policies:
  - a. Lizabeth Becton-Read, as Trustee of the Lizabeth Becton Revocable Trust

**SC-5.05 OWNER's Liability Insurance**

SC-5.05 *Delete paragraph GC-5.05.A in its entirety.*

**SC-5.06 Property Insurance**

SC-5.06 *Delete paragraphs GC-5.06.A, B, and C in their entirety and insert the following paragraphs in their place:*

- A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:

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1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
2. be written on a Builder's Risk "All Risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, 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, 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; and
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 additional insured to whom a certificate of insurance has been issued.

B. CONTRACTOR shall be responsible for any deductible or self-insured retention.

C. The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph SC-5.06 shall comply with the requirements of paragraph 5.06.C of the General Conditions.

SC-5.06.E *Delete paragraph GC-5.06.E in its entirety and insert the following in its place:*

E. Additional Insureds:

1. The following individuals or entities shall be listed as "additional insureds" on the CONTRACTOR's property insurance policies:
  - a. Indian River County, Florida
  - b. Lizabeth Becton-Read, as Trustee of the Lizabeth Becton Revocable Trust

**SC-5.07 Waiver of Rights**

SC-5.07 *Delete GC-5.07 (paragraphs A, B, and C) in its entirety.*

**SC-5.08 Receipt and Application of Insurance Proceeds**

SC-5.08 *Delete GC-5.08 (paragraphs A and B) in its entirety.*

**SC-5.09 Acceptance of Bonds and Insurance; Option to Replace**

SC-5.09 *Delete GC-5.09(paragraph A)in its entirety.*

**SC-6.02 Labor; Working Hours**

SC-6.02.B. *Add the following paragraphs immediately after paragraph GC-6.02.B:*

1. Regular working hours are defined as Monday through Friday, excluding Indian River County Holidays, from 7 a.m. to 5 p.m.
2. Indian River County Holidays are: New Year's Day, Martin Luther King, Jr. Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve and Christmas Day. Working on these days will not be permitted without prior written permission and approval from the Construction Coordination Manager.
3. The CONTRACTOR shall receive no additional compensation for overtime work, i.e., work in excess of eight hours in any one calendar day or 40 hours in any one calendar week, even though such overtime work may be required under emergency conditions and may be ordered by the ENGINEER in writing.
4. All costs of inspection and testing performed during overtime work by the CONTRACTOR, which is allowed solely for the convenience of the CONTRACTOR, shall be borne by the CONTRACTOR, and a credit given to the OWNER to deduct the costs of all such inspection and testing from any payments otherwise due the CONTRACTOR.
5. All costs of OWNER's employees and costs of ENGINEER's Consultant resulting from overtime work by the CONTRACTOR, which is allowed solely for the convenience of the CONTRACTOR, shall be borne by the CONTRACTOR, and a credit given to OWNER to deduct all such costs from any payments otherwise due the CONTRACTOR.
6. No work shall commence before 7 a.m. or continue after 5 p.m. except in case of emergency upon specific permission of the ENGINEER.
7. Planting of dune vegetation is encouraged outside of marine turtle nesting season. However, planting activities may occur during the marine turtle nesting season March 1 through October 31 under the conditions as outlined under the conditions on page 16 of 36 of the Florida Department of Environmental Protection Permit Number \_\_\_\_\_. Said permit is part of these contract documents in Attachment 4 – Environmental Permits.

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

SC-6.06.C. *Add the following sentence at the end of paragraph GC-6.06.C:*

OWNER or ENGINEER may furnish to any such Subcontractor, Supplier, or other individual or entity, to the extent practicable, information about amounts paid to CONTRACTOR on account of Work performed for CONTRACTOR by a particular Subcontractor, Supplier, or other individual or entity.

#### **SC-6.08 Permits**

SC-6.08 *Add the following paragraphs immediately after paragraph GC-6.08.A:*

1. The OWNER has obtained the following permits (copies of these permits are contained in Appendix "D"):
  - A. Florida Department of Environmental Protection - Permit No.
  - B. US Army Corps of Engineers – Permit No.
2. The CONTRACTOR shall obtain and pay for all other required permits and licenses. The CONTRACTOR shall provide copies of the permits to the OWNER and ENGINEER and shall comply with all conditions contained in the permits at no extra cost to the OWNER.

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3. The CONTRACTOR shall be familiar with all permit requirements during construction and shall be responsible for complying with these requirements. The cost of this effort shall be included in the pay item in which the work is most closely associated with.

#### **SC-11.01 Cost of the Work**

SC-11.01.A.1. *Delete paragraph GC-11.01.A.1 in its entirety, and insert the following sentences in its place:*

1. CONTRACTOR will receive payment for actual costs of direct labor and burden (see SC-2.06.B) for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder. 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.

#### **SC-13.03 Test and Inspections**

SC-13.03.B. *Delete paragraph GC-13.03.B in its entirety, and insert the following sentences in its place:*

- B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all initial inspections, tests, or approvals required by the Contract Documents except those inspections, tests, or approvals listed immediately below. Subsequent inspections, tests, or approvals required after initial failing inspections, tests, or approvals shall be paid for by the CONTRACTOR by back charge to subsequent applications for payment. The CONTRACTOR shall arrange, obtain, and pay for the following inspections, tests, or approvals:
  1. inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
  2. costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B;
  3. tests otherwise specifically provided in the Contract Documents, in particular paragraph 23.4 of the technical provisions.

#### **SC-13.05 OWNER May Stop the Work**

SC-13.05.A. *Delete paragraph GC-13.05.A in its entirety and insert the following paragraph in its place:*

- A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to comply with permit requirements, or fails to comply with the technical specifications, or fails to perform the Work in such a way that the completed Work will conform to the

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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.

### **SC-13.07 Correction Period**

SC-13.07 A. *Delete the first sentence of paragraph GC-13.07.A in its entirety and insert the following sentence in its place*

- A. If within one year after the date of Final Completion or such longer period of time as may be prescribed by Laws or Regulations or 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: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) 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.

SC-13.07 B. *Delete paragraph GC-13.07.B in its entirety and insert the following sentence in its place*

- B. In special circumstances where a particular item of equipment is placed in continuous service before Final 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 or by Written Amendment.

### **SC-14.02 Progress Payments**

SC-14.02.B.5. *Delete paragraph GC-14.02.B.5.d in its entirety and insert the following paragraph in its place:*

- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A; or

SC-14.02.B.5. *Add the following sentences at the end of paragraph GC-14.02.B.5:*

- e. OWNER has been required to pay ENGINEER additional compensation because of CONTRACTOR delays or rejection of defective Work; or
- f. OWNER has been required to pay an independent testing laboratory for subsequent inspections, tests, or approvals taken after initial failing inspections, tests, or approvals.

SC-14.02.C.1. *Delete paragraph GC-14.02.C.1 in its entirety and insert the following paragraph in its place:*

- C. Payment Becomes Due

1. Payment shall be made by OWNER to CONTRACTOR according to the Local Government Prompt Payment Act. F.S. 218.70 et. seq.

#### **SC-14.04 Substantial Completion**

SC-14.04A. *After the third sentence in paragraph GC-14.04A of the General Conditions, delete the remainder of paragraph 14.04A in its entirety and replace with the following:*

“If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Owner a tentative certificate of Substantial Completion that shall fix the date of Substantial Completion. In accordance with the provisions of Florida Statutes section 208.735(7)(a)(2005), upon receipt of the tentative certificate of Substantial Completion from Engineer, the Owner, the Engineer, and the Contractor shall conduct a walk-through inspection of the Project to document a list of any items required to render the Work on the Project complete, satisfactory, and acceptable under this Agreement (herein the “Statutory List”). The Statutory List shall be reduced to writing and circulated among the Owner, the Engineer, and the Contractor by the Owner or the Engineer within 30 calendar days after substantial completion. The Owner and Contractor acknowledge and agree that: 1) the failure to include any corrective work, or pending items that are not yet completed, on the Statutory List does not alter the responsibility of the Contractor to complete all of the Work under this Agreement; 2) upon completion of all items on the Statutory List, the Contractor may submit a pay request for all remaining retainage except as otherwise set forth in this Agreement; and 3) any and all items that require correction under this Agreement and that are identified after the preparation of the Statutory List remain the obligation of the Contractor to complete to the Owner’s satisfaction under this Agreement. After receipt of the Statutory List by the Contractor, the Contractor acknowledges and agrees that it will diligently proceed to complete all items on the Statutory List and schedule a final walk-through in anticipation of final completion on the Project.”

SC-14.04B *Add the following new paragraph immediately after paragraph GC 14.04B:*

C. 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

#### **SC-14.07 Final Payment**

SC-14.07.C.1. *Delete paragraph GC-14.07.C.1 in its entirety and insert the following paragraph in its place:*

- C. Payment Becomes Due
  1. Payment shall be made by OWNER to CONTRACTOR according to the “ Local Government Prompt Payment Act” , Florida Statutes section 218.70, et. seq.

#### **SC-15.01 OWNER May Suspend Work**

SC-15.01.A *Delete the last sentence in paragraph GC-15.01.A and insert the following in its place:*

CONTRACTOR shall be allowed an extension of the Contract Times, directly attributable to any such suspension if CONTRACTOR makes a Claim for an extension as provided in paragraph

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10.05. CONTRACTOR shall not be allowed an adjustment of the Contract Price and 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 Work suspension.

#### **SC-15.02 OWNER May Terminate For Cause**

SC-15.02.A.5 and SC-15.02.A.6 *Add the following new paragraphs immediately after paragraph GC-15.02.A.4:*

5. CONTRACTOR's violation of Section 02225 – "Erosion Control and Treatment of Dewatering Water From the Construction Site."
6. CONTRACTOR's failure to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the CONTRACTOR and the Subcontractors or Suppliers.
7. CONTRACTOR certifies that it and its related entities as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and its related entities as defined above by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

OWNER may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

OWNER may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

#### **SC-15.04 CONTRACTOR May Stop Work or Terminate**

SC-15.04 *Delete the following text from the first sentence of paragraph GC-15.04.A:*

~~or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due,~~

SC-15.04 *Delete the following text from the second sentence of paragraph GC-15.04.A:*

~~or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due,~~

#### **SC-16 DISPUTE RESOLUTION**

##### **SC-16.02 Mediation**

SC-16 *Add the following new paragraph immediately after paragraph GC-16.01.*

SC-16.02 Mediation

- A. OWNER and CONTRACTOR agree that they shall submit any and all unsettled Claims or counterclaims, disputes, or other matters in question between them arising out of or relating to the Contract Documents or the breach thereof, to mediation by a certified mediator of the 19<sup>th</sup> Judicial Circuit in Indian River County unless delay in initiating mediation would irrevocably prejudice one of the parties. The mediator of any dispute submitted to mediation under this agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

**SC-17 Miscellaneous**

**SC-17.06 Liens**

*Add the following new paragraphs immediately after paragraph GC17.05:*

SC-17.06 Liens

- A. This project is a "Public Works" under Chapter 255, Florida Statutes. No merchant's liens may be filed against the OWNER. Any claimant may apply to the OWNER for a copy of this Contract. The claimant shall have a right of action against the CONTRACTOR for the amount due him. Such action shall not involve the OWNER in any expense. Claims against the CONTRACTOR are subject to timely prior notice to the CONTRACTOR as specified in Florida Statutes Section 255.05. The CONTRACTOR shall insert the following paragraph in all subcontracts hereunder:

"Notice: Claims for labor, materials and supplies are not assessable against Indian River County and are subject to proper prior notice to (CONTRACTOR'S Name) and to (CONTRACTOR Surety Company Name), pursuant to Chapter 255 of the Florida Statutes. This paragraph shall be inserted in every sub-subcontract hereunder." The payment due under the Contract shall be paid by the OWNER to the CONTRACTOR only after the CONTRACTOR has furnished the OWNER with an affidavit stating that all persons, firms or corporations who are defined in Section 713.01, Florida Statutes, who have furnished labor or materials, employed directly or indirectly in the Work, have been paid in full. The OWNER may rely on said affidavit at face value. The CONTRACTOR does hereby release, remiss and quit-claim any and all rights he may enjoy perfecting any lien or any other type of statutory common law or equitable lien against the job.

++END OF SUPPLEMENTARY CONDITIONS++

**SECTION 00942 - Change Order Form**

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

DATE OF ISSUANCE: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

OWNER: Indian River County

CONTRACTOR \_\_\_\_\_

Project: **Sector 7 Beach and Dune Restoration Project**

OWNER's Project No. **IRC-1926**

OWNER'S Bid No. **2020054**

You are directed to make the following changes in the Contract Documents:

Description:

Reason for Change Order:

Attachments: (List documents supporting change)

CHANGE IN CONTRACT PRICE:	
Description	Amount
Original Contract Price	\$ _____
Net Increase (Decrease) from previous Change Orders No. _____ to _____:	\$ _____
Contract Price prior to this Change Order:	\$ _____
Net increase (decrease) of this Change Order:	\$ _____
Contract Price with all approved Change Orders:	\$ _____

CHANGE IN CONTRACT TIMES	
Description	Time
Original Contract Time:	(days or dates) _____
Substantial Completion:	_____
Final Completion:	_____
Net change from previous Change Orders No. _____ to _____:	(days) _____
Substantial Completion:	_____
Final Completion:	_____
Contract Time prior to this Change Order:	(days or dates) _____
Substantial Completion:	_____
Final Completion:	_____
Net increase (decrease) this Change Order:	(days or dates) _____
Substantial Completion:	_____
Final Completion:	_____
Contract Time with all approved Change Orders:	(days or dates) _____
Substantial Completion:	_____
Final Completion:	_____

<b>ACCEPTED:</b>
By:
CONTRACTOR (Signature)
Date:

<b>RECOMMENDED:</b>
By:
ENGINEER (Signature)
Date:

<b>APPROVED:</b>
By:
OWNER (Signature)
Date:



**SECTION 00948 - Work Change Directive**

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

DATE OF ISSUANCE: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

OWNER: Indian River County

CONTRACTOR \_\_\_\_\_

Project: **SECTOR 7 BEACH AND DUNE RESTORATION PROJECT**

OWNER's Project No. **IRC-1926**

OWNER'S Bid No. **2020054**

You are directed to proceed promptly with the following changes:

Description:

Purpose of Work Change Directive:

Attachments: (List documents supporting change)

If OWNER or CONTRACTOR believe that the above change has affected Contract Price any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in Contract Prices

- Unit Prices
- Lump Sum
- Other: \_\_\_\_\_
- By Change Order:

Method of determining change in Contract Times

- Contractor's Records
- Engineer's Records
- Other: \_\_\_\_\_
- By Change Order:

Estimated increase (decrease) of this Work Change Directive  
\$ \_\_\_\_\_

If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times:

Substantial Completion: \_\_\_\_\_ days;  
Ready for Final Completion: \_\_\_\_\_ days.

If the change involves an increase, the estimated time is not to be exceeded without further authorization.

ACCEPTED:
By:
CONTRACTOR (Signature)
Date:

RECOMMENDED:
By:
ENGINEER (Signature)
Date:

APPROVED:
By:
OWNER (Signature)
Date:

**\*\* END OF SECTION \*\***