



# SOUTH FLORIDA WATER MANAGEMENT DISTRICT SOLICITATION ADDENDUM NO. 3

<b>Bid Must Be Submitted to the Following Address:</b> South Florida Water Management District Attn: Procurement Bureau B-1 Building, 3301 Gun Club Road West Palm Beach, FL 33406	<b>Number: 6000000898</b> <b>Issue Date: November 16, 2018</b>  <b>Inquiry Period:</b> From – November 16, 2018 to January 4, 2019
<b>TITLE: C-43 WEST CALOOSAHATCHEE BASIN STORAGE RESERVOIR – PART 2, HENDRY COUNTY, FLORIDA</b>	
This <b>ADDENDUM NO. 3</b> is issued in the second step of this two-step solicitation process for the following purpose: <ol style="list-style-type: none"><li>1. Provide Short-Listed firms approved at the District's October Governing Board meeting with the Plans and Specifications currently administered as the "Check Set" version. The "Final RTA Set" (Rev A) will be issued in a forthcoming Addendum. A Conformed for Construction set of Plans and Specifications (Rev 0) will be provided to the successful bidder.</li><li>2. Provide Construction General Terms &amp; Conditions and Attachments referenced below.</li><li>3. Request prices through a Request for Bids.</li></ol>	
<b>An OPTIONAL pre-bid conference will be held:</b> <b>TIME:</b> 9:00 A.M. <b>DATE:</b> November 27, 2018 <b>PLACE:</b> South Florida Water Management District Auditorium 3301 Gun Club Road West Palm Beach, FL 33406  For directions call (561) 682-2673.  <i>A Site Visit Will Take Place on November 28 Beginning at 10:00 a.m.</i>	<b>Dollar Range:</b> \$635,500,000.00 to \$704,500,000.00 <b>Small Business Enterprise (SBE) Utilization:</b> <u>5 %</u>  <b>Liquidated Damages to Substantial Completion:</b> \$30,000.00 Per Day <b>Liquidated Damage from Substantial to Final Completion:</b> \$20,000.00 Per Day  <b>CONTRACT TIME:</b> 1664 calendar days to Substantial Completion 1878 calendar days* to Final Completion *Includes punchlist work and close out documentation.
<b>Deadline For SEALED Bid Submission:</b>  <b>DUE DATE – JANUARY 30, 2019 2:30 P.M.</b> <b>One (1) <u>Original</u> and One (1) <u>Copy</u> of the Bid Required</b> Confirmation of timely receipt of bid may be made by calling (561) 682-2011 or 1-800-472-5290.	
<b>BIDS MUST BE SUBMITTED IN A <u>SEALED</u> PACKAGE AND MARKED WITH THE SOLICITATION NUMBER AND TITLE, AND THE BIDDER'S NAME AND ADDRESS. THE DISTRICT WILL <u>NOT</u> ACCEPT BIDS THAT ARE NOT SUBMITTED IN ACCORDANCE WITH THESE INSTRUCTIONS.</b>	
<b>Attachments:</b> <ul style="list-style-type: none"><li>• Drawings Numbered: 1-948</li><li>• Technical Specifications Volume 1, 2 and 3</li><li>• Davis Bacon Wage Rates</li><li>• FAR Clauses</li><li>• 2018 C43 Reservoir Civil Works Geotechnical Site Characterization Report</li><li>• 2018 C43 Reservoir Civil Works Generalized Excavation and Dewatering Plan</li></ul>	<ul style="list-style-type: none"><li>• S476 Temporary Bypass Drawings</li><li>• As-Built for P1 Preload Mounds</li><li>• Site Surveys</li><li>• FDEP ERP and Updated Modification Permits</li><li>• USACE 404 Permits</li><li>• FDOT Drainage Connection Permit</li><li>• Hendry County Site Development Plan Approval</li></ul>

### **EXPLORATORY SITE INSPECTIONS:**

The District will allow exploratory site inspections on the dates and times below. A representative from the District will be on-site to open and lock the gates. Access will be at Bidder's risk and Bidders are advised that high water conditions exist on site. Bidder shall restore site to condition existing prior to conducting said investigations and tests. Bidders shall abide by all local, state and federal requirements regarding protection of wildlife, including but not limited to, Eastern Indigo snakes and Florida panthers.

The District will schedule times for exploratory site inspections in order to minimize number of different contracting firms on site at any given time. Dates will be scheduled between:

**November 29 - December 6, 2018, Time: 9:00 a.m. – 4:00 p.m.**

Bidders must vacate the premises by times indicated by the District.

**Directions:** The site is accessed from Congen Rd, 6.1 miles west of Labelle, FL on SR80. Traveling south on Congen road, drive  $\frac{1}{4}$  mile south to the construction trailers in fenced compound west of the shellrock road.

# **SUPPLEMENTAL CONDITIONS:**

The Supplemental Conditions are provided, if necessary, to clarify, revise or amend the terms and conditions of the Instructions to Bidders, General Terms & Conditions and Bid Form for this particular project. Refer to the specific paragraph noted. Bidders are encouraged to read the following conditions carefully. Failure to comply with these conditions may cause the bid to be declared non-responsive.

## **00700 - GENERAL TERMS & CONDITIONS:**

Article 4.01. *District shall furnish the Site.* Access must be maintained throughout duration of the Project along the northern, eastern and western side of the property (FPL/Duda Road) for local land users and the pump station S476 contractor with duration expected to last through April 2019. Access must also be maintained throughout the duration of the Project for the pump station S470 contractor (including Townsend Canal North work activities) with a duration expected to last through May 03, 2022.

Article 4.02.A. *Subsurface and Physical Conditions.* The following reference materials are available for inspection at the offices of the DISTRICT: These materials are for reference only, are provided as-is, are not contractual documents, and do not replace the CONTRACTOR's due diligence in bid preparation.

Article 4.06.A. *Hazardous Environmental Condition at Site.* Not Applicable.

Article 5. *Bonds and Insurance Requirements.* Bidders are reminded to read Article 5 of the General Terms & Conditions regarding the minimum requirements of the bonds. Bidders must use the bond forms enclosed herein. Specific insurance limits are included in the Insurance Requirements Checklist attached herein. The South Florida Water Management District shall be named as additional insured for General and Automobile Liability.

Article 5.02.A *Performance & Payment Bonds.* Bidders must use the bond forms enclosed herein. Bidders must provide certified copies of recorded bonds as required by Florida Law.

Article 6.06. *Concerning Subcontractors, Suppliers, and Others.* Bidders are strongly encouraged to verify, with Florida's Secretary of State, the corporate status and standing of all subcontractors they will be utilizing to ensure the firm's ability to do business in the state of Florida.

Article 6.08. *Permits.* The District has obtained/ is obtaining the following permit(s) for this project:

- a. FDEP ERP
- b. USACE 404
- c. FDOT Drainage Connection Permit
- d. Hendry County Site Development Plan Approval

In the event the District's permits are not obtained prior to bid opening, the District has the option of holding the bids for an additional one hundred twenty (120) days after bid opening.

The Contractor is responsible to obtain and renew (as required) the Congen Road FDOT Driveway Permit throughout the duration of the contract.

Article 7.02. *Coordination.* Applicable.

Article 12.02 D *Change of Contract Times.* Contractor shall include in his schedule Normal Unfavorable (adverse) Weather Conditions.

In order to consider a Change of Contract Time due to weather, the weather experienced at various locations on

the project site during the contract period must be found to be abnormal or unusually severe; that is, more severe than the adverse weather anticipated for the project location during any given month.

The abnormal or unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the Contractor.

The climate in the project area is subtropical and humid. The project area is subject to tropical storms and hurricanes from June through November, and to windy and/or rainy weather during any time of the year. Temperatures below freezing are rare. The month of May is generally a transitional month in which storms that typically occur in June through September may begin. Lightning associated with these systems are frequent and dangerous. The typical rainfall of October through May is associated with mid-latitude systems (fronts and low-pressure systems) and is distributed in a spatially uniform pattern. Typical June through September rainfall is closely associated with convective activity. These rainfall events are normally of short duration and amounts are quite variable spatially. Occasionally, daily rainfall during the typical rainfalls of October through May could be quite heavy as mid-latitude systems penetrate into Florida. Weather forecasts as well as actual rainfall information from the National Weather Service Miami-South Florida forecast office can be accessed at: <http://www.srh.noaa.gov/mfl/>.

It shall be the contractor's responsibility to obtain information on rain, wind and lightning.

The schedule of monthly anticipated Normal Unfavorable (adverse) Weather Delays is based upon SFWMD Hydrometeorological data for the project location and will constitute the base line for monthly weather time evaluations. The Contractor's progress schedule must reflect these anticipated Normal Unfavorable (adverse) Weather Delays in all weather dependent activities.

Contractor will not be entitled to an extension of the Contract Times (or Milestones) on account of Normal Unfavorable (adverse) Weather unless the actual sum of Contract Times lost due to adverse weather in a particular calendar month exceed the expected number of Contract Times lost in that calendar month due to Normal Unfavorable (adverse) Weather. The Contractor shall reconcile lost Contract Times with the District on a weekly basis.

Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the Contractor shall record on the daily CQC report the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical (path) activities for 50 percent or more of the Contractor's scheduled work day at a particular location on site. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated below, the District Construction Manager will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather Contract Times, and issue a schedule modification in accordance with the Contract. If the number of adverse weather days each month is less than or equal to that shown in the table, then no extended Contract Times will be awarded.

**MONTHLY ANTICIPATED ADVERSE WEATHER DELAY CONTRACT TIMES  
BASED ON 5-DAY WORK WEEK**

The parties acknowledge that adverse weather can impact construction of the Work and have included in the Contract Times a certain number of Work days lost to account for adverse weather as follows:

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Days	2	2	2	6	5	10	10	10	9	3	1	1

Article 8.08 *District's Responsibilities*. The following list of Owner Furnished Equipment is hereby provided:

C43 P4 Owner Furnished Equipment

Equipment	Structure	Quantity
<b>Gate Pointer and Gate Position Sensor Housing</b>	S475	1
<b>Motorola ACE RTU</b>	S471	1
	S473	1
	S475	1
	S477	1
	S479	1
	S481A	1
	S481B	incl in S481A
	S481C	1
<b>Motorola ACE RTU (Solar Powered Standalone)</b>		
	S478	1
	S480	1
	S483	1
<b>Embedded Strain Gauge (with wiring)</b>	S471	44
	S473	32
<b>Embedded Accelerometer (with wiring)</b>	S471	1
	S473	1
<b>Embedded Corrosion Monitor (with wiring)</b>	S471	2
	S473	2
<b>Wall Mounted Control Box</b>	S471	1
	S473	1

Article 13.08 *Warranty*. The following extended Warranty is hereby required: Applicable

Roofing Membrane	20 Years
Roofing Installation	5 Years
Joint Sealants	5 Years
Pump Station Intake Trash Collection System	5 Years
Dam Instrumentation and Control	5 Years
Vertical Mixed-Flow Propeller Pumps	5 Years
Emergency Generator & Transfer Switch	5 Years
Exterior LED Lighting	5 Years
Fuel Piping and Other Fuel System Components	5 Years

Transient Voltage Surge Suppressors	5 Years
Pumping Station Instrumentation and Control	5 Years
Motor Pump Drives	5 Years
Interior LED Lighting	5 Year
Temporary Erosion Control Materials	1.5 Years
Permanent Erosion Control Measures	3 Years
Geotextile (Filter Fabric)	5 Years
District Field Office Trailer, including the roof, internal plumbing system and the air conditioner	5 Years
Asphalt for Roads/Parking	5 Years
Protective Coatings	5 Years
Soil Cement Slope Protection	5Years

Article 14. *Payments to Contractors and Completion.*

Requirements for Substantial Completion and Final Acceptance are to be found in the General Terms & Conditions and in Section 01 of the General Requirements.

Article 14.08. *Incentive Payment.* Not Applicable

Article 14.09. *Incentive Bonus.* Not Applicable

Article 20. *Partnering.* Item A.

Article 27. *Davis Bacon Act.* Applicable.

Article 28. *Copeland Act.* Applicable.

#### **01010 – TECHNICAL SPECIFICATIONS:**

Use of District Standard Details and Guideline Drawings:

Users of District Standard Details and Guideline Drawings are advised that the users are responsible for the function and safety of the intended facilities. Any changes must be approved by the District. District approval does not relieve the user of their responsibility.

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## TECHNICAL SPECIFICATIONS



# **BID SBE GUIDELINES AND INFORMATION**

The DISTRICT's Small Business Enterprise (SBE) Program is designed to help small businesses, including those owned by women and minorities, to participate in DISTRICT procurement and contract activities. The purpose of the program is to spur economic development and support small businesses, including women-owned and minority-owned businesses, to successfully expand in the marketplace. Certain pre-bid requirements are defined herein. Failure to comply with these requirements or to submit any of the information required herein shall result in a finding that the Bid is non-responsive and will result in rejection of the Bid.

## **1.1 SBE Rule**

The DISTRICT has implemented Chapter 40E-7, Florida Administrative Code, the "Small Business Enterprise Contracting Rule" ("SBE Rule"). The provisions of the Rule shall apply to all competitive solicitations for commodities, construction, professional and other contractual services and any resulting contract documents including change orders, and amendments.

## **1.2 Minimum Goal**

The DISTRICT has established a minimum SBE participation goal for this solicitation. **The Bid shall meet the established SBE goal or be deemed non-responsive.** SBE Certified vendors that are available to meet the required percentage for this solicitation can be obtained by clicking on the Small Business Enterprise link on the District's website [www.sfwmd.gov](http://www.sfwmd.gov).

## **1.3 Submission of SBE Subcontractor Utilization Plan**

Any participation by firms not certified with the DISTRICT at the time of Bid submission will not count towards SBE goal attainment. Bidders are strongly encouraged to contact the DISTRICT's Small Business Enterprise Section at (561) 682- 6446 well in advance of the date set for receipt of Bids to allow sufficient time for review and determination of SBE eligibility and certification.

- A. Bidders shall identify all SBE firms who will be used as subcontractors in this Procurement. The Bid must contain proof that each firm to be utilized as an SBE prime or subcontractor is certified as a DISTRICT SBE. Each SBE subcontractor and prime shall be listed in the SBE Subcontractor Utilization Plan (as defined below) and shall be submitted with the Bid. The listing of SBE's in the SBE Subcontractor Utilization Plan attached with each Bid shall constitute the Bidder's representation to the DISTRICT that the SBE firms are technically and financially qualified and available to perform the assigned work. **Failure to provide complete and accurate information shall result in the Bid being deemed non-responsive.**

The SBE Subcontractor Utilization Plan shall consist of the following documentation which must be attached to the Bid:

1. The *Statement of Intent to Perform as a Small Business Enterprise Subcontractor* form (form 0957), which confirms (1) the intent of the prime to establish a business relationship with each SBE subcontractor; and (2) the SBE participation percent. **One form must be completed and signed by each proposed SBE subcontractor.** The form Bidders must use to fulfill this requirement is attached to this solicitation.
  2. The *Small Business Enterprise Subcontractor Participation Schedule* form (form 0956), which identifies all SBE firms which will be utilized as subcontractors, delineates the specific elements of work each SBE firm will be responsible for performing, and identifies the dollar value of the SBE work as a percentage of the total contract value. The form Bidders must use to fulfill this requirement is attached to this solicitation.
- B. Any bidder failing to meet the established SBE goal shall be deemed nonresponsive. If an SBE Prime intends to subcontract work to another SBE subcontractor, the SBE Prime must submit the aforementioned forms at the time of submitting its bid or be deemed non-responsive. If the SBE Prime intends to perform 100% of the work, (is not subcontracting any portion of the work to another subcontractor) the SBE Prime does not have to submit the aforementioned forms. If more subcontractors are utilized than space allows on the *Small Business Enterprise Subcontractor Participation Schedule* form, a photocopy of the page continuing the list will be acceptable.

#### 1.4 *Sheltered Market (if applicable – see RFB Cover Page)*

Pursuant to the DISTRICT's SBE Rule, the DISTRICT may provide for Sheltered Markets. Sheltered Markets allow for only SBE firms to bid on designated solicitations. In order to designate a sheltered market the District must identify at least 3 SBEs available to perform work within the industry identified in the solicitation.

#### 1.5 *SBE Compliance and Substitution*

The contractual provisions that will apply in the event of a contract award are delineated in Article 19 of the *General Terms & Conditions* attached to this solicitation. The following is an excerpt of key aspects of Article 19.

A. *Compliance.* The DISTRICT shall monitor performance and compliance with the provisions of the SBE Rule. During the term of any subsequent contract, the CONTRACTOR shall comply with the Small Business Enterprise Utilization Plan made in its bid. Compliance for use of SBE's shall include tasks and proportionate dollar amounts throughout the term of the contract, including amendments and change orders. After CONTRACT execution, the CONTRACTOR shall maintain the level of SBE utilization as established in the CONTRACT's SBE Utilization Plan. Failure to comply with the SBE requirements of this CONTRACT will be considered a material breach of debarment pursuant to DISTRICT Rule 40E-7, F.A.C.

B. *SBE Substitution or Addition.* The CONTRACTOR must notify the DISTRICT's Small Business Enterprise staff when the need to add or replace an SBE subcontractor occurs. The CONTRACTOR must submit to the DISTRICT's SBE Staff the following:

1. *Small Business Enterprise Subcontractor Revised Participation Schedule form – form 1373*
2. *Statement of Intent to Perform as a Small Business Enterprise Subcontractor form – form 0957*

# INSTRUCTIONS TO BIDDERS

## ARTICLE 1 - DEFINED TERMS

1.01 *Definitions* - Terms used in these INSTRUCTIONS TO BIDDERS have the meanings assigned to them in the General Terms & Conditions. The terms, Contract number and Request for Bids number, are used interchangeably throughout this document and shall be construed to have the same meaning.

## ARTICLE 2 - EXAMINATION OF INSTRUCTIONS TO BIDDERS

2.01 Bidders are encouraged to carefully read these Instructions. Deviations, changes, modifications or failures to properly complete the Bid may cause the Bid to be non-responsive.

## ARTICLE 3 - COPIES OF BIDDING DOCUMENTS

3.01 Complete sets of Bidding Documents shall be used in preparing Bids; neither DISTRICT nor DESIGN ENGINEER assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. DISTRICT, in making copies of Bidding Documents available on the above terms, does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant for any other use.

## ARTICLE 4 - INTERPRETATIONS AND ADDENDA

4.01 Verbal interpretations of the meaning of the Drawings, Specifications, or other Contract Documents will **not** be valid. Every request for interpretations **shall be in writing** and addressed to the Contract Specialist identified on the cover page of this RFB, and to be given consideration must be received by the end of the Inquiry Period, prior to the date fixed for the opening of Bids. Inquiries may be faxed or emailed.

4.02 Bidders are cautioned not to contact any other representative of the DISTRICT, DESIGN ENGINEER or RESIDENT ENGINEER, manufacturer or supplier referenced herein, without the written permission of the DISTRICT's Contract Specialist. Such contact may invalidate the Bid supplied by the Bidder.

4.03 If any solicitation revisions become necessary (other than changes to the deadline for response submission), the District will provide written addenda via email at least five (5) calendar days before the date scheduled for opening the responses. The District may revise the deadline for response submission at any time prior to the date and time scheduled for opening the responses. **It is the responsibility of all respondents to ascertain whether any addenda have been issued before the solicitation deadline by calling (561) 682-2521.**

4.04 Failure of any Bidder to receive any such addenda shall not relieve such Bidder from any obligation under its Bid as submitted. Bidders are advised to contact the DISTRICT prior to

submitting Bids to satisfy themselves as to the existence and number of all such addenda. All addenda so issued shall become part of the Contract Documents. The Bid shall be construed as though the addendum(a) have been received and acknowledged by the Bidder.

## ARTICLE 5 - EXAMINATION OF CONTRACT DOCUMENTS AND SITE

5.01 Before submitting a Bid, each Bidder must (a) examine the Contract Documents thoroughly, (b) visit the site to familiarize itself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize itself with federal, state and local laws, ordinance, rules, regulations and policies that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate Bidder's observations with the Contract Documents; and (e) make written requests for interpretations promptly after discovering any conflicts, errors, ambiguities or inconsistencies. If a Bidder intends to protest the specifications contained in an invitation to bid or a request for proposals, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation and the formal written protest shall be filed within ten days after the date the notice of protest is filed. Any Bidder who files a formal written protest pursuant to Chapter 28-110, Florida Administrative Code and Section 120.57(3), Florida Statutes, shall post with the District at the time of filing the formal written protest, a bond pursuant to Section 287.042(2)(c), Florida Statutes (2018). Failure to file a notice of protest or failure to file a formal written protest within the time prescribed in Chapter 28-110, Florida Administrative Code and Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Notices of Protest and Formal Written Protests along with bond or other security must be timely filed with the District Clerk.

5.02 Reference is made to the General Requirements for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which have been relied upon by DESIGN ENGINEER in preparing the Drawings and Specifications. DISTRICT shall make copies of such reports available. These reports are not guaranteed as to accuracy or completeness, nor are they part of the Contract Documents; they are provided for guidance only. If this information is used by Bidder in preparing its Bid, the Bidder shall assume all risks resulting from actual conditions differing from the conditions indicated in the reports.

A. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* Reports and drawings are not CONTRACT Documents. CONTRACTOR may not rely upon or make any claim against DISTRICT, 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.

5.03 When a log of test borings showing a record of the data obtained by the investigation of subsurface conditions by the DISTRICT, the DESIGN ENGINEER or its consultants is included with the plans or other documents, it is expressly understood and agreed that said log of test borings does not constitute a part of the contract, represents only the opinion of the DISTRICT, or the DESIGN ENGINEER or its consultants as to the character of the materials encountered by them in the test borings, is included in the plans or other documents only for the convenience of Bidders, and its use is subject to all of the conditions and limitations set forth in this article.

5.04 Before submitting a Bid, each Bidder shall, at Bidder's own expense, make or obtain any additional investigations, examinations, explorations and tests and obtain any additional information which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress or performance of the Work and which Bidder deems necessary to determine its Bid for performing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

5.05 Upon request, DISTRICT will attempt to provide each Bidder reasonable access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of its Bid. If access is provided, Bidder shall restore site to condition existing prior to conducting said investigations and tests.

5.06 The lands upon which the Work is to be performed, rights-of-way for access thereto and other lands designated for use by CONTRACTOR in performance the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor.

5.07 The submission of a Bid shall constitute a conclusive representation by the Bidder that it has complied with every requirement of this Article 5 and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

5.08 The submission of the Bid shall be an indication that the Bidder has considered normal local weather conditions (daily and monthly variations) for the previous ten years from the date of the Bid as compiled by the National Weather Service (NWS) and measured at the observation site closest to the project site or other such local data as provided by the District.

## **ARTICLE 6 - BONDS AND INSURANCE**

6.01 Article 5 of the GENERAL TERMS & CONDITIONS sets forth the DISTRICT's requirements as to Bonds and Insurance. The successful Bidder shall have seven (7) business days from the date of the Notice of Apparent Low Bidder Letter from the DISTRICT, to produce the required Bonds and Insurance Certificates on forms prescribed by DISTRICT.

The successful Bidder shall have thirty (30) business days after CONTRACT execution, to produce the required Insurance Declaration Page of Policy, additional insured endorsement forms and a waiver of subrogation endorsement as set forth in the General Terms & Conditions, and the Insurance Requirements Checklist included herein. Within 30 days upon request by the DISTRICT, the successful Bidder must supply copies of all insurance policies for the insurance requirements set forth in the General Terms & Conditions, and the Insurance Requirements Checklist included herein.

6.02 Power of Attorney. Attorneys-In-Fact who sign bonds must file with such bond a certified copy of their power of attorney to sign said bonds.

## **ARTICLE 7 - SBE PARTICIPATION**

(See solicitation and Contract SBE Information)

## **ARTICLE 8 - CONTRACT TIMES**

The time of completion is of the essence of the contract, and the Bidder awarded the Contract shall proceed with the Work in accordance with the Contract Times specified in the Contract Documents. The Contract Time is specified on the cover page of this RFB. In the event of failure to complete the Work within the time specified, the DISTRICT may assess damages as provided by law or the Contract Documents, unless an appropriate extension of time has been granted by the DISTRICT.

## **ARTICLE 9 - LIQUIDATED DAMAGES**

Provisions for liquidated damages, if any, are set forth in the Request for Bids (RFB). The Bidder agrees to pay liquidated damages to the DISTRICT as described herein and as provided in the Contract Documents, which shall be in addition to such other amounts for actual damages.

## **ARTICLE 10 – BIDDER'S RESPONSIVENESS AND RESPONSIBILITY**

10.01 To be eligible for contract award, a bidder must be responsive and responsible, as determined by the DISTRICT.

### **A. Responsiveness Conditions**

Each bid shall be reviewed in accordance with the following conditions. If a respondent fails to satisfy these conditions the bid shall be deemed non-responsive by the DISTRICT and not considered for further review.

- 1) Timely submission of the bid
- 2) Submission of:

- a. Construction Bid Form
- b. SBE Subcontractor Utilization Plan – As part of the bids the DISTRICT shall receive from all Bidders documentation related to the Small Business Enterprise requirements as described. (if applicable)
- c. Trench Safety Act (if applicable)
- d. Any other required information as stated in the solicitation
- e. Bidders must comply with Article 5 (Bonding Requirements) of the General Terms & Conditions. Bidders must use the bond forms enclosed herein.

B. Responsibility Documentation: The bidders have already submitted Responsibility Documentation and have been pre-qualified as responsible.

## ARTICLE 11 - BIDDERS'S DISCLOSURE

In each Bid there shall be stated the name and address of every person having an interest in the Bid; and in case of a corporation the names and addresses of its officers. Bids shall be signed by the person or member of the firm making the same, and in the case of a corporation, by some authorized officer or agent subscribing the name of the corporation and his own name.

## ARTICLE 12 - PUBLIC ENTITY CRIMES

Any Bidder, or any of his suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the DISTRICT, shall not be a convicted vendor or, if the Bidder or any of his suppliers, subcontractors, or consultants of the Bidder has been convicted of a public entity crime, a period longer than 36 months shall have passed since that person was placed on the convicted vendor list. The Bidder further understands and accepts that any contract issued as a result of this solicitation shall be either voidable by the DISTRICT or subject to immediate termination by the DISTRICT, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, Florida Statutes. The DISTRICT, in the event of such termination, shall not incur any liability to the respondent for any work or materials furnished.

### *Scrutinized Companies*

Bidder certifies that it is not listed on either 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, Florida Statutes. The Respondent further understands and accepts that any contract issued as a result of this Solicitation shall be subject to Section 287.135, Florida Statutes, and subject to immediate termination by the District in the event there is any misrepresentation or false certification on the part of the Respondent.

## ARTICLE 13 - PREPARATION OF BIDS

Bids shall be submitted on the Bid Forms furnished, or upon an exact copy thereof, and must be signed by an authorized representative of the firm submitting the Bid. Bidders must quote on all items listed and required by the solicitation. The intent of

INSTRUCTIONS TO BIDDERS

the Bid form is to secure a price for the work described in these Contract Documents entitled as shown on the cover page. Bids shall be accompanied by the following items:

- a. Construction Bid Form with all required attachments
- b. Bid Bond
- c. SBE Utilization Forms (if applicable)
- d. Trench Safety Act (if applicable)

## ARTICLE 14 - DELIVERY OF BIDS

14.01 The Bid shall be submitted in an opaque, sealed envelope, marked on the outside with the name and address of the Bidder, the Project title, and the bid number. The DISTRICT shall not be responsible for Bids improperly identified or delivered. If forwarded by U.S. Postal Service regular mail or express mail, the sealed envelope containing the Bid and marked as directed above, shall be addressed to the U.S. Mail address indicated on the cover page. If forwarded by a service other than United States Postal Service, the sealed envelope containing the Bid and marked as directed above, shall be enclosed in another envelope addressed to the street address indicated on the cover page. Bids may be hand-delivered to the DISTRICT, B-1 Building.

14.02 Facsimile Bids will NOT be accepted. **The District cautions Bidders to assure actual delivery of mailed or hand-delivered Bids directly to the Procurement Bureau or at the kiosk in the District's lobby.** Telephone confirmation of timely receipt of the Bid may be made by calling (561) 682-2011 before Bid opening time. Bids received after the established deadline will be returned unopened to the Bidder.

## ARTICLE 15 - MODIFICATION AND WITHDRAWAL OF BIDS

15.01 Bids 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 at any time prior to the opening of Bids. Withdrawal of a Bid will not prejudice the rights of Bidder to file a new Bid before the Due Date.

15.02 If within 24 hours after Bids are opened, any Bidder files a duly signed written notice with DISTRICT, and within 48 hours thereafter demonstrates to the reasonable satisfaction of the DISTRICT that: a) there has been a material and substantial mistake in the preparation of the Bid; b) the mistake is of such great consequence that to enforce the Contract would be unconscionable; and c) the mistake occurred notwithstanding the exercise of reasonable care in the preparation of the Bid; the Bidder may withdraw its Bid, and the Bid Security will be returned provided that the DISTRICT is not seriously prejudiced, except for the loss of its bargain. Bidder shall not be allowed to correct a Bid with a material and substantial mistake. Thereafter, that Bidder shall be disqualified from further Bidding on the work to be provided under the Contract Documents.

## ARTICLE 16 - DATE AND PLACE OF BID OPENING

16.01 Sealed Bids will be received by the Procurement Bureau, South Florida Water Management District, 3301 Gun

Club Road, West Palm Beach, Florida 33406, at the time set forth on the Cover Page.

16.02 Bids received after the time and date specified in the Request for Bids shall not be considered and will be returned unopened.

16.03 Bids will be publicly opened and read. In case of a tie, a selection among the lowest tied responsive and responsible Bidders shall be made in accordance with the DISTRICT's Procurement Policy and SBE Rule.

16.04 Once Bids are opened, they become the property of the DISTRICT and will not be returned. Upon receipt, responses become "public records" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. If respondents wish to claim an exemption to disclosure, they shall provide in the response to the solicitation the specific statutory authority for the claimed exemption, identifying the data or other materials to be protected and stating the reasons why such exclusion from public disclosure is necessary. However, if a request is made of the District, pursuant to Chapter 119, Florida Statute, for public disclosure of proprietary property of the Respondent, the District shall advise the Respondent of such request and it shall be the Respondent's sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the party requesting the public records.

Bids will be made available for public inspection at the time the District posts notice of its decision or intended decision concerning contract awards, or thirty (30) days after the response opening, whichever is earlier. In the event the District rejects all bids in accordance with Article 18 of the Instructions to Bidders and concurrently notices its intent to reissue the solicitation, responses will be made available after the District posts notice of its decision or intended decision concerning awards for the reissued solicitation, or when the District withdraws the reissued solicitation.

#### **ARTICLE 17 - NOTICE OF INTENDED AWARD**

Tentative Bid tabulations will be posted for review by interested parties at the Procurement Bureau offices within two (2) business days of the Bid opening. After completion of the review of the Bids, a final Bid tabulation (official Notice of Intended Award) will be posted for a period of not less than seventy-two (72) hours. Interested parties may visit the DISTRICT website ([www.SFWMD.gov/Procurement](http://www.SFWMD.gov/Procurement)) for Bid results. If a Bidder intends to protest the District's intent to award, the notice of protest must be filed in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of the District's decision or intended decision and shall file a formal written protest within 10 days after filing the notice of protest. Any Bidder who files a formal written protest pursuant to Chapter 28-110, Florida Administrative Code and Section 120.57(3), Florida Statutes shall post with the District at the time of filing the formal written protest, a bond pursuant to Section 287.042(2)(c), Florida Statutes (2000). Failure to file a notice of protest or failure to file a formal written protest within the time prescribed in Chapter 28-110, Florida Administrative Code, and Section 120.57(3), Florida

Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Notices of Protest and Formal Written Protests along with bond or other security must be timely filed with the District Clerk.

Notices of Intent to Protest and Formal Written Protests along with bond or other security must be timely filed with the Clerk of the South Florida Water Management District at 3301 Gun Club Road, West Palm Beach, Florida 33406. The District will not accept receipt of any Notices of Intent to Protest or Formal Written Protests filed at any location other than the District Clerk's Office. Notices of Intent to Protest and Formal Written Protests may be filed by hand delivery, U.S. Mail or electronic transmission (email) with the Clerk's Office at [clerk@sfwmd.gov](mailto:clerk@sfwmd.gov). **Filings by facsimile will not be accepted.** A Respondent who files a document by email is responsible for any delay, disruption, or interruption of the electronic signals and accepts the risk that the document may not be properly filed with the District Clerk as a result. The filing date for Notices of Intent to Protest and Formal Written Protests transmitted by email is the date the District Clerk receives the complete document. Filings will be accepted between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday which are the normal hours of operation. Any document received after 5:00 p.m. will be deemed filed as of 8:00 a.m. the next business day.

#### **ARTICLE 18 - REVIEW ACCEPTANCE AND/OR REJECTION OF BIDS**

18.01 Pursuant to Rule 40E-7.301, Florida Administrative Code, the DISTRICT reserves the right to reject any and all Bids when (i) such rejection is in the interest of the DISTRICT; (ii) such Bid is void per se; or (iii) the Bid contains any irregularities, PROVIDED, however, that the DISTRICT reserves the right to waive any minor irregularities and to accept the lowest responsible and responsive Bid as determined by the DISTRICT.

18.02 The DISTRICT reserves the right to request a written confirmation of the Bid and the responsibility of the Bidder prior to the awarding of the Contract. Failure of the Bidder to confirm the Bid within seven (7) business days from the date of the DISTRICT's request may render the Bid nonresponsive and will entitle the DISTRICT to award to the next apparent lowest responsive and responsible Bidder and may require forfeiture of the Bid security.

18.03 Discrepancies between the indicated sum of any column of figures and the correct sum thereof shall be resolved in favor of the LOWEST sum. Discrepancies in the extension of the unit price times the estimated quantity for any line item shall be resolved in favor of the correct extension.

18.04 The apparent low Bidder shall submit, upon request of DISTRICT, documentation evidencing its capability to perform classes of work contemplated, and the necessary plant and sufficient capital to execute the work properly within the time specified. This information must be received by DISTRICT within seven (7) business days of Bidder receiving written request.



18.05 In addition to the DISTRICT's Small Business Enterprise (SBE) submittal requirements described in the RFB, the DISTRICT must receive from the apparent low bidder, within seven (7) business days after receipt of Apparent Low Bidder Letter, the name and qualifications of the **Superintendent, Project Manager, Quality Control Manager, Safety Manager** and a list of all **Subcontractors** and other persons and organizations, including those who are to furnish the principal items of material and equipment. The DISTRICT shall consider the qualifications and experience of the **Superintendent, Project Manager, Quality Control Manager, Safety Manager**, Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment). Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by DISTRICT. If the DISTRICT has reasonable objection to any proposed Superintendent, Project Manager, Quality Control Manager, Subcontractor, other person or organization, the DISTRICT may request the apparent low bidder to substitute the Superintendent, **Project Manager, Quality Control Manager, Safety Manager** or subcontractor before CONTRACT execution, and request that the apparent low bidder submit an acceptable substitute without an increase in Bid price. If the apparent low bidder declines to make any such substitution, the contract may not be awarded to such Bidder at the DISTRICT's sole discretion. DISTRICT does not waive any right it may have against the Contractor because of the actions or omissions of said Superintendent, Project Manager, Quality Control Manager, Subcontractor, or other person or organization.

18.06 DISTRICT shall conduct such investigations and require supplemental information as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility and financial ability of the Bidder, including proposed Subcontractors, proposed equipment and material suppliers, and other persons and organizations to do the Work in accordance with the Contract Documents to DISTRICT's satisfaction within the Contract Times.

## **ARTICLE 19 - CONTRACT**

19.01 This Request for Bids does not constitute a Contract with the Bidder. An official Contract does not exist until the Contract has been executed by both parties. The award of the Contract shall be made to the lowest responsive and responsible Bidder, unless the DISTRICT rejects all Bids.

19.02 The Bidder to whom the award is made shall, within seven (7) business days after receipt of Notice of Apparent Low Bidder Letter, provide the required bonds and insurance to the DISTRICT. The Bidder to whom the award is made shall, within seven (7) business days after receipt of the Contract document, provide the executed Contract to the DISTRICT.

19.03 If the Bidder fails to provide the bonds and insurance or execute the Contract within the seven (7) business day period, the District in its sole discretion may annul the award and the bidder may forfeit the Bid Security to the DISTRICT. Bidder shall be liable to the DISTRICT for all damages resulting therefrom including reasonable attorneys' fees and costs, and attorneys' fees and cost on appeal. The Bid Security forfeited shall not be a

limitation thereon. Award may then be made to the next lowest, responsible, and responsive Bidder or the work may be re-advertised at the DISTRICT's sole discretion.

19.04 Award of this Contract is subject to further DISTRICT approval. All awards are subject to the approval of the DISTRICT's Governing Board or Executive Office. In the event a firm is not awarded the CONTRACT, the DISTRICT shall not be responsible for any costs related to bidding or securing award, including, but not limited to, bid preparation, bond and insurance costs.

19.05 The respondent understands that this solicitation or the response shall not constitute a contract with the District. No contract is binding or official until responses are reviewed and accepted by appointed District staff, approved by the appropriate level of authority within the District, and an official contract is duly executed by the parties. A sample contract is attached to this solicitation. The District requires that the final official contract will be in full conformance with the sample contract. **The District will not consider any changes to contract terms and conditions. Any deviations from the sample contract will result in the respondent being deemed non-responsive.**

## **ARTICLE 20 - DRAWINGS AND SPECIFICATIONS**

The successful Bidder, upon award, will receive a CD that includes all bidding documents, technical specifications and drawings free of charge.

**ARTICLE 21 - SUBSTITUTE MATERIAL AND EQUIPMENT** The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to DISTRICT application for such acceptance will not be considered by DISTRICT until after the Effective Date of the CONTRACT.

## **ARTICLE 22 - EQUAL OPPORTUNITY**

The DISTRICT recognizes fair and open competition as a basic tenet of public procurement. Contractors doing business with the DISTRICT are prohibited from discriminating on the basis of race, color, creed, national origin, handicap, age or sex.

## **ARTICLE 23 - SPECIAL REQUIREMENTS**

There may be special requirements pertaining to Warranty, Guarantee, Bonds, Insurance, Maintenance and the Correction Period, which are described in the Contract Documents. Bidders should review all of the Contract Documents to determine whether there are special requirements, and if applicable, reflect in their Bids all costs associated therewith.

## **ARTICLE 24 - LOBBYING**

Respondents or its agents may only contact the Contract Specialist identified on the cover page of this Solicitation

regarding any issues arising out of this Solicitation, including but not limited to the selection process, negotiation, and award. The Respondent or its agents must not contact any other District employee, board member, or agent. This provision applies from the release of the Solicitation through the end of the 72-hour period following the District posting of the notice of intended award. If a Respondent or its agent violate this provision the District may reject their response.



# **BID FORM CHECKLIST**

**CONTRACT NO. 6000000898**

This Bid Form Checklist is provided for the convenience of the respondent and shall not be relied upon in lieu of the instructions or requirements of this solicitation. To ensure that your bid package is complete, please review the following items to confirm that they have been addressed and are enclosed. There is no requirement to return this checklist with your bid package.

<b>ITEM</b>	
1. BID FORM – PAGES 1-5 (must be completed & signed) <ul style="list-style-type: none"><li>• Item A-C</li><li>• Item D must include the following attachments: STATE OF FLORIDA AUTHORIZATION TO DO BUSINESS (Item 1.2) FELONY CONVICTS (Item 1.3) ADDITIONAL INFORMATION (Items 4.1 and 4.2)</li></ul>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
2. DISTRICT'S BID BOND (must be signed and sealed) Substitute bid bond form will NOT be accepted. 3. ALLOWABLE ALTERNATE SECURITY, submitted in lieu of bid bond	<hr/> <hr/> <hr/>
4. SBE UTILIZATION PLAN: <ul style="list-style-type: none"><li>• STATEMENT OF INTENT TO PERFORM AS AN SBE SUBCONTRACTOR, submitted for and signed by EACH SBE Subcontractor. <i>Prime Contractor cannot sign the form for the SBE. Please fill both the price and percentage of work columns on this form.</i> Include proof of SBE Certification.</li><li>• SCHEDULE OF SUBCONTRACTOR/SBE PARTICIPATION, completed by the Bidder.</li></ul>	<hr/> <hr/> <hr/>
5. TRENCH SAFETY ACT (if applicable - Choose option A or B)	<hr/>

# **CONSTRUCTION BID FORM**

## **CONSTRUCTION OF**

### **C-43 WEST CALOOSAHATCHEE BASIN STORAGE**

### **RESERVOIR – PART 2**

### **HENDRY COUNTY, FLORIDA**

### **CONTRACT NO. 6000000898**

*The statements completed below are material representations of fact upon which reliance will be placed when making an award. If it is later determined that the Respondent knowingly rendered an erroneous statement, certification or representation in this document, the Director of Procurement may terminate the contract resulting from this solicitation for default and the District may suspend or debar the Respondent or pursue any other available remedies.*

#### **A. STATEMENT OF BUSINESS ORGANIZATION**

Legal Business Name (Prime Bidder):	Florida Contractor Licensee's Name:				
If applicable, different business name under which the bidder is operating for this response:	License Number:				
	License Type:				
	State or Country:				
Mailing Address:	License Limitations, if any (Attach a separate sheet, if necessary):				
Remittance Address:	Type of Organization – check below				
Telephone No.:	Corporation	Partnership	Joint Venture	Sole Proprietorship	Not for Profit
Fax No.:					
Email Address:	Agree to Extend Prices to Other Governmental Agencies? <input type="checkbox"/> Yes <input type="checkbox"/> No				
FEID No.:					
Key Contact Name(s)/Telephone No.(s):	Name(s):			Telephone No.(s):	

#### **B. STATEMENTS OF MATERIAL REPRESENTATION**

The Bidder, by signing on page four (4) of this Bid Form, hereby certifies to the South Florida Water Management District (District) that neither the Bidder, nor its agents, principals and proposed subconsultants or subcontractors:

1. Is temporarily or permanently on the District's Suspension List
2. Is temporarily or permanently debarred from participating in public contract lettings in Florida or any other state.
3. Is now or in the past 36 months been on the State of Florida's Convicted Vendor List/Discriminatory Vendor List.
4. Has lobbied, either individually or collectively, the District's Governing Board members, District evaluation committee members, or other District employees for any purpose in connection with this solicitation which may influence the outcome of the selection process.
5. Has employed or retained any person or company to solicit or obtain a contract resulting from this solicitation and has not paid or agreed to pay any person or company employed or retained to solicit or obtain a contract resulting from this solicitation any commission, percentage, brokerage or other fee contingent upon or resulting from contract award.

### C. ADDITIONAL REPRESENTATIONS

1. Pursuant to and in compliance with the DISTRICT'S notice inviting sealed Bids (Request for Bids), Contract Documents and the other documents relating thereto, the undersigned Bidder, having familiarized itself with the terms of the Contract Documents, as defined in the General Terms & Conditions, site and local conditions affecting the performance of the CONTRACT, and the cost of the work at the place where the work is to be done, hereby bids and agrees to perform within the Contract Times, including all of its component parts and everything required to be performed, and to provide and furnish any and all of the labor, material, and tools, expendable equipment, and all utility and transportation services necessary to perform the contract and complete in a workmanlike manner, all of the work required in connection with the construction of said work all in strict conformity with the plans and specifications and other Contract Documents, including all Addenda. Respondent acknowledges that it is responsible for receipt of any and all addenda from the District.
2. The undersigned Bidder agrees that the Work shall be completed according to the schedule set forth in the Contract Documents. The undersigned Bidder further agrees to pay liquidated damages as described herein and as provided in the Contract Documents, which shall be in addition to such other amounts for actual delay damages.
3. The undersigned as Bidder, declares that the only persons or parties interested in this Bid as principals are those named herein; and the Bidder bids and agrees, if the Bid is accepted, that the Bidder will execute a contract with the DISTRICT in the form set forth in the Contract Documents; that the Bidder will furnish the Contract Security, Insurance Certificates, Endorsements, and Policies, and that the Bidder will comply with all Small Business Enterprise requirements.
4. Pursuant to and in compliance with the DISTRICT's Invitation to Bid, the Contract Documents, Supplemental Conditions, and other documents relating thereto, the undersigned hereby agrees to furnish all labor, materials, and equipment to do the work in strict accordance with the Contract Documents and all addenda, if any, issued prior to the date of this Bid at the price herein as follows. Discrepancies between the indicated sum of any column of figures and the correct sum thereof shall be resolved in favor of the LOWEST sum. Discrepancies in the extension of the unit price times the estimated quantity for any line item shall be resolved in favor of the correct extension.

#### SCHEDULE OF BID PRICES

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE
A.	TOTAL PROJECT (NOT INCLUDING ITEM B AND C BELOW)	JOB	1	LUMP SUM	
B.	SOIL BENTONITE WALL	SF	4,055,300	\$	
C.	CEMENT FOR SOIL CEMENT	TONS	118,000	\$	
(ITEM A + ITEM B + ITEM C)				BASE BID:	\$

5. The DISTRICT and Bidder recognize that time is of the essence of this Contract and Bidder recognizes that the DISTRICT will suffer financial loss if the Work is not completed within the Contract Times, plus any extensions thereof allowed in accordance with Article 12 of the General Terms & Conditions. The DISTRICT and Bidder also recognize the delay, expense and difficulties involved in proving actual delay damages (excluding engineering fees and inspection costs) suffered by the DISTRICT in a legal or arbitration proceeding if the work is not completed on time. Accordingly, Bidder agrees to pay DISTRICT as liquidated damages **\$30,000.00** per day for each day CONTRACTOR exceeds the time specified for Substantial Completion as indicated on the front cover of this solicitation. After Substantial Completion, the Bidder agrees to pay DISTRICT as liquidated damages **\$20,000.00** per day for each day CONTRACTOR exceeds the time specified for Final Completion as indicated on the front cover of this solicitation.

6. ACCOMPANYING THIS BID IS a \_\_\_\_\_ (insert the word(s): "Bid Bond," "certified check," or other security as provided by law, as the case may be) in an amount equal to at least **5%** of the total Base Bid, payable to the SOUTH FLORIDA WATER MANAGEMENT DISTRICT. The DISTRICT may deposit all Bid securities upon receipt. The undersigned agrees that, in case of failure on Bidder's part to deliver the Insurance and the Bonds within seven (7) business days after receipt of the Notice of Apparent Low Bidder, or failure to execute and deliver the said Contract within seven (7) business days after receipt, any Bid Bond, or securities accompanying the Bid, shall be paid into the funds of South Florida Water Management District, otherwise, any securities accompanying this Bid shall be returned to the undersigned. Bid bonds will be returned only upon request.
7. The undersigned provides above-named Bid Security as a Bid guaranty and agrees that it shall be forfeited to the DISTRICT in case this Bid is accepted by the DISTRICT and the undersigned fails to execute a contract with the DISTRICT as specified in the contract documents, accompanied by the required statutory payment and common law performance bonds with sureties satisfactory to the DISTRICT, and accompanied by the required certificates of insurance coverage, and endorsements. Should the DISTRICT be required to engage the services of an attorney in connection with the enforcement of this Bid, Bidder promises to pay DISTRICT's reasonable attorney's fees and costs (including attorney's fees and costs on appeals) incurred with or without suit.
8. In addition to the Bid Security, also accompanying this Bid, are all items listed on the Bid Form Checklist and all other documents as may be required.
9. Bidder agrees to maintain pricing and furnish any or all items upon which prices are offered for a minimum period of one hundred twenty (120) calendar days from the date specified in the solicitation for receipt of bids.
10. The undersigned as Bidder agrees that substitutions or "or-equal" items will not be considered until after the Effective Date of the CONTRACT and will be evaluated in accordance with Article 6.05 of the General Terms & Conditions.

## **D. BIDDER'S QUESTIONNAIRE**

### **1. Organization**

- 1.1 Title and name of Principals (President, Vice-President, Secretary and Treasurer, if a corporation; partners, if a partnership): \_\_\_\_\_
- 1.2 If respondent is a corporation, provide certification from the Florida Secretary of State verifying respondent's corporate status and good standing, and in the case of out-of-state corporations, evidence of authority to do business in the State of Florida. In the case of a sole proprietorship, provide Social Security numbers for ALL owners or partners. In the case of a "dba", provide a copy of the fictitious name affidavit filed with the Clerk of the Court.
- 1.3 If your organization has ever been convicted of a felony, or has felony charges pending, in any state within the last three years from the date of Bid opening, disclose with this Questionnaire all material facts pertaining to any such felony conviction or any such pending felony charges against (a) your organization, (b) any business entity related to or affiliated with your organization, or (c) any present or former executive employee, officer, director, shareholder (owning twenty percent (20%) or more of the outstanding shares), partner, or owner of your organization or of any such related or affiliated entity. Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

## **E. NON COLLUSION CERTIFICATION**

The respondent hereby represents and certifies that all statements of fact in the bid/proposal are true and that its bid/proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company association, organization nor corporation. Respondent further certifies that the bid/proposal has been prepared independently without collusion, consultation, communication or written agreement with any undisclosed person, partnership, company, association, organization or corporation and has not colluded, conspired, connived or agreed, directly or

indirectly, to commit a fraudulent, deceitful, unlawful or wrongful act, or any act which may result in an unfair competitive advantage for one or more bidders/proposers over other bidders/proposers. Respondent certifies that no more than one (1) bid as Prime Contractor for the work to be performed as described in the Contract Documents will be submitted from the respondent under the same or a different name and that respondent has no financial interest in another respondent for the same Project. The District will prosecute any violation of this representation to the fullest extent of the law. Conviction for the commission of any fraud or act of collusion in connection with any sale, bid quotation, proposal or other act incidental to doing business with the South Florida Water Management District may result in suspension or permanent debarment if the respondent is placed on the State's Convicted Vendor List. In addition to any other rights or remedies it may have, the District reserves the right to terminate any existing contracts that a respondent has with the District based on the commission of any of the above wrongful acts. These rights may be exercised at any time whenever the commission of any of the above wrongful acts comes to the District's attention even if this occurs after award of a contract to the respondent.

**Bidder acknowledges and understands that all four (4) pages of this Bid Form must be complete, attached to the bid and timely filed and signed by a representative with authority to bind the firm or the respondent will be deemed non-responsive to the requirements of this solicitation.**

NOTE: If a Bidder is a corporation, the legal name of the corporation shall be set forth below, together with signature(s) of the officer or officers authorized to sign contracts on behalf of the corporation; if bidder is a partnership, the true name of the firm shall be set forth below with the signature(s) of the partner or partners authorized to sign contracts in behalf of the partnership; and if the bidder is an individual, Bidder's signature shall be placed below; if a partnership, the names of the general partners.

**NAME AND TITLE OF INDIVIDUAL AUTHORIZED TO BIND THE PRIME BIDDER:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Attest** (Required for CORPORATION)

I, \_\_\_\_\_, CERTIFY THAT I AM THE SECRETARY/  
ASSISTANT SECRETARY OF THE CORPORATION, NAMED AS PRINCIPAL IN THE WITHIN BID;  
THAT THE CORPORATE OFFICIAL WHO SIGNED THE SAID BID ON BEHALF OF THE PRICIPAL,  
WAS THEN A CORPORATE OFFICIAL OF SAID CORPORATION; THAT I KNOW THEIR SIGNATURE  
IS GENUINE; AND THAT SAID BID WAS DULY SIGNED AND ATTESTED FOR AND IN BEHALF OF  
SAID CORPORATION BY AUTHORITY OF ITS GOVERNING BODY.

\_\_\_\_\_  
Secretary / Assistant Secretary

Witness: \_\_\_\_\_  
(Required for PARTNERSHIP OR INDIVIDUAL)

Witness: \_\_\_\_\_  
(Required for PARTNERSHIP OR INDIVIDUAL)

# **BID BOND**

**(ITEM 3A)**

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_ as Principal and \_\_\_\_\_, as Surety, are held and firmly bound unto South Florida Water Management District, in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated \_\_\_\_\_, 20\_\_\_\_, for the Contract Documents:

Contract Number: 6000000898

Contract Title: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida

NOW, THEREFORE, if the Principal:

1. Does not withdraw said Bid within one hundred twenty (120) calendar days after date of opening of the same, and
2. Within seven (7) business days after the date of the Notice of Apparent Low Bidder:
  - a. Provides a Statutory Payment Bond and a Common Law Performance Bond as specified in the General Terms & Conditions (if the Bid Amount exceeds \$200,000.00) or, in lieu of the Statutory Payment Bond or Common Law Performance Bond, provide an alternate form of security as specified in the General Terms & Conditions; and
  - b. Provides the District's insurance certificate, completed by a lawfully authorized insurance agent; and
3. Within seven (7) business days of receipt of the contract, enters into a written contract with South Florida Water Management District, in accordance with the Bid, as accepted,

then the above obligations of the Principal and Surety shall be null and void. However, should the Principal fail to fully comply with the conditions of the numbered paragraphs 1 or 2 above, then the Principal and Surety, jointly and severally, shall be liable to the District for the full penal sum of this Bond which shall be forfeited to the District as liquidated damage, but not a penalty, as a result of the Principal's failure to comply with the bid instructions and conditions, regardless of whether the District ultimately decides to change the project requirements or resolicit bids.

The remedies provided herein are not to be construed as the District's exclusive remedies for the Principal's failure to enter into a contract with the District, but shall be deemed supplemental to all remedies available to the District at law or otherwise.

DATED ON \_\_\_\_\_, 20\_\_\_\_.

**WHEN THE PRINCIPAL IS AN INDIVIDUAL:**

\_\_\_\_\_  
(Witness)

By: \_\_\_\_\_  
(Individual Principal)

\_\_\_\_\_  
(Witness)

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

**WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:**

Signed and delivered in the presence:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Business Name and Address)

\_\_\_\_\_  
(Witness)

By: \_\_\_\_\_  
Signature of Individual

**WHEN A PARTNERSHIP:**

Signed and delivered in the presence:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Name of Partnership)

\_\_\_\_\_  
(Witness)

By: \_\_\_\_\_  
Signature of Individual

**WHEN THE PRINCIPAL IS A CORPORATION:**

ATTEST:

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

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

\_\_\_\_\_  
(Secretary)

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

**SURETY:**

ATTEST:

(Corporate Seal)

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

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

\_\_\_\_\_  
(Secretary)

By: \_\_\_\_\_  
(Surety)

\_\_\_\_\_  
Florida Address for Service of Process

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

(Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.)

# Statement of Intent to Perform as a Small Business Enterprise Subcontractor

Solicitation No. or Contract No. 6000000898

A signed "Statement of Intent to Perform as a SBE Subcontractor" must be completed by the owner or authorized principal of each SBE firm listed in the "SBE Subcontractor Participation Schedule" Form No. 0956.

\_\_\_\_\_ agrees to perform work on the above contract as (check one):  
(Name of SBE Subcontractor)

☐ a partnership; ☐ a corporation; ☐ an individual; ☐ a joint venture

## SBE Subcontractor

The SBE Subcontractor will enter into a formal agreement, conditioned upon the Bidder/Proposer executing a contract with the District for the work with \_\_\_\_\_ .  
(Name of Bidder/Proposer)

Item No.	Type of Work	Agreed Price (For CCNA, Agreed Percentage)	% of Work
1		\$	%
2		\$	%
3		\$	%
Total Value of Work		\$	%

\_\_\_\_\_  
SBE Subcontractor Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Form 0957 (08/2013)

Incorporated by reference in subsections  
40E-7.670(3) and 40E-7.672(4), F.A.C.

 SFWMD

Page 1 of 1



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

**SMALL BUSINESS ENTERPRISE SUBCONTRACTOR  
PARTICIPATION SCHEDULE**

Contract/ Solicitation No.	6000000898	Date Submitted	
Project Name & Location	C-43 West Caloosahatchee Basin Storage Reservoir — Part 2, Hendry County, Florida	Project Start Date	
Bidder/Proposer			
Address			
Contact Person		Email Address	Telephone No.

**ORGANIZATION STATUS**

Business Association	Business Name	Business Address	Business Phone #	Work to be Performed		
				Describe Type of Work to be Performed	% of Work	Dollar Amount
Prime Bidder/Proposer						
Non SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
					100%	\$0.00
						\$0.00

The listing of a Small Business Enterprise (SBE) shall constitute a representation by the bidder/proposer to the District that the bidder/proposer believes such SBE to be technically and financially qualified and available to perform the work described. Bidders/Proposers are advised that the information contained herein may be verified.

\_\_\_\_\_  
Bidder/Proposer Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# **TRENCH SAFETY ACT**

## **SECTION 553.60, FLORIDA STATUTE**

### **NOTICE TO BIDDERS:**

In order to comply with the Trench Safety Act, the Contractor is required to either specify the costs of compliance or certify that the project scope and / or his construction means and methods will not require trenching as defined by OSHA.

- **Bidders must fill out EITHER PART A or PART B of this form, ***BUT NOT BOTH***, sign the form where indicated, and then submit the form with the bid.**

#### ***PART A: Specify Costs of Compliance with the Trench Safety Act***

These costs **are not a separate pay item.** The Contractor must also reference the Trench Safety Standards which will be in effect during construction, and assure in writing that the Contractor will comply with the applicable Trench Safety Standards.

<u><b>TRENCH SAFETY MEASURE</b></u>	<u><b>UNITS OF MEASURE</b></u>	<u><b>QUANTITY</b></u>	<u><b>UNIT COST</b></u>	<u><b>COST</b></u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

#### **PART B: Certification that the Trench Safety Act does not apply.**

☐ **By placing a check mark in the box to the left I certify that this project either does not include trenching, or that my intended construction means and methods will not require trenching, as defined by OSHA.**

From 29 CFR 1926.650 Subpart P, the definition of "Trenching" or "Trench excavation" means a narrow excavation (in relation to its length) made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench (measured at the bottom) is not greater than 15 feet (4.6 m). If forms or other structures are installed or constructed in an excavation so as to reduce the dimension measured from the forms or structure to the side of the excavation to 15 feet (4.6 m) or less (measured at the bottom of the excavation), the excavation is also considered to be a trench.

\_\_\_\_\_  
Signature



# SOUTH FLORIDA WATER MANAGEMENT DISTRICT CONSTRUCTION CONTRACT

<b>THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT</b> (hereinafter referred to as <b>DISTRICT</b> ) <b>HEREBY ENTERS INTO THIS CONTRACT WITH:</b> <b>Name:</b> _____ <b>Address:</b> _____  <b>Contact Person:</b> _____ <b>Telephone No:</b> _____ <b>Fax No:</b> _____ <b>Email Address:</b> _____ <b>Hereinafter referred to as: CONTRACTOR</b>		<b>This number must appear on all Invoices and Correspondence</b> <b>4600000</b> _____ <b>60000000</b> _____ <b>P.O. #:</b> _____  <b>SBE PARTICIPATION</b> _____ %  <b>CONTRACT TIME:</b> _____ DAYS - Substantial Completion <b>CONTRACT TIME:</b> _____ DAYS - Final Completion  <b>LIQUIDATED DAMAGES:</b> \$ <u>00.00</u> – Substantial Completion <b>LIQUIDATED DAMAGES:</b> \$ <u>00.00</u> – Final Completion <b>EFFECTIVE DATE:</b> NOTICE TO PROCEED				
<b>PROJECT TITLE:</b> _____						
<b>The CONTRACTOR hereby acknowledges receipt of the following documents which are included in the attached CD and made a part hereto of this CONTRACT:</b> <table border="1"><tr><td>General Terms &amp; Conditions General Requirements Supplemental Conditions Bonds &amp; Insurance</td><td>Bidding Documents • RFB and Addenda • Bid • SBE Documents</td><td>Technical Specifications Drawings Post Award Forms</td></tr></table>				General Terms & Conditions General Requirements Supplemental Conditions Bonds & Insurance	Bidding Documents • RFB and Addenda • Bid • SBE Documents	Technical Specifications Drawings Post Award Forms
General Terms & Conditions General Requirements Supplemental Conditions Bonds & Insurance	Bidding Documents • RFB and Addenda • Bid • SBE Documents	Technical Specifications Drawings Post Award Forms				
<b>TOTAL CONTRACT AMOUNT: \$</b> <b>Multi-Year Funding (If Applicable)</b> <b>Fiscal Year:</b> October 1, 2014 – September 30, 2015 NTE \$ _____ <b>Fiscal Year:</b> October 1, 2015 – September 30, 2016 NTE \$ * _____ <b>Fiscal Year:</b> October 1, 2016 – September 30, 2017 NTE \$ * _____ <b>*Subject to District Governing Board Annual Budget Approval</b>		<b>CONTRACT TYPE:</b> Firm Fixed Price  <b>Fiscal Year:</b> _____ <b>Fiscal Year:</b> _____ <b>Fiscal Year:</b> _____				
<b>District Project Manager:</b> _____ <b>Telephone No:</b> _____ <b>Fax No.</b> _____ <b>Email Address:</b> @sfwmd.gov		<b>District Contract Specialist:</b> _____ <b>Contract Specialist Name (561) 682-XXXX</b> <b>Fax No.:</b> (561) 682-XXXX <b>Email Address:</b> email @sfwmd.gov				
<b>SUBMIT NOTICES TO THE DISTRICT AT:</b> South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 <b>Attention: District Project Manager</b> <b>Copy: District Contract Specialist</b>		<b>SUBMIT NOTICES TO THE CONTRACTOR AT:</b>  <b>Attention:</b> _____				
IN WITNESS WHEREOF, the authorized representative hereby executes this <b>CONTRACT</b> on this date, and accepts all Terms and Conditions under which it is issued.  Accepted _____  Signature of Authorized Representative  Title: _____ Date: _____		<b>SOUTH FLORIDA WATER MANAGEMENT DISTRICT</b> <b>BY ITS GOVERNING BOARD</b>  Accepted _____  Date: _____  <b>SFWMD PROCUREMENT APPROVED</b> By: _____ Date: _____				

# SOUTH FLORIDA WATER MANAGEMENT DISTRICT INSURANCE REQUIREMENTS CHECKLIST

**FOR: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2**

TYPE OF COVERAGE		MINIMUM COVERAGE LIMITS	
<b>Must be Included if marked "X"</b>	<b>General Liability Comprehensive Form</b>	<b>Bodily Injury &amp; Property Damage</b> <u>\$2,000,000. Each Occurrence</u> <u>\$3,000,000. General Aggregate</u> <u>\$3,000,000. Products – Comp/Op Aggregate</u>	
	(Please note special instructions →)	<b>Special instructions:</b> The Silica exclusion, if any, must be eliminated from the policy. Prior to commencement of any activities or access to District property or equipment under this agreement, Contractor is required to provide District with an acceptable certificate of insurance, copy of entire insurance policy, additional insured endorsements and a waiver of subrogation endorsement. Coverage and limits must be in accordance with these requirements, be no more restrictive than the most recent ISO forms and the District must be listed as a certificate holder.	
X	Occurrence Form		
X	Premises Operations		
X	Delete XCU Exclusion		
X	Products and Completed Operations		
X	Contractual		
X	Independent Contractors		
X	Broad Form Property		
X	Personal Injury		
	Blasting		
X	Demolition		
X	Watercraft		
X	Pollution extension		
	<b>Automobile Liability</b>		<b>Bodily Injury &amp; Property Damage</b> <u>\$1,000,000.</u> Combined Single Limit
X	Any Auto		
	<input type="checkbox"/> Owned <input type="checkbox"/> Hired		
	<input type="checkbox"/> Non - Owned <input type="checkbox"/> Scheduled		
X	<b>Umbrella Liability</b>	<u>\$3,000,000.</u>	
X	<b>Workers' Compensation/ Employer's Liability</b>	<b>Statutory Limits</b> <u>\$100,000/ occurrence</u> <u>\$500,000/ aggregate</u> <u>\$100,000/ disease</u>	
X	<b>Contractors Professional Liability</b>	<u>\$2,000,000.</u>	
X	<b>Builder's Risk</b>	<b>Property Under Construction</b> @ 100% of Value	
X	<b>Installation Floater</b>	<b>Materials</b> @ 100% of Value	

FOR: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2		
<b>X</b>	<b>Environmental Impairment Liability</b>	<b>Bodily Injury &amp; Property Damage</b> <u>\$2,000,000.</u> Combined Single Limit
<b>South Florida Water Management District must be named as an “Additional Insured” except for Workers’ Compensation and Employer’s Liability. Construction contractors must use ISO Additional Insured Endorsement Form CG2010, CG2037. Contractor must use ISO Waiver of Subrogation Endorsement CG 2404. Clauses such as “Where required by written contract or agreement are not acceptable.”</b>		
<b>The Certificate holder shall be designated as:</b> South Florida Water Management District 3301 Gun Club Road West Palm Beach, FL 33406		<b>Insurance Requirements reviewed by:</b>  <div style="text-align: right;"><b>DGW      05/21/2018</b></div>

# COMMON LAW PERFORMANCE BOND

BY THIS BOND, know that \_\_\_\_\_ as Principal, herewith called CONTRACTOR,  
 Business Address \_\_\_\_\_, Business Phone \_\_\_\_\_, and \_\_\_\_\_, as  
 \_\_\_\_\_, hereinafter called SURETY, Surety Address \_\_\_\_\_,  
 Surety Phone Number \_\_\_\_\_, are bound to South Florida Water Management District, as Obligee, herein called DISTRICT,  
 in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for payment of which CONTRACTOR and SURETY bind themselves, their  
 heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written  
 CONTRACT entered into by CONTRACTOR and DISTRICT, for the following:

Contract Number:

Contract Title: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida

General Description of Project : The South Florida Water Management District (District) is seeking a construction contractor for a major Civil Works project to build the new dam and water control structures located in Hendry County, FL. The Reservoir is a major component of the Comprehensive Everglades Restoration Project being executed between the South District and the US Army Corps of Engineers. As the local sponsor, the District is responsible for design and construction of the Reservoir. The C43 Reservoir will be an earth fill dam with total perimeter dam length of approximately 16.3 miles and separator dam 2.8 miles in length separating the reservoir into two cells. The reservoir will encompass approximately 10,000 acres and will store 170,000 acre-feet of water when full.

Directions: The site is accessed from Congen Rd, 6.1 miles west of Labelle, FL on SR80. Traveling south on Congen road, drive 1/4 mile south.

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

1. Performs said contract in accordance with its terms and conditions; and
2. Pays DISTRICT all losses, damages (direct and consequential including delay or liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that DISTRICT sustains because of a default by CONTRACTOR under the CONTRACT; and
3. Pays DISTRICT any and all other amounts due DISTRICT by CONTRACTOR because of a default by CONTRACTOR under the CONTRACT; and
4. Performs the warranty, extended warranty and 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.

If there is no DISTRICT default, the SURETY's OBLIGATIONS UNDER THIS BOND shall arise after SURETY has received notice of DISTRICT's declaration of default of CONTRACTOR in accordance with the terms and conditions of the CONTRACT (including notice and cure periods), so that within 20 days of DISTRICT's declaration of CONTRACTOR's default, SURETY shall either (1) arrange for the CONTRACTOR, with the written consent of the DISTRICT, to timely perform and complete the contract or (2) undertake to timely perform and complete the contract either by retaining another contractor approved by the DISTRICT or undertaking to do the contract itself. SURETY shall be liable for any and all delays caused by the CONTRACTOR, SURETY, and/or the replacement contractor(s) provided by the SURETY. SURETY's failure to take such action shall be deemed to be a default on this Bond, thus entitling the DISTRICT to complete the contract with another contractor and recover all resulting damages, including, but not limited to, all direct and consequential damages including delay or liquidated damages, engineering and architectural fees, as well as, any and all legal costs and attorney's fees.

Any changes in or under the Contract Documents do not affect the Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the Owner. Any suit under this bond must be initiated before the expiration of the limitation period applicable under Florida Statutes.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Legal Form Approved:

\_\_\_\_\_

WHEN THE PRINCIPAL IS AN **INDIVIDUAL**:

Signed and delivered in the presence of:

By: \_\_\_\_\_  
 (Witness)

By: \_\_\_\_\_  
 Individual Principal

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

**WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:**

Signed and delivered in the presence of:

By: \_\_\_\_\_  
(Witness)

By: \_\_\_\_\_  
Signature of Individual

By: \_\_\_\_\_  
(Witness)

**WHEN A PARTNERSHIP:**

Signed and delivered in the presence of:

By: \_\_\_\_\_  
(Witness)

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

By: \_\_\_\_\_  
(Witness)

**WHEN THE PRINCIPAL IS A CORPORATION:  
ATTEST:**

\_\_\_\_\_  
(Type Corporate Principal Name)

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

By: \_\_\_\_\_  
(Secretary)

**SURETY:**

ATTEST:

(Surety Seal)

\_\_\_\_\_  
(Type Corporate Surety Name)

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

By: \_\_\_\_\_  
(Secretary)

**ATTORNEY-IN-FACT**

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

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

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

**ATTACH** a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

The Common Law Performance Bond and the Payment Bond and the covered amounts of each are separate and distinct from each other.

# STATUTORY PAYMENT BOND

BY THIS BOND, know that \_\_\_\_\_ as Principal, herewith called CONTRACTOR, Business Address \_\_\_\_\_, Business Phone \_\_\_\_\_, and \_\_\_\_\_, as \_\_\_\_\_, hereinafter called SURETY, Surety Address \_\_\_\_\_, Surety Phone Number \_\_\_\_\_, are bound to South Florida Water Management District, as Obligee, herein called DISTRICT, in the amount of Dollars (\$\_\_\_\_\_) for payment of which CONTRACTOR and SURETY bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written CONTRACT entered into by CONTRACTOR and DISTRICT, for the following:

Contract Number:

Contract Title: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida

General Description of Project: The South Florida Water Management District (District) is seeking a construction contractor for a major Civil Works project to build the new dam and water control structures located in Hendry County, FL. The Reservoir is a major component of the Comprehensive Everglades Restoration Project being executed between the South District and the US Army Corps of Engineers. As the local sponsor, the District is responsible for design and construction of the Reservoir. The C-43 Reservoir will be an earth fill dam with total perimeter dam length of approximately 16.3 miles and separator dam 2.8 miles in length separating the reservoir into two cells. The reservoir will encompass approximately 10,000 acres and will store 170,000 acre-feet of water when full.

Directions: The site is accessed from Congen Rd, 6.1 miles west of Labelle, FL on SR80. Traveling south on Congen road, drive 1/4 mile south.

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

Promptly makes payments to all claimants as defined in Section 255.05(1), Florida Statutes, supplying CONTRACTOR with labor, material, or supplies, used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the contract;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract Documents and compliance or noncompliance with formalities, connected with the CONTRACT or with the changes, do not affect Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the DISTRICT.

Claimants must comply with notice requirements set forth in Section 255.05(2), Florida Statutes. No action shall be instituted against the CONTRACTOR or Surety under this bond after one (1) year from the performance of the labor or completion of the delivery of the materials or supplies.

IN WITNESS WHEREOF, this instrument is executed this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WHEN THE PRINCIPAL IS AN **INDIVIDUAL**:

Signed and delivered in the presence of:

By: \_\_\_\_\_  
(Witness)

By: \_\_\_\_\_  
(Individual Principal)



**WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:**

Signed and delivered in the presence of:

By: \_\_\_\_\_  
(Witness)By: \_\_\_\_\_  
Signature of IndividualBy: \_\_\_\_\_  
(Witness)**WHEN A PARTNERSHIP:**

Signed and delivered in the presence of:

By: \_\_\_\_\_  
(Witness)By: \_\_\_\_\_  
PartnerBy: \_\_\_\_\_  
(Witness)**WHEN THE PRINCIPAL IS A CORPORATION:  
ATTEST:**\_\_\_\_\_  
(Type Corporate Principal Name)By: \_\_\_\_\_  
PresidentBy: \_\_\_\_\_  
(Secretary)**SURETY:**

ATTEST:

(Surety Seal)

\_\_\_\_\_  
(Type Corporate Surety Name)By: \_\_\_\_\_  
SURETYBy: \_\_\_\_\_  
(Secretary)\_\_\_\_\_  
(Type Florida Address for Service of Process)**ATTORNEY-IN-FACT**

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

Name \_\_\_\_\_

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

**IMPORTANT:** Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.**ATTACH** a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

The Common Law Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other.

# **AFFIDAVIT FOR SURETY COMPANY**

## **TO BE SUBMITTED WITH PERFORMANCE & PAYMENT BOND**

TO: South Florida Water Management District

RE: CONTRACT NUMBER:

CONTRACT TITLE: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County,  
Florida

### **CONTRACTOR:**

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

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

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

AMOUNT OF BOND: \_\_\_\_\_

### **SURETY COMPANY:**

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

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

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

BEFORE ME, the undersigned authority, personally appeared the AFFIANT, who being duly sworn and says:

(1) He/She is \_\_\_\_\_ of the Surety Company;  
(Officership)

(2) In accordance with Section 287.0935, Florida Statutes, the Surety Company fulfills each of the following provisions:

- a) The Surety Company is licensed to do business in the State of Florida;
- b) The Surety Company holds a certificate of authority authorizing it to write surety bonds in Florida;
- c) The Surety Company has twice the minimum surplus and capital required by the Florida Insurance code at the time the invitation to bid is issued;
- d) The Surety Company is otherwise in compliance with the provisions of the Florida Insurance Code; and
- e) The Surety Company holds a currently valid certificate of authority issued by the United States Department of Treasury under 31 U.S.C. ss. 9304 to 9308.

FURTHER AFFIANT SAYETH NOT.

---

Dated Signed Signature of AFFIANT (Officer of Surety Company)

---

Title of AFFIANT

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

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

Before me this day personally appeared \_\_\_\_\_, who, being duly sworn, executed this Affidavit and acknowledged to and before me the truthfulness and accuracy of the statements in the Affidavit.

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by AFFIANT, who is personally known to me.

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

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

NOTARY PUBLIC

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

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## ARTICLE I - DEFINITIONS AND INTERPRETATIONS

### 1.01 Defined Terms

- A. Wherever used in the CONTRACT Documents the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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.
- B. Certain of the following definitions, as indicated with an asterisk "\*", are extracts from Chapter 40E-7, Part VI, F.A.C., the "Small Business Enterprise Contracting Rule" ("SBE Rule") of the South Florida Water Management District ("DISTRICT"). Please refer to a copy of the entire SBE Rule for a complete list of SBE definitions and a full description of each.
1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which modify or interpret the CONTRACT Documents by additions, deletions, corrections or clarifications.
  2. *Acceptance, Final Acceptance*-- The formal action by the DISTRICT accepting the Work as being complete after review by Construction Manager of final completion.
  3. *Apparent Low Bidder* -- Bidder whom has submitted the lowest price but has not yet been deemed responsive and responsible by the DISTRICT.
  4. *Application for Payment*--The form furnished in the CONTRACT documents 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. Each application shall contain an affidavit by CONTRACTOR that partial payments received from DISTRICT for the Work have been applied by CONTRACTOR to discharge in full all of CONTRACTOR'S obligations stated in prior Applications For Payment.
  5. *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.
  6. *Bid*--The written offer of a Bidder submitted in the prescribed manner on the prescribed forms to perform the Work in accordance with the CONTRACT Documents. It shall be considered a formal offer.
  7. *Bidder or Respondent*-- All contractors, consultants, organizations, firms or other entities submitting a Response to this RFB as a prime contractor.
  8. *Bidding Documents*--The Bidding Requirements and the CONTRACT Documents (including all Addenda issued prior to receipt of Bids).
  9. *Bidding Requirements*--The Advertisement or Request for Bid, Instructions to Bidders, Bid security form, if any, Statement of Intent to Perform as an SBE Subcontractor, Schedule of Subcontractor / SBE Participation, Statement of Business Organization, Bidder's Questionnaire, and the Bid form with any supplements.
  10. *Bonds*--Bid, performance and payment bonds and other instruments of security designated in the General Terms & Conditions.
  11. *Change Order*--A written instrument which when signed by the DISTRICT authorizes an addition, deletion and/or revision in the CONTRACT Documents, or an adjustment in the CONTRACT Price or the CONTRACT Times, issued on or after the Effective Date of the CONTRACT.
  12. *Claim*--A written demand or assertion by DISTRICT or CONTRACTOR seeking an adjustment of CONTRACT Price or CONTRACT Times, or both. A demand for money or services by a third party is not a Claim.
  13. *Construction Manager*--The authorized representative of the DISTRICT for the Project who has the rights and authority as assigned to him/her in the CONTRACT Documents.
  14. *CONTRACT*--The written instrument which is evidence of the agreement between DISTRICT and CONTRACTOR covering the Work to be performed; other CONTRACT Documents are incorporated in or referenced in the CONTRACT and made a part thereof as provided therein.
  15. *CONTRACT Document* - Includes the CONTRACT, the Request For Bids, the Supplemental Conditions, Instructions To Bidders, General Terms & Conditions, Bid Forms, DISTRICT's Post Award forms, Specifications, the Drawings, Addenda, the Bonds, the Insurance, SBE Utilization Plan, together with all Written Amendments, Change Orders, Field Orders, and DISTRICT's and DESIGN ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the CONTRACT. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not CONTRACT Documents.
  16. *CONTRACT Price*--The total compensation, subject to authorized adjustments, payable by DISTRICT to CONTRACTOR for satisfactory completion of the Work in accordance with the CONTRACT Documents as stated in the CONTRACT.
  17. *CONTRACT Times*--The number of days or the dates stated in the CONTRACT to complete the work.
  18. *CONTRACTOR*--The individual or legal entity with whom the DISTRICT has entered into the CONTRACT for performance of the Work.
  19. *Contractor's Fee*--The total compensation, payable by the DISTRICT to the CONTRACTOR, for use with Change Orders as set forth in Article 12.01.C. The CONTRACTOR's fee shall include all costs for overhead and profit.
  20. *Cost-Loaded Construction Schedule* - A document furnished by the CONTRACTOR to the DISTRICT using a computerized Precedence Diagram Method (PDM) and established technical standards for Critical Path Method (CPM) scheduling that shows all work scheduled within the time constraints set forth in the CONTRACT. This document will reflect a reasonable allowance of costs associated with the various parts of the work totaling the entire bid amount, and be used as a basis for reviewing the CONTRACTOR'S Applications for Payment. It shall not be used as the basis for Change Orders.
  21. *Cost of the Work*--See paragraph 11.01.A for definition.
  22. *Day*--A day shall constitute a calendar day of 24 hours measured from midnight to the next midnight except in cases where the term *Day* is otherwise defined herein.
  23. *DISTRICT*--The South Florida Water Management DISTRICT,

- a public corporation of the State of Florida, 3301 Gun Club Road, West Palm Beach, Florida; the OWNER.
24. *Drawings*--That part of the CONTRACT Documents 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.
  25. *Design Engineer*--The individual or legal entity named as such in the CONTRACT Documents who designed the project and has the rights and authority assigned to DESIGN ENGINEER in the CONTRACT Documents. The term "DESIGN ENGINEER" means DESIGN ENGINEER or its representative.
  26. *Effective Date of the CONTRACT*--The date indicated in the CONTRACT on which it becomes effective, but if no such date is indicated, it means the date on which the CONTRACT is signed and delivered by the last of the two parties to sign and deliver.
  27. *Field Order*--A written order issued by DISTRICT which orders minor variations in the Work, and which does not involve a change in the CONTRACT Price or the CONTRACT Times.
  28. *Fifty Percent Completion* -- 50% of the total cost of the services purchased by the DISTRICT as defined in the contract documents, including all other costs associated with change orders.
  29. *General Requirements*--Sections of Division I of the Specifications. The General Requirements pertain to all sections of the Specifications.
  30. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
  31. *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.
  32. *Laws and/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.
  33. *Lien*--Charges, security interest, or encumbrances upon Project funds, real property, or personal property.
  34. *Liquidated Damages* --The damages the DISTRICT might incur if the Project is not completed within the time specified.
  35. *Material Breach*- Any substantial, unexcused non-performance. The breach is either failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the contract.
  36. *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.
  37. *Notice of Intent to Award*--The written official notice by DISTRICT of the apparent successful responsive and responsible bidder.
  38. *Notice of Apparent Low Bidder*--The written unofficial notice by DISTRICT of the apparent low bidder.
  39. *Notice to Proceed*--A written notice given by DISTRICT to CONTRACTOR authorizing CONTRACTOR to proceed with the work and establishing the date of commencement of the CONTRACT Times.
  40. *OWNER*-- Refer to definition of DISTRICT.
  41. *Partial Utilization*--Use by DISTRICT 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.
  42. *PCBs*--Polychlorinated biphenyls.
  43. *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.
  44. *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.
  45. *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.
  46. *Responsible*--A firm is capable in all respects to fully perform the CONTRACT requirements and has the integrity and reliability which will assure good faith performance.
  47. *Responsive*--A firm's bid conforms in all material respects to the invitation to bid and shall include compliance with SBE goals.
  48. *Request for Information (RFI)* - A written request, from the Contractor to the District that asks for additional information or to clarify some aspect of the project, such as procedures, equipment, materials, specification details or drawing details. The District will review the RFI within 15 business days.
  49. *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.
  50. *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.
  51. *Site*--Lands or areas indicated in the CONTRACT Documents as being furnished by DISTRICT upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by DISTRICT which are designated for the use of CONTRACTOR .
  52. *"Small Business Enterprise" or "SBE"*—is as defined in 40E-7.669, F.A.C.
  53. *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.
  54. *Subcontractor*--An individual or legal entity having a direct CONTRACT with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.
  55. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of DISTRICT, 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 and shall begin the warranty period. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

56. *Supplemental Conditions* --That part of the CONTRACT Documents which amends or supplements these General Terms & Conditions.
57. *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.
58. *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.
59. *Unilateral Change Order*-- A written change order issued by DISTRICT which orders variations in the Work, and which involves a change in the CONTRACT Price or the CONTRACT Times.
60. *Unit Price*--Amount stated in the CONTRACT Documents as a price per unit of measurement for materials or services required.
61. *Unit Price Work*--Work to be paid for on the basis of unit prices.
62. *Work*--Any and all obligations, duties, responsibilities, labor, materials, equipment, temporary facilities, utilities, and incidentals and the furnishing thereof necessary to complete the construction assigned to, or undertaken by CONTRACTOR pursuant to the CONTRACT Documents. Also, the completed construction or parts thereof required to be provided under the CONTRACT Documents, including all materials, equipment, and supplies incorporated or to be incorporated in the construction.
63. *Work Change Directive*--A written directive to CONTRACTOR issued on or after the Effective Date of the Contract and signed by the DISTRICT ordering an addition, deletion or revision in the Work, or responding to differing site 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 Time(s), but is evidence that the parties expect that the change directed 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 Time(s).
64. *Written Amendment*--A written statement modifying the CONTRACT Documents, signed by the parties indicated in the Amendment, on or after the Effective Date of the CONTRACT and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the CONTRACT Documents.
65. *Written Notice*--Notice given in writing via e-mail, letter, or otherwise required by law.

## ARTICLE 2 - PRELIMINARY MATTERS

*2.01 Delivery of Performance and Payment Bonds:* CONTRACTOR shall deliver to DISTRICT such Bonds as CONTRACTOR is required to furnish within seven (7) business days of the date of Notice of Apparent Low Bidder from the DISTRICT.

A. *Bid/Quote Price:* Bids/Quote price received will be valid for one hundred twenty (120) days after the opening date of the solicitation.

*2.02 Copies of Documents:* DISTRICT shall furnish to CONTRACTOR one CD containing electronic copies, in PDF format, of the CONTRACT Documents free of charge. CONTRACTOR will be responsible for preparing additional copies at its expense.

*2.03 Commencement of CONTRACT Time; Notice to Proceed:* The period of performance of this CONTRACT shall commence upon the effective date of the Notice to Proceed and continue for a period as indicated on the cover/signature page of this CONTRACT, including punchlist work (Contract Time). The CONTRACTOR shall not proceed with work under this CONTRACT until a Notice to Proceed is received from the DISTRICT.

*2.04 Starting the Work:* CONTRACTOR shall start to perform the Work on the effective date indicated in the Notice to Proceed. No Work shall be done at the Site prior to that date unless approved, in writing, by the DISTRICT.

### *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 immediately report, in writing, to DISTRICT any conflict, error, ambiguity, or discrepancy which CONTRACTOR or any of its Subcontractors or Suppliers may discover and shall obtain a written interpretation or clarification from DISTRICT before proceeding with any Work affected thereby.

B. *Preliminary Schedules:* Following CONTRACT execution and prior to Notice to Proceed CONTRACTOR shall submit to DISTRICT for its timely review:

1. An Initial Cost-Loaded Construction Baseline Schedule and Schedule Narrative Report in accordance with the CONTRACT documents.
  2. A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting it in keeping with the GENERAL REQUIREMENTS; and
  3. A tentative procurement schedule of equipment and materials.
- C. *Evidence of Insurance:* The CONTRACTOR shall purchase and maintain insurance coverage reflecting, at a minimum, the amounts and conditions as specified within the DISTRICT's Insurance Requirements Checklist, as further detailed in Article 5. The CONTRACTOR shall provide the certificate within seven (7) business days of the date of the Notice of Apparent Low



Bidder.

The CONTRACTOR shall have thirty (30) business days after CONTRACT execution, to produce the required Insurance Declaration Page of Policy, additional insured endorsement forms, blanket additional insurance endorsement forms (if applicable) and a waiver of subrogation endorsement set forth in the General Terms & Conditions, and the Insurance Requirements Checklist included herein.

**2.06 Preconstruction Conference:** A conference attended by CONTRACTOR, DISTRICT, 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. CONTRACTOR shall attend such conference and shall require any or all of the subcontractors and suppliers, as the DISTRICT requests, to attend the conference.

**2.07 Initial Acceptance of Schedules:** Prior to the submission of the first Application for Payment by CONTRACTOR, the schedules submitted in accordance with paragraph 2.05.B must be reviewed by the DISTRICT and be corrected and/or revised by the CONTRACTOR if deemed necessary by the DISTRICT. No progress payment shall be made to CONTRACTOR until final schedules are submitted to DISTRICT.

1. The Cost-Loaded Construction Baseline schedule will be acceptable to DISTRICT if it is prepared by personnel having substantial experience in the use of the latest version of Oracle Primavera software. The work breakdown structure is consistent with the DISTRICT provided asset templates. It provides a reasonable allocation of the CONTRACT price to component parts of the Work and it provides an orderly progression of the Work to completion within any specified Milestones and the CONTRACT Times. Such acceptance will not impose on DISTRICT's responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefore. The Cost-Loaded schedule shall not be used as a basis of cost for change order work and does not relieve CONTRACTOR from CONTRACTOR's full responsibility therefore.
2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to DISTRICT if it provides a workable arrangement for reviewing and processing the required submittals.
3. Price for mobilization and demobilization shall be distributed such that the mobilization and demobilization charges are equal. The demobilization shall be paid in the last Application for Payment.

#### *A. Statement of Work*

The CONTRACTOR shall furnish all equipment, tools, materials, labor and everything known and necessary and shall complete all required Work as specified in the CONTRACT Documents. The project for which the Work under the CONTRACT Documents may

be the whole or only a part is generally described on the cover/signature page of this CONTRACT.

The CONTRACTOR shall, to the satisfaction of the DISTRICT, fully and timely perform all work items described in the Plans and Specifications attached hereto, and made a part of this CONTRACT. In the event CONTRACTOR employees, subcontractors or hired workers are authorized to perform services on-site at DISTRICT facilities, the CONTRACTOR hereby agrees to be bound by all applicable DISTRICT policies and standards of conduct. It is the CONTRACTOR's responsibility to advise its employees, subcontractors or hired workers of the nature of the project, as described in the CONTRACT Documents. The CONTRACTOR shall determine the method, details and means of performing the services. The DISTRICT may provide additional guidance and instructions to CONTRACTOR's employees, subcontractors or hired workers where necessary or appropriate as determined by the DISTRICT.

#### *B. Contract Time/Liquidated Damages*

1. Unless extended or terminated, the period of performance of this CONTRACT shall commence upon the effective date of the Notice to Proceed and continue for a period as indicated on the cover/signature page of this CONTRACT, including punchlist work (Contract Time). The CONTRACTOR shall not proceed with work under this CONTRACT until a Notice to Proceed is received from the DISTRICT or unless approved in writing by the DISTRICT.
2. Time is of the essence for this CONTRACT. Therefore, if the CONTRACTOR fails, or refuses, to perform the work, or any separable part thereof, with such diligence as will insure the completion of the same, or fails, for any reason, to complete such work within the time limit specified, or any extension thereof granted, then the CONTRACTOR shall be liable to pay the DISTRICT not as a penalty, but as liquidated damages, the sum as indicated in on the cover/signature page of this CONTRACT, for each calendar day that the work remains incomplete after the expiration of the time limit specified or any extension thereof, plus any moneys which are paid by the DISTRICT to any other person, firm or corporation, for services rendered for the preservation or completion of the work.
3. Two-Tiered Liquidated Damages: the higher level of damages shall be assessed from the calculated Completion Date until such date as the CONTRACTOR attains Substantial Completion. Beyond the date of attainment of Substantial Completion, and until the CONTRACTOR attains FINAL COMPLETION, the lower level of Liquidated Damages shall be assessed. Total Liquidated Damages shall be assessed shall be the sum of the upper and lower levels of Liquidated Damages.
4. Single-Tiered Liquidated Damages: the Liquidated Damages assessed shall be calculated from the calculated Completion Date until such date as the CONTRACTOR attains FINAL COMPLETION.
5. Such moneys shall be chargeable to the CONTRACTOR and shall be deducted from any moneys due said CONTRACTOR, or if no money is due or the amount due is insufficient to cover the amount charged, then the CONTRACTOR and its Surety shall be liable for said amount.

6. The foregoing Liquidated Damages amounts are acknowledged by the parties to be reasonable and justified in this case, given the difficulty of assessing actual damages as a result of delays to the Work on the Project. The parties understand that the foregoing amounts are NOT a penalty.
7. Payments may be reduced by any liquidated damages amounts properly assessed under the terms of the Contract Documents.

#### 2.08 Background Checks

The CONTRACTOR shall conduct a thorough background check for all CONTRACTOR employees or hired workers who will be working on any DISTRICT site. Prior to CONTRACT execution, CONTRACTOR shall submit the attached "Contractor's Affidavit, Work Involving District Facilities or Equipment" to certify compliance with Article 2.08. The background checks shall consist of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status in accordance with Article 6.02 B. After reviewing the results of the background check, the CONTRACTOR shall determine whether the CONTRACTOR employee and/or hired worker meets the necessary criteria for the position. Prior to allowing any employees or hired workers to work on-site at DISTRICT facilities, the CONTRACTOR must provide written certification to the DISTRICT that a complete background check, as described above, was conducted for any such employee or hired worker. The CONTRACTOR shall provide written recertification of the CONTRACTOR Affidavit every three months or until expiration of the contract. The CONTRACTOR shall advise the DISTRICT of any violation or potential violation of compliance of the Affidavit. The CONTRACTOR shall place the above language in any CONTRACT that it has with subcontractors and shall be responsible for its enforcement.

### ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

#### 3.01 Intent

- A. The CONTRACT Documents comprise the entire agreement between the DISTRICT and CONTRACTOR concerning the Work. The CONTRACT Documents are complementary; what is called for by one is as binding as if called for by all. The CONTRACT Documents will be governed by the laws of the State of Florida.
- 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 DISTRICT.
- C. Clarifications and interpretations of the CONTRACT Documents shall be issued by DISTRICT as provided in Article 9.04.

#### 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 CONTRACT 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 DISTRICT, CONTRACTOR, or DESIGN 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 DISTRICT, DESIGN ENGINEER, or any of DISTRICT'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.

#### B. *Industry Standards*

1. Applicability of Standards: Except where the CONTRACT Documents include more stringent requirements, applicable construction industry standards have the same force and effect as if bound or copied directly into the CONTRACT Documents. Such standards are made a part of the CONTRACT Documents by reference and are stated in each section.
  - a. Referenced standards, referenced directly in CONTRACT Documents or by governing regulations, have precedence over nonreferenced standards which are recognized in industry for applicability to the Work.
  - b. Where compliance with an industry standard is required, standard in effect shall be stated in Article 3.02.A.1.
  - c. Where an applicable code or standard has been revised and reissued after the date of the CONTRACT Documents and before performance of Work affected, the DISTRICT will decide upon the updated standard.
  - d. Where compliance with two or more standards is specified, and they establish different or conflicting requirements for minimum quantities or quality levels, the most stringent requirement will be enforced, unless the CONTRACT Documents indicate otherwise. Refer requirements that are different but apparently equal, and uncertainties as to which quality level is more stringent, to the DISTRICT for a decision before proceeding.
  - e. In every instance the quantity or quality level shown or specified shall be the minimum to be provided or performed. The actual installation may comply exactly, within specified tolerances, with the minimum quantity or quality specified, or it may exceed that minimum within reasonable limits. In complying with these requirements, indicated numeric values are minimum or maximum values, as noted, or appropriate for the context of the requirements. Refer instances of uncertainty to the Engineer for a decision before proceeding.
  - f. Each entity engaged in construction on the Project is required to

be familiar with industry standards applicable to that entity's construction activity. Copies of applicable standards are not bound with the CONTRACT Documents.

- 1) Where copies of standards are needed for performance of a required construction activity, the CONTRACTOR shall obtain copies directly from the publication source.
- 2) Abbreviation of Names: Trade association names and titles of general standards are frequently abbreviated. Where such acronyms or abbreviations are used in the Specifications or other CONTRACT Documents, they mean the recognized name of the trade association, standards generating organizing, authority having jurisdiction, or other entity applicable to the context of the text provision.

### 3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies: If, during the performance of the Work, CONTRACTOR, or any of his Subcontractors or Suppliers, 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 DISTRICT in writing at once but in no event later than seventy-two (72) hours. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.) until obtaining a written clarification from the DISTRICT. After CONTRACTOR's discovery of such a conflict, error or discrepancy, or after the date when CONTRACTOR should have reasonably known thereof, until the interpretation or clarification is obtained from the DISTRICT, any Work done by CONTRACTOR which is directly or indirectly affected by same, will be at CONTRACTOR's own risk and CONTRACTOR shall bear all costs and delay arising therefrom.

#### 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).
2. In resolving such conflicts, errors or discrepancies, the CONTRACT Documents shall be given preference as specified in the CONTRACT.
3. In all cases where notes, specifications, sketches, diagrams, details or schedules in the Specifications or Drawings, or between the Specifications and Drawings, conflict, the higher

cost requirements shall be furnished by CONTRACTOR unless otherwise directed by the DISTRICT.

### 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 or (ii) a Change Order.
- 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) DESIGN ENGINEER's approval of a Shop Drawing or Sample; or (iii) DISTRICT's written interpretation or clarification, which will not require adjustments on the CONTRACT Price or CONTRACT Times.

3.05 Reuse of Documents: 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 DISTRICT: (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), 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 prior written consent of DISTRICT. 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. Please also refer to Article 24 – Records.

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

### 4.01 Availability of Lands

#### A. DISTRICT shall furnish the Site:

1. DISTRICT 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.
2. DISTRICT will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and DISTRICT 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 DISTRICT's furnishing the Site, CONTRACTOR may make a Claim therefore as provided in paragraph 16.02.
3. In the event that the DISTRICT provides the CONTRACTOR with keys to access to any DISTRICT structures or Right-of-Ways through its key permitting system, a deposit shall apply. Because the cost to re-key DISTRICT structures is high, should the CONTRACTOR lose any keys provided by the DISTRICT, such loss shall not only result in the loss of the CONTRACTOR's deposit, but may also result in the assessment of progressively higher fines depending on how many keys may have been

lost throughout the term of this CONTRACT or across multiple contracts between the CONTRACTOR and the DISTRICT. The DISTRICT reserves the right to offset the amounts owed pursuant to this provision against payments due to the CONTRACTOR under this CONTRACT and/or against payments due under any other contracts or purchase orders between the DISTRICT and CONTRACTOR. Repeated loss of keys may also be used as a basis for deeming the CONTRACTOR as non-responsible in conjunction with bid or proposal submissions.

- B. *Governmental Entity:* The DISTRICT is a governmental entity. Accordingly, the provisions of Chapter 713, Florida Statutes concerning construction liens, do not apply to lands owned by the DISTRICT.
- C. *Additional Lands:* 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 Supplemental Conditions, identify, if any:
  - 1. Reports of explorations and tests of subsurface conditions at or contiguous to the Site that DESIGN ENGINEER has used in preparing the CONTRACT Documents; and
  - 2. Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that DESIGN ENGINEER has used in preparing the CONTRACT Documents.
- B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* Reports and drawings are not CONTRACT Documents. CONTRACTOR may not rely upon or make any claim against DISTRICT, 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. CONTRACTOR shall promptly, but in no event later than ten (10) days after becoming aware thereof and before the conditions are disturbed, give a written notice to DISTRICT of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily

encountered and generally recognized as inherent in work of the character called for by the Contract Documents.

DISTRICT will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 10.

No request by CONTRACTOR for an equitable adjustment under this paragraph shall be allowed unless CONTRACTOR has given the written notice required;

The provisions of this paragraph are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

- B. *DISTRICT's Review:* After receipt of written notice as required by paragraph 4.03.A, DISTRICT will promptly review the pertinent condition, determine the necessity of obtaining additional exploration or tests with respect thereto, and advise CONTRACTOR in writing of findings and conclusions.
- C. *Possible Price and Times Adjustments*
  - 1. The CONTRACT Price or the CONTRACT Times, or both, may be 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, and
    - c. In order to be entitled to an increase in time for performance of the Work, CONTRACTOR must establish that its critical path of construction performance has been adversely impacted. Upon such a showing, CONTRACTOR shall be entitled only to such an extension equivalent to such actual adverse impact in the critical path.
  - 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 DISTRICT 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 DISTRICT and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the CONTRACT Price or CONTRACT Times, or both, a Claim may be made therefore as provided in paragraph 16.02. However, DISTRICT, DESIGN ENGINEER, and its CONTRACTORS 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 DISTRICT or DESIGN ENGINEER by the owners of such Underground Facilities, including DISTRICT, or by others. Unless it is otherwise expressly provided in the Supplemental Conditions:

1. DISTRICT shall not be responsible for the accuracy or completeness of any such information or data; and
2. The cost 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 DISTRICT, 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, immediately 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), identify the owner of such Underground Facility and give written notice to that owner and to DISTRICT. DISTRICT 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 DISTRICT concludes that a change in the CONTRACT

Documents is required, a Change Order may be issued to reflect and document such consequences. An adjustment may 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 DISTRICT 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, DISTRICT or CONTRACTOR may make a Claim therefore as provided in paragraph 16.02.

3. In order to be entitled to an increase in time for performance of the Work, CONTRACTOR must establish that its critical path of construction performance has been adversely impacted. Upon such a showing, CONTRACTOR shall be entitled only to such an extension equivalent to such actual adverse impact in the critical path.

4.05 *Reference Points:* DISTRICT shall provide engineering surveys to establish reference points for construction which in DISTRICT'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 DISTRICT. CONTRACTOR shall report to DISTRICT 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 a professional land surveyor licensed in the State of Florida.

#### 4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplemental 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 DESIGN ENGINEER and/or the DISTRICT 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 Supplemental Conditions. Except for such reliance on such "technical data" as described in the Supplemental Conditions, CONTRACTOR may not rely upon or make any Claim against DISTRICT, DESIGN ENGINEER or any of its 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 by the 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 DISTRICT and DESIGN ENGINEER (and immediately thereafter confirm such notice in writing).
- E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after DISTRICT 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 DISTRICT and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in CONTRACT Price or CONTRACT Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefore as provided in paragraph 16.02.
- F. In order to be entitled to an increase in time for performance of the Work, CONTRACTOR must establish that its critical path of construction performance has been adversely impacted. Upon such a showing, CONTRACTOR shall be entitled only to such an extension equivalent to such actual adverse impact in the critical path.
- G. 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

### 5.01 Bid Guaranty

- A. *Bid Bond Form.* Each Bid must be accompanied by the DISTRICT's Bid Bond form meeting the standards specified in this Article 5, including those applicable to the sureties for the Statutory Payment Bond and Common Law Performance Bond specified in the General Terms & Conditions. The bond shall be on the Bid Guaranty form provided by the DISTRICT, with Power of Attorney Affidavit attached, in an amount not less than five percent (5%) of the amount of the bid. The Bid Bond shall be in the Prime Contractor's name. The Bidder is required to use

the DISTRICT forms provided in this RFB. Alternate bond forms will not be accepted. Failure to provide the DISTRICT's bond forms will deem the Bid non-responsive.

- B. *Alternate Security.* In lieu of the Bid Bond, the Bid may be accompanied by an alternate form of security in the form of cash, a money order, certified check of any national or state bank made payable to the DISTRICT, or an irrevocable letter of credit, in an amount not less than five percent (5%) of the amount of the Bid. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond for which the alternative form of security is being substituted. The determination of the value of an alternative form of security shall be made by the DISTRICT.
- C. *Conditions.* The Bid Bond or alternate security shall be conditioned upon the Bidder's:
  1. Not withdrawing said bid within one hundred twenty (120) days after date of opening of the same, and
  2. Within seven (7) business days after of the Notice of Apparent Low Bidder Letter:
    - a. executing a written CONTRACT with the DISTRICT, in accordance with the bid as accepted;
    - b. providing evidence of insurance in the manner specified by the DISTRICT; and
    - c. if the Bid exceeds \$200,000.00, providing a Statutory Payment Bond and a Common Law Performance Bond as specified in the General Terms & Conditions (or, in lieu of the Statutory Payment Bond or Common Law Performance Bond, having provided an alternate form of security as specified in the General Terms & Conditions);
    - d. or in the event to fully comply with all of the foregoing, if the Bidder shall have paid the DISTRICT the difference between the amount specified in said bid and the amount for which the DISTRICT may procure the required work and/or supplies, if the latter amount be in excess of the former.
- D. *Return of Bid Guaranty.* Funds of any money order or check that may be received will be returned to all Bidders, with the exception of the two (2) apparent low Bidders, within thirty (30) days after the opening of the Bids. Bid bonds will not be returned to the bidders, unless specifically requested by a Bidder. The Bid Security of the apparent and second apparent low bidder shall be retained until such Bidder has executed the CONTRACT, furnished the Insurance Certificate and endorsements, complied with the DISTRICT's SBE requirements, and furnished a valid and acceptable Statutory Payment Bond and a Common Law Performance Bond as specified in the General Terms & Conditions (or, in lieu of the Statutory Payment Bond or Common Law Performance Bond, having provided an alternate form of security as specified in the General Terms & Conditions) as required under the provisions of the CONTRACT. Any money order or check from the apparent low bidder shall be deposited upon receipt. Any money order or certified check from the second apparent low bidder may be deposited. Failure of the DISTRICT to execute the CONTRACT within one hundred twenty (120) days after the date of the bid opening shall initiate

release of the Bid Bond, certified check or cash of the lowest and second lowest bidders unless mutually agreed otherwise or specified in the Supplemental Conditions.

#### *5.02 Performance and Payment:*

- A. *Performance and Payment Bond:* Bonds must be in compliance with Florida Law. If the CONTRACT price is in excess of \$200,000.00, the CONTRACTOR shall, within seven (7) business days of date of the Notice of Apparent Low Bidder from DISTRICT, provide DISTRICT with a Common Law Performance Bond and a Statutory Payment Bond meeting the standards specified herein, on the forms provided by the DISTRICT with Power of Attorney Affidavit attached, each in an amount not less than the CONTRACT Price. The bonds shall also be accompanied by the DISTRICT's Affidavit for Surety Form. The Performance and Payment Bonds shall be in the Prime Contractor's name. Failure to provide the bond(s) within the seven (7) business day period shall be sufficient cause for the DISTRICT to deem the Bidder non-responsive and nullify the CONTRACT award. The Contractor shall provide a Performance Bond which guarantees the performance of the Work as well as any applicable extended warranty.
- B. *Maintenance Bond:* A Maintenance Bond is required for this project unless specifically excluded by the Supplemental Conditions. The cost for providing it should be included in the bid, in the line for "Total Project" on the bid form. Proof of the ability to obtain this bond must be provided by consent of surety, which must accompany the bid, in the form of a statement or letter from a surety agency that is duly qualified per the conditions of this Article. The bond itself need not accompany the bid, and can be provided by the successful bidder at a later date, prior to substantial completion.

#### *5.03 All Bonds*

*Sureties Qualifications:* All bonds required under this CONTRACT, including, but not by way of limitation, any Bid Bond, Common Law Performance Bond or Statutory Payment Bond shall be written through a reputable and responsible surety bond agency licensed to do business in the State of Florida and with a surety which holds a certificate of authority authorizing it to write surety bonds in Florida meeting the following requirements:

**BOND AND INSURANCE  
REQUIREMENTS FOR CONSTRUCTION CONTRACTS**

<b>CONTRACT SUM</b>	<b>BEST'S RATING CLASSIFICATION FOR SURETY AND INSURANCE FIRMS, &amp; OTHER REQUIREMENTS</b>	<b>BEST'S FINANCIAL SIZE CATEGORY FOR SURETY AND INSURANCE FIRMS.</b>
From: \$0.00 To: \$200,000.00	Bid Bond and Insurance Required.  Performance and Payment Bond <u>Not</u> Required (unless specified in Supplemental Conditions)	No Minimum Required.  Not Applicable.
From: \$200,000.01 To: \$500,000.00	<u>All Bonds and Insurance Required:</u> See requirements under paragraph (3) below	No Minimum Required.
From: \$500,000.01 To: \$2,500,000.00	<u>All Bonds and Insurance Required:</u> A- or better Circular 570 requirements (paragraph 2 below)	IV or larger.
From : \$2,500,000.01 and more	<u>All Bonds and Insurance Required:</u> A- or better Circular 570 requirements (paragraph (2) below	V or larger.

CONTRACTORS must use the DISTRICT bond forms enclosed herein. Failure to use the DISTRICT forms shall deem the bidder as non-responsive.

1. Ratings by A.M. Best:

The surety and insurance company or corporation shall have a minimum A.M. Best Company rating as indicated above in addition to the surety qualifying pursuant to paragraph (3) below:

2. Circular 570, CONTRACT Price of \$500,000.01 or More:

If the CONTRACT Price is \$500,000.01 or greater, the surety shall also comply with the Circular 570 requirements as set forth in this paragraph 2. The surety shall maintain a current certificate of authority as an acceptable surety on Federal Bonds in accordance with U.S. Department of Treasury Circular 570, current revision. If the amount of the bond exceeds the underwriting limitations set forth in the Circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the Circular and the excess risk must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 CFR Section 223.10 - Section 223.111. Further the surety company shall provide the DISTRICT with evidence satisfactory to the DISTRICT, that such excess risk has been protected in an acceptable manner.

3. CONTRACT Price of \$500,000 or Less:

Notwithstanding the foregoing paragraphs 1. and 2., in the event the CONTRACT price is \$500,000.00 or less, in accordance with Section 287.0935, Florida Statutes, bonds with a surety company in compliance with the following requirements shall be acceptable:

- a. The surety company is licensed to do business in the State of Florida; and
- b. The surety company holds a certificate of authority authorizing it to write surety bonds in Florida; and
- c. The surety company has twice the minimum surplus and

capital required by the Florida Insurance code at the time this Request For Bids is issued; and

- d. The surety company is otherwise in compliance with the provisions of the Florida Insurance Code; and
- e. The surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. ss.9304 to 9308.

In order to qualify as an acceptable surety company under this paragraph 3, an Affidavit for the Surety Company shall be executed by an Officer of the surety bond insurer as evidence that a surety company is in compliance with the foregoing requirements.

- A. *Additional or replacement bond:* It is further mutually agreed between the parties hereto that if, at any time, the DISTRICT shall deem the surety or sureties upon any bond to be unsatisfactory, or if, for any reason, such bond ceases to be adequate, the CONTRACTOR shall, at its expense within seven (7) business days after the receipt of notice from the DISTRICT to do so, furnish an additional or replacement bond or bonds on the DISTRICT'S standard form, with the same amount, and with such surety or sureties as shall be satisfactory to the DISTRICT. In such event, no further payments to the CONTRACTOR shall be deemed to be due under this CONTRACT until such new or additional security for the faithful performance of the work shall be furnished in the manner and form satisfactory to the DISTRICT.

In addition, the CONTRACTOR shall for any increases in the CONTRACT amount automatically increase the amount of the performance and payment bonds to equal the revised amount of the contract, and shall provide the DISTRICT with evidence of same.

- B. The surety company shall provide a Florida address for service of process in the prescribed space on the forms provided by the



DISTRICT for all bonds required by the DISTRICT.

- C. *Alternate form of security:* In lieu of the Common Law Performance Bond or Statutory Payment Bond, CONTRACTOR may, pursuant to Section 255.051, Florida Statutes, provide an alternate form of security in the form of cash, a money order, a certified check, or an irrevocable letter of credit. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond for which the alternative form of security is being substituted. The determination of the value of an alternative form of security shall be made by the DISTRICT.

#### 5.04 Insurance

- A. *Certificate of Insurance.* The CONTRACTOR shall deliver to DISTRICT and maintain insurance coverage reflecting, at a minimum, the amounts and conditions as specified within the DISTRICT'S Insurance Requirements Checklist, attached herein. All insurance required under this CONTRACT shall meet the requirements listed in the Table found in 5.03 above.

In addition, at the direction of the DISTRICT, the CONTRACTOR shall for any increases in the CONTRACT amount automatically increase the amount of the insurance to equal the revised amount of the contract, and shall provide the DISTRICT with evidence of same.

The CONTRACTOR shall provide the certificate within seven (7) business days from the date of the *Notice of Apparent Low Bidder*.

The CONTRACTOR shall have thirty (30) business days after CONTRACT execution, to produce the required Insurance Declaration Page of Policy, additional insured endorsement forms, and a waiver of subrogation endorsement as set forth in the General Terms & Conditions, and the Insurance Requirements Checklist included herein. CONTRACTOR shall provide an insurance policy that provides the District, as additional insured, a separate defense in the event of a claim filed by a third party against the District, regardless of whether an allegation of negligence is alleged against the CONTRACTOR.

- B. *Qualifications to Do Business in Florida.* All insurers must be qualified to lawfully conduct business in the State of Florida. Failure of the DISTRICT to notify the CONTRACTOR that the Certificate of Insurance provided does not meet the CONTRACT requirements, shall not constitute a waiver of the CONTRACTOR's responsibility to meet the stated requirements. In addition, receipt and acceptance of the certificate of insurance by the DISTRICT shall not constitute approval of the amounts, conditions or types of coverage listed on the certificate. Misrepresentation of any material fact, whether intentional or not, regarding the CONTRACTOR's insurance coverage, policies or capabilities, may be grounds for rejection of the response and rescission of any ensuing contract.

- C. *Self-insured Provisions.* If the CONTRACTOR is a self-insured entity, the CONTRACTOR may contact the DISTRICT'S CONTRACT Administrator, identified on the cover page, and request the DISTRICT'S self-insurance package. It shall be the responsibility of the CONTRACTOR to ensure that all Subcontractors are adequately insured or covered under their policies. The DISTRICT may at its discretion, require the CONTRACTOR to provide a complete certified copy of its insurance policy(s).

D. *Workers' Compensation:*

1. Workers' Compensation insurance shall comply with Chapter 440, Florida Statute, including Employer's Liability. If work is performed in/over navigable waters, an endorsement covering the U.S. Longshore and Harbor Workers' Compensation Act (LHWCA) 33 U.S.C. Section 901, et seq. and Jones Act, 46 App U.S.C. Section 861, et seq. shall be included.
2. If CONTRACTOR claims an exemption from coverage, it must attach proof of same for consideration in the form of a certified copy of your state exemption form. The DISTRICT reserves the right to require said coverage regardless of the state exemption.

E. *Commercial Liability Insurance*

1. Coverage shall be no more restrictive than that identified by the Insurance Services Office, Inc. (ISO).
2. Coverage shall be written on an Occurrence Basis Form.
3. Coverage shall provide as a minimum those limits identified within the DISTRICT's Insurance Requirements Checklist. Coverage shall be "first dollar" coverage. If CONTRACTOR's policy includes a Self-Insured Retention (SIR) CONTRACTOR may, at the DISTRICT's option, be required to meet established financial security requirements.
4. Coverage shall include as a minimum the following coverage endorsements: Premises / Operations, Products/Completed Operations, Contractual Liability, Independent CONTRACTORS, Broad Form Property Damage, Underground Explosion/Collapse (XCU) and Personal Injury. Additional endorsements may be required as the CONTRACT dictates. Refer to the DISTRICT's Insurance Requirements Checklist attached herein.
5. The DISTRICT shall be added by endorsement as an Additional Insured. An endorsement shall also be included which specifies that the inclusion of an additional insured does not exclude any pollution liability coverage otherwise afforded by said policy.

F. *Business Auto Liability Insurance*

1. Coverage shall be no more restrictive than that identified by the Insurance Services Office, Inc. (ISO).
2. Coverage shall provide as a minimum those limits identified within the DISTRICT's Insurance Requirements Checklist. Coverage shall be "first dollar" coverage. If CONTRACTOR's policy includes a Self-Insured Retention (SIR) CONTRACTOR may, at the DISTRICT's option, be required to meet established financial security requirements.

3. Coverage shall be "Any Auto" - Symbol 1.

*G. Builders Risk Insurance/Installation Floater*

1. The insurance policy shall be "broad form," "all risk" covering all equipment and machinery; or a special Installation Floater may be included to ensure the required coverage for this exposure. The policy form shall be no more restrictive than the "inland marine type form." The DISTRICT shall be allowed to occupy the property in question without voiding any of the provided coverages.
2. The policy(s) shall state, "on behalf of all parties to the contract." The CONTRACTOR, the DISTRICT and all other applicable subcontractors are to be included as "insureds" on the policy(s).
3. At a minimum, the "covered property" will include the building or structure being constructed, including all fixtures, materials, supplies, machinery and equipment to be used in, or incidental to the construction. This will extend coverage to underground works. Coverage shall also be afforded to the property of others through a "care, custody or control" endorsement, as well as property off-site or in transit. The following coverages shall also be included by endorsement, unless excluded by the DISTRICT: Boiler & Machinery, Testing, Mechanical Breakdown, Earthquake, and Flood.
4. Coverage shall be valued on a Replacement Cost (100%) basis. A maximum (SIR) of \$5,000 is allowed. If multiple limits of liability are proposed for the construction site, property in transit, off-site storage, etc., the same value requirement shall be used for each.
5. All coverages afforded under this policy(s) shall remain in effect and not be excluded by a "Force Majeure Clause" found elsewhere in these Bidding Documents.
6. Coverage shall cease when the entire project covered by said policy is accepted by the DISTRICT. In the event testing by the CONTRACTOR is conducted after acceptance by the DISTRICT, coverage shall remain in full force and effect until all testing is complete and accepted by the DISTRICT, and final payment is made.

*5.05 Licenses:*

*A. Florida Corporations*

Before submitting a Bid, the CONTRACTOR must have the below listed license as indicated in the Supplemental Conditions as well as any other license required by law:

- 1) Certified General Contractor (as defined in Section 489.105(3)(a), Fla. Stat.)
- 2) Building Contractor (as defined in Section 489.105(3)(b), Fla. Stat.)
- 3) Underground and Utility Excavation Contractor (as defined in Section 489.105(3)(n), Fla. Stat.)
- 4) Roofing Contractor (as defined in Section 489.105(3)(e), Fla. Stat.)
- 5) Pollutant Storage Systems Contractor (as defined in Section 489.105(3)(p), Fla. Stat.)
- 6) Mechanical Contractor (as defined in Section 489.105(3)(i),

Fla. Stat.)

- 7) Plumbing Contractor (as defined in Section 489.105(3)(m), Fla. Stat.)
- 8) Other (specify):\_\_\_\_\_ (as defined in Section 489.105(3)(\_\_\_\_), Fla. Stat.)
- 9) Occupational License from the counties in the State of Florida within which the work will be performed or from the County in the State of Florida in which the CONTRACTOR's principle place of business is located.

Note that with respect to the applicable license requirement, the CONTRACTOR must either be "certified" in accordance with Section 489.111, Fla. Stat., or "registered" in accordance with Section 489.117, Fla. Stat. A CONTRACTOR that is "registered" rather than certified must also have the appropriate occupational license and meet any other applicable local licensing requirements in the county in Florida where the work is to be performed.

Unless otherwise specified in the Supplemental Conditions, the required licensure must be in the Prime Contractor's name.

*B. Foreign Corporations*

Before submitting a Bid, the CONTRACTOR must:

- 1) Be authorized to conduct business in the State of Florida pursuant to Chapter 607, F.S.; and
- 2) Meet the DISTRICT's licensing requirements for Florida Corporations (see Article 5.05A) by complying with one of the following options:
  - a) Obtain a State of Florida General Contractor's License; or
  - b) Obtain a qualifying agent (licensed as a State of Florida Certified General Contractor) pursuant to Section 489.119, F.S.; or
  - c) Obtain a "limited registration" pursuant to Section 489.117(3), Florida Statutes; or
  - d) Obtain an "endorsement certification" pursuant to Section 489.115(3), Florida Statutes.

**ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

*6.01 Supervision and Superintendence*

- A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the CONTRACT Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. CONTRACTOR shall 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 have a competent resident superintendent on site who shall not be replaced without written notice to DISTRICT except under extraordinary circumstances. The resident superintendent shall be a full time employee of the CONTRACTOR. The DISTRICT may, at its sole discretion, require replacement of the superintendent, in which case CONTRACTOR shall submit an acceptable replacement at no increase in CONTRACT Price

nor extension in CONTRACT Times. 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.

- C. CONTRACTOR shall ensure that all employees performing or furnishing any of the Work will be prohibited from using firearms, engaging in hunting, fishing, trapping, using illegal drugs or using alcohol either on the work site, on DISTRICT property, or on any land adjoining the work site.
- D. CONTRACTOR shall ensure that all employees performing or furnishing any of the Work will be prohibited from trespassing on any land adjoining the work site.

#### 6.02 Labor; Working Hours

- A. CONTRACTOR shall provide competent, qualified personnel to perform construction as required by the CONTRACT Documents. CONTRACTOR shall employ a Professional Land Surveyor with current Florida registration to survey and lay out the work (in accordance with any additional provisions included in the General Requirements). CONTRACTOR is fully responsible to provide a sufficient number of skilled workers and supervisory personnel to perform the Work and insure that the Work is completed within the CONTRACT Time. Failure to fully man the Project with supervisory personnel and skilled workers shall be cause for termination of CONTRACTOR.
- 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 DISTRICT's written consent and 48 hours notice. The CONTRACTOR shall be responsible for verifying employee authorization to work in the U.S. and certifying that a good faith effort has been made to properly identify employees by timely reviewing and completing appropriate documentation, including but not limited to the Department of Homeland Security, U.S. Citizenship and Immigration Services Form I-9. In the event the amount of this CONTRACT exceeds \$150,000 and for all persons hired by CONTRACTOR to work in the State of Florida for a period that is equal to or exceeds 120 days, the CONTRACTOR shall use the United States Department of Homeland Security's E-Verify system ("E-Verify") to verify employment eligibility. Additionally, if CONTRACTOR uses subcontractors to perform any portion of the Work under this CONTRACT valued in excess of \$3,000, CONTRACTOR must include a requirement in the subcontractor's contract that the subcontractor use E-Verify to verify the employment eligibility of all persons hired by subcontractor to perform any such portion of the Work. Within 30 days of this CONTRACT's Effective Date, CONTRACTOR must provide the DISTRICT with evidence that

CONTRACTOR is enrolled in the E-Verify system. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify).

- C. Written verification shall be kept by the CONTRACTOR and made available for inspection on demand by the DISTRICT.
- D. The hourly rate of pay for each employee shall comply with State law and industry standards for similar work performed under the CONTRACT. The CONTRACTOR shall maintain records verifying the rate of pay for each employee working on this CONTRACT and make such records available for inspection on demand by the DISTRICT.
- E. Failure to fully comply with these provisions shall be a material breach of the CONTRACT and cause for termination of the CONTRACT.

#### 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 DISTRICT. If required by DISTRICT or DESIGN 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.
- C. Manufacturers' or Suppliers' warranties for all materials products and equipment to be furnished by CONTRACTOR and to be incorporated into the completed Work shall be furnished to the DISTRICT through CONTRACTOR. CONTRACTOR shall obtain from Suppliers of all materials, products and equipment, complete information as to any special condition or restriction to be applied in the use of these items. Should the manner or method of installation, specified performance or test results as set forth in the Specifications be contrary to the Manufacturer's recommendations for use of the product, CONTRACTOR shall notify the DISTRICT in writing of such conflict as soon as reasonably possible, but no later than the time of Shop Drawing submittal including those products. Failure to provide such written notice before proceeding with the Work affected thereby shall be certification by CONTRACTOR that the specification requirements will be met by the materials, products and equipment, and that the cost and time required to perform the Work affected thereby have been included in the CONTRACT Price and in the schedule for the

performance of the Work within the CONTRACT Time.

#### 6.04 *Progress Schedule:*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 and shall be updated monthly as provided below.

1. CONTRACTOR shall submit to DISTRICT 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 provision of the General Requirements applicable thereto. CONTRACTOR further hereby acknowledges that the CONTRACT Time for performance is reasonable and that all costs for schedule compliance are included in the CONTRACT Price.
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. The CONTRACTOR shall not alter the schedule for proposed substitutions in anticipation of a change order, but rather will provide a proposed schedule revision with the change order, if requested by the DISTRICT, which will become effective with approval of the change.

#### 6.05 *"Or Equals" or Substitutes*

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," no "equivalent," no "or equal" item or no substitution is permitted, the substitution may be submitted to DISTRICT for review under the circumstances described below.

1. *"Or-Equal" Items:* If in DISTRICT'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 DISTRICT as an "or equal" item, in which case review and approval of the proposed item may, in DISTRICT'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, a proposed item of material or equipment may be considered functionally equal to an item so named if:
  - a. In the exercise of reasonable judgment DISTRICT 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 DISTRICT; 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 DISTRICT'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 may, at the DISTRICT's option be considered a proposed substitute item.
- b. CONTRACTOR shall submit sufficient information as provided below to allow DISTRICT to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by DISTRICT from anyone other than CONTRACTOR.
- c. The procedure for review by DISTRICT will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as DISTRICT may decide is appropriate under the circumstances.
- d. CONTRACTOR shall first make written application to DISTRICT 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 DISTRICT 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 DISTRICT in evaluating the proposed substitute item. DISTRICT 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 DISTRICT. CONTRACTOR shall submit sufficient information to allow

DISTRICT, in DISTRICT'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 DISTRICT will be similar to that provided in Article 6.05.A.2.

- C. *DISTRICT's Evaluation:* DISTRICT 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. DISTRICT will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until DISTRICT'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." DISTRICT will advise CONTRACTOR in writing of any negative determination. CONTRACTOR shall not be entitled to recover any extended general condition costs, or any schedule related impacts, including but not limited to acceleration or inefficiency costs, alleged to have been incurred resulting from the time spent by the DESIGN ENGINEER and DISTRICT in evaluating each proposal or submittal under this Article.
- D. *Special Guarantee:* DISTRICT may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.
- E. *DISTRICT's Cost Reimbursement:* DISTRICT will record time required by DISTRICT and DESIGN ENGINEER 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 DISTRICT for work on the Project) occasioned thereby. Whether or not DISTRICT approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse DISTRICT for the charges of DISTRICT and DESIGN ENGINEER 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. The DISTRICT requires the identity of Subcontractors, Suppliers, and other individuals or entities to be submitted to the DISTRICT in advance of the Work for review by DISTRICT. DISTRICT's acceptance 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. No acceptance by DISTRICT of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of DISTRICT to reject defective Work.
- B. CONTRACTOR shall be fully responsible to DISTRICT 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 DISTRICT or DESIGN ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of DISTRICT or DESIGN 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. DISTRICT or DESIGN ENGINEER may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account for specific Work done. No Subcontractor, Supplier or other person or organization shall be a third party beneficiary of this CONTRACT.

- C. 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.
- D. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with DISTRICT through CONTRACTOR.
- E. CONTRACTOR shall ensure that all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work will be prohibited from using firearms, engaging in hunting, fishing, trapping, using illegal drugs or using alcohol either on the work site, on DISTRICT property, or on any land adjoining the work site.
- F. The CONTRACTOR shall be solely responsible for SBE compliance as indicated in the CONTRACT Documents.
- G. CONTRACTOR shall ensure that all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work will be prohibited from trespassing on any land adjoining the work site.
- H. 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.
- I. 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 DISTRICT.

6.07 *Patent Fees and Royalties:* 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.

6.08 *Permits:* Unless otherwise provided in the Supplemental Conditions, CONTRACTOR shall obtain and pay for all required Federal, State or local permits and licenses applicable for the performance of the Work. If CONTRACTOR believes that any additional permits are required it shall notify the DISTRICT's

Procurement Bureau in writing specifying which permits the CONTRACTOR believes are required. The permits shall be in Prime CONTRACTOR's name only unless required otherwise by the regulating authorities. The CONTRACTOR shall provide the DISTRICT's CONSTRUCTION MANAGER copies of all permits and records required to be maintained relating to the Work. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. CONTRACTOR shall pay all charges of utility owners for connections to the Work. If CONTRACTOR fails to obtain or renew any permit or license required by this paragraph, the DISTRICT has the option of stopping or suspending work, terminating the CONTRACTOR's services or procuring any permit or license directly. In addition, the CONTRACTOR shall not be entitled to any additional time for such failure. DISTRICT shall be entitled to deduct DISTRICT's resultant costs from the CONTRACT Price by issuing a Change Order. CONTRACTOR shall meet all requirements of all permits and licenses.

6.09 *Laws and Regulations*: 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, the DISTRICT shall not be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

#### 6. 10 *Taxes*

- A. The DISTRICT is exempted from payment of Florida State Sales and Use taxes and Federal Excise tax. The CONTRACTOR, however, shall not be exempted from paying Florida State Sales and Use taxes to the appropriate governmental agencies or for payment by the CONTRACTOR to suppliers for taxes on materials used to fulfill its contractual obligations with the DISTRICT.
- B. 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. The CONTRACTOR shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes resulting from this CONTRACT.

#### 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, rights-of-way, permits and easements or the requirements of the CONTRACT Documents, 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. CONTRACTOR shall ensure that all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work will be prohibited from trespassing on any land adjoining the work site.
- 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/Restoring*: Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by DISTRICT. At the completion of the Work or upon Termination for Convenience the 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, but in no event later than a date determined at the sole discretion of the DISTRICT's Construction Manager.
- 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 (1) record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Field Orders, field test records, and construction photographs 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 DISTRICT and DESIGN ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to DISTRICT.
- B. The record drawings shall be marked up as the Work progresses to reflect current conditions and shall become the "as-built" plans. The revisions are to be indicated in a neat, well-organized manner and are to include the elevation and plan location of any utilities, structures, etc., encountered or installed. A "record" survey book will be kept and shall include the following items:
  - 1. The location and elevation of all existing utilities, structures, etc. encountered.
  - 2. The finished product location and elevation of all utilities and structures installed, including, but not limited to, fire hydrants, catch basin and manhole lids, inverts, pipes, and any and all underground structures.
  - 3. Comply with Article 24- Records.
- C. All record notes shall be kept in book(s) designated "record" and no other survey notes will be kept in such books.

CONTRACTOR will be required to review with the DESIGN ENGINEER the status of the "as-built" plans and the "record" survey notes in connection with DISTRICT's evaluation of an application for payment. Failure to maintain record documents current shall be just cause for the DISTRICT to withhold payments for work performed.

- D. Upon completion of the work, CONTRACTOR shall deliver to the DISTRICT a reproducible set of updated CONTRACT plans. CONTRACTOR will transfer all its "as-built" information to these reproducibles and deliver the resultant "as-built" set of plans, together with the record survey book to the DISTRICT. Each completed set of "As-Built" drawings must include on its face, a certified statement by the CONTRACTOR's Principal that the set of "As-Built" drawings accurately depicts the actual work as constructed.

#### 6.13 *Safety and Protection*

A. The CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety programs and precautions in connection with the Work. The CONTRACTOR shall comply with all applicable Federal, State and local laws, regulations, ordinances and standards pertaining to the safety of its employees, subcontractors and the Work while performing the Work pursuant to this CONTRACT. The CONTRACTOR shall also be responsible for the compliance of its subcontractors, suppliers and individuals or entities hired directly or indirectly with all of the foregoing laws, regulations and standards pertaining to safety 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 works;
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. The CONTRACTOR shall coordinate the CONTRACTOR's and subcontractors use of Lockout and Tagout Devices on DISTRICT equipment, machinery or facilities with the DISTRICT's Construction Manager. The CONTRACTOR shall coordinate with the DISTRICT's Construction Manager regarding the application of DISTRICT Lockout and Tagout Devices on DISTRICT equipment, machinery or facilities that may affect the Work or the CONTRACTOR's employees and subcontractors. The CONTRACTOR is responsible to advise its employees and subcontractors of and enforce the prohibition against the removal of or tampering with DISTRICT Lockout and Tagout Devices. The DISTRICT may require short notice or immediate removal of the CONTRACTOR's Lockout and Tagout Devices due to

operational necessity. The CONTRACTOR shall have a plan in place for the immediate safe removal of the CONTRACTOR's Lockout and Tagout Devices by an Authorized Person employed by the Contractor in the event the DISTRICT so requires their removal.

CONTRACTOR shall ensure that all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work will be prohibited from using firearms, engaging in hunting, fishing, trapping, using illegal drugs or using alcohol either on the work site, on DISTRICT property, or on any land adjoining the work site.

C. The CONTRACTOR shall adhere to Occupational Safety and Health Administration (OSHA) requirements regarding the notification and documentation of injuries and fatalities that occur during the performance of this Work. The CONTRACTOR shall verbally notify the DISTRICT's Construction Manager immediately of any fatalities or injuries requiring medical treatment beyond first aid that occur arising out of the Work. The CONTRACTOR shall submit a written accident report, signed by the CONTRACTOR, describing the details of the accident, fatality or injury and the measures being taken to prevent a recurrence to the DISTRICT's Construction Manager within 5 business days of the event. The CONTRACTOR shall verbally notify the DISTRICT's Construction Manager of all accidents that occur which result in property damage during the Work the same day the accident occurs.

6.14 *Safety Representative*: The CONTRACTOR shall designate a competent safety representative at the site who has the experience, duty, responsibility and authority to take prompt actions to eliminate hazards, correct unsafe conditions and enforce the implementation of the CONTRACTOR's safety requirements.

6.15 *Hazard Communication Programs*: CONTRACTOR shall be responsible for complying with hazard communication standards or other hazard communication information requirements in accordance with all federal, state and local Laws and Regulations. The CONTRACTOR shall be responsible for dissemination of hazard communication information to all employers on the site in accordance with applicable laws, rules and 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 DISTRICT 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. CONTRACTOR shall be responsible for providing first aid and medical care in accordance with applicable laws and regulations.
- B. The CONTRACTOR shall secure or remove from the site, prior to a storm event, any materials or equipment which could cause bodily injury, damage to the Work, the DISTRICT'S installations and/or public or private property. Site excavations

shall be required to be secured and/or backfilled. No CONTRACTOR equipment may be parked within 100 feet of any DISTRICT facilities. In the event of the issuance of a Storm Warning, the DISTRICT will attempt to notify the CONTRACTOR, however, the CONTRACTOR is responsible for preparing for a storm event. The CONTRACTOR shall take the necessary precautions to protect the walking and motoring public from harm due to construction activity.

- C. The CONSTRUCTION MANAGER or delegatee may, but is not required to, order the work be stopped if a condition of eminent danger exists. Nothing shall be construed to shift responsibility or risk of loss for injuries and / or damages, cost of stoppage or delay of work, from the CONTRACTOR to the DISTRICT. The CONTRACTOR shall remain solely and exclusively responsible for compliance with all safety requirements and the safety of all persons and property at worksite and work.

#### 6.17 Shop Drawings and Samples

- A. CONTRACTOR shall submit Shop Drawings to DISTRICT for review and approval in accordance with the CONTRACT Documents and acceptable schedule of Shop Drawings and Sample submittals. 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 DISTRICT the services, materials, and equipment CONTRACTOR proposes to provide and to enable DISTRICT to review the information for the limited purposes required by paragraph 6.17.E.
- B. CONTRACTOR shall also submit Samples to DISTRICT 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 DISTRICT may require to enable DISTRICT 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 CONTRACT Documents.
- C. Where a Shop Drawing or Sample is required by the CONTRACT Documents or the schedule of Shop Drawings and Sample submittals acceptable to DISTRICT as required by paragraph 2.07, any related Work performed prior to DISTRICT'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 DISTRICT 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 DISTRICT for review and approval of each such variation.

#### E. DISTRICT'S Review

1. DISTRICT will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to DISTRICT. DISTRICT's review and acceptance 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. DISTRICT's review and acceptance 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 acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
3. DISTRICT's review and acceptance 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 DISTRICT's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and DISTRICT 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 DISTRICT relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1. Nor does it relieve the CONTRACTOR of meeting the safety and functionality of the system (or component).

- F. Resubmittal Procedures. CONTRACTOR shall make corrections required by DISTRICT and shall return the required number of corrected copies of Shop Drawings and submit as



required new Samples for review and acceptance. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by DISTRICT on previous submittals.

6.18 *Continuing the Work:* CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with DISTRICT. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as the CONTRACTOR and DISTRICT may otherwise agree in writing. Suspension of the Work by CONTRACTOR during any dispute or disagreement with DISTRICT shall entitle DISTRICT to terminate the CONTRACT for cause.

#### 6.19 *CONTRACTOR's General Warranty and Guarantee*

- A. CONTRACTOR warrants and guarantees to DISTRICT all Work shall be in accordance with the CONTRACT Documents and will not be defective.
- 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 DISTRICT and/or DESIGN ENGINEER;
  - 2. payment by DISTRICT of any progress or final payment;
  - 3. the issuance of a certificate of Substantial Completion or any payment related thereto by DISTRICT;
  - 4. use or occupancy of the Work or any part thereof by DISTRICT;
  - 5. any acceptance by DISTRICT 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 DESIGN ENGINEER;
  - 7. any inspection, test, or approval by others; or
  - 8. any correction of defective Work by DISTRICT.

#### 6.20 *Truth-In-Negotiation*

- A. CONTRACTOR warrants that all bid line items are true, complete and accurate and include all costs, overhead, profit and all other amounts associated with such items and may be relied upon by DISTRICT when making additions or deductions to the CONTRACT Price. CONTRACTOR further warrants that all Cost and Pricing Data provided to DESIGN ENGINEER and DISTRICT during the term of the CONTRACT shall be complete, accurate and current when provided. Should there be any changes in the Cost and Pricing Data previously submitted, the CONTRACTOR shall notify and provide the new information to DESIGN ENGINEER and DISTRICT immediately. DISTRICT shall be entitled to issue an appropriate Change Order to adjust the CONTRACT Price and CONTRACT Times based on correcting inaccurate or incomplete information provided by CONTRACTOR.

- B. Despite any provisions in the CONTRACT Documents to the contrary, any amounts paid by DISTRICT to CONTRACTOR in excess of that to which it is entitled under the CONTRACT Documents shall be reimbursed by CONTRACTOR to DISTRICT. The making of Final Payment to CONTRACTOR shall not be a waiver of DISTRICT's right to reimbursement from CONTRACTOR nor shall it discharge CONTRACTOR's obligation to refund the overpayment. The terms of this Article shall survive the DISTRICT's making Final Payment.
- C. CONTRACTOR shall insert a provision containing all the requirements of this Article, in all Subagreements between CONTRACTOR and Subcontractors or Suppliers or other persons, altering the section only as necessary to identify properly the contracting parties.

### ARTICLE 7 - OTHER WORK

#### 7.01 *Related Work at Site*

- A. DISTRICT, and its CONTRACTORS and utility owners may perform work at the Project Site.
- B. CONTRACTOR shall afford each other CONTRACTOR, each utility owner, the DISTRICT and its other CONTRACTORS 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 DISTRICT and its other CONTRACTORS whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners, the DISTRICT and its CONTRACTORS to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between DISTRICT 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 immediately report to DISTRICT 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:* CONTRACTOR shall be ultimately responsible for coordination of all other CONTRACTORS. If DISTRICT intends to CONTRACT with others for the performance of other work on the Project at the Site, the following will be set forth in Supplemental 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.

## **ARTICLE 8 - DISTRICT's RESPONSIBILITIES**

8.01 *Communications to CONTRACTOR:* Except as otherwise provided in these General Terms & Conditions, DISTRICT shall issue all communications to CONTRACTOR

8.02 *Pay When Due:* DISTRICT shall make payments to CONTRACTOR when they are due as provided in Article 14.

8.03 *Lands and Easements; Reports and Tests:* DISTRICT's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraph 4.05. Paragraph 4.05 refers to DISTRICT'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 DESIGN ENGINEER in preparing the CONTRACT Documents.

8.04 *Change Orders:* DISTRICT will issue unilaterally or negotiate, at its discretion, Change Orders and Field Orders as provided in Article 10.

8.05 *Inspections, Tests, and Approvals:* DISTRICT's responsibility with respect to certain inspections, tests, and approvals is set forth in Article 13.

8.06 *Limitations on DISTRICT's Responsibilities:* The DISTRICT 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. DISTRICT will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the CONTRACT Documents.

8.07 *Undisclosed Hazardous Environmental Condition:* DISTRICT's responsibility with respect to an undisclosed Hazardous Environmental Condition is set forth in Article 4.06.

## **ARTICLE 9 - CONSTRUCTION MANAGER'S STATUS DURING CONSTRUCTION**

9.01 *DISTRICT's Authorized Representatives:* CONSTRUCTION MANAGER will be DISTRICT's authorized representative during the construction period. The duties and responsibilities and the limitations of authority of the CONSTRUCTION MANAGER as DISTRICT's authorized representative during construction are set forth in the

CONTRACT Documents and will not be changed without written consent of DISTRICT.

9.02 *Clarifications and Interpretations:* CONSTRUCTION MANAGER may issue such written clarifications or interpretations of the requirements of the CONTRACT Documents as CONSTRUCTION MANAGER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the CONTRACT Documents.

9.03 *Authorized Variations in Work:* CONSTRUCTION MANAGER 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 DISTRICT and also on CONTRACTOR, who shall promptly perform the Work involved.

9.04 *Rejecting Defective Work:* DISTRICT will have authority to disapprove or reject Work which DISTRICT believes to be defective, or that DISTRICT 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. DISTRICT will also have authority to require special inspection or testing of the Work as provided in Article 13, whether or not the Work is fabricated, installed, or completed. When CONTRACTOR has been notified of disapproval or rejection of defective work, CONTRACTOR shall take immediate action to correct or replace same.

9.05 *Shop Drawings, Change Orders and Payments*

- A. In connection with DISTRICT's authority as to Shop Drawings and Samples, see Article 6.17.
- B. In connection with DISTRICT's authority as to Change Orders, see Articles 10, 11, and 12.
- C. In connection with DISTRICT's authority as to Applications for Payment, see Article 14.

9.06 *Determinations for Unit Price Work for Invoices:* CONSTRUCTION MANAGER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. CONSTRUCTION MANAGER will review with CONTRACTOR the CONSTRUCTION MANAGER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). CONSTRUCTION MANAGER's written decision thereon will be final and binding (except as modified by DISTRICT to reflect changed factual conditions or more accurate data) upon CONTRACTOR, subject to the provisions of Article 10.

9.07 *Decisions on Requirements of CONTRACT Documents and Acceptability of Work:* DISTRICT will be the 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 to DISTRICT in writing, in accordance with the provisions of Article 10, with a request for a formal decision.

#### *9.08 Limitations on CONSTRUCTION MANAGER Authority and Responsibilities*

- A. CONSTRUCTION MANAGER's authority or responsibility under this Article 9 or under any other provision of the CONTRACT Documents nor any decision made by CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by CONSTRUCTION MANAGER 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. CONSTRUCTION MANAGER 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. CONSTRUCTION MANAGER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the CONTRACT Documents.
- C. CONSTRUCTION MANAGER will not be responsible for the acts or omissions of the CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. CONSTRUCTION MANAGER'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 9.08 shall also apply to DISTRICT, CONSTRUCTION MANAGER's Consultants and assistants.

## **ARTICLE 10 - CHANGES IN THE WORK**

### *10.01 Authorized Changes in the Work*

- A. Without invalidating the CONTRACT and without notice to any surety, DISTRICT may, at any time or from time to time, order additions, deletions, or revisions in the Work within the general scope of the CONTRACT by a Written Amendment, Work Change Directive or Change Order. 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 DISTRICT 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, a Claim may be made therefore as provided in Article 16.

*10.02 Unauthorized Changes in the Work:* CONTRACTOR shall not be entitled to an adjustment in the CONTRACT Price or 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. DISTRICT and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:
  - 1. Changes in the Work which are:
    - a. ordered by DISTRICT pursuant to paragraph 10.01.A,
    - b. required because of acceptance of defective Work under Article 13 or DISTRICT's correction of defective Work under Article 13, or
    - c. base claims 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 Change Order or Amendment; and
  - 3. Unilateral Changes in the CONTRACT Price or CONTRACT Times which are issued by the DISTRICT, including any undisputed and/or disputed sum or amount of time for Work actually performed in accordance with a Change Order or Amendment; and
  - 4. Changes in the CONTRACT Price or CONTRACT Times which embody the substance of any written decision rendered by DISTRICT pursuant to paragraph 16.02; 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.
  - 5. An executed change order shall be in accord and satisfaction concerning all potential claims related to the Change Order work, including inefficiencies or acceleration based claims.
- B. There shall be no CONTRACTOR delay claim based upon CONTRACTOR's inability to perform change order work due to delay caused by DISTRICT's approval process.

*10.04 Notification to Surety:* 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, and evidence of increased coverage provided to the DISTRICT.

In addition, the CONTRACTOR shall for any increases in the CONTRACT amount, automatically increase the amount of the Performance and Payment Bonds to equal the revised amount of the CONTRACT and shall provide the DISTRICT with evidence of same.

## **ARTICLE 11 - COST OF THE WORK FOR CHANGES; OWNER DIRECTED ALLOWANCES; UNIT PRICE WORK**

### *11.01 Cost of the Work for Changes*

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 DISTRICT, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in paragraph 11.01.B "Costs Excluded" and shall include only the following items:

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by DISTRICT and CONTRACTOR. Such employees may include within 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, 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 not be included in the above.
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 trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to DISTRICT, 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 DISTRICT, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to DISTRICT and CONTRACTOR shall deliver such bids to DISTRICT, who will then determine, with the advice of DESIGN 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 (cost of engineers, architects, testing laboratories and surveyors) 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 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 DISTRICT, 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. The cost of utilities, fuel, and sanitary facilities at the Site.
  - f. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site or expressage in connection with the Work.
  - g. 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.
  - h. 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:* Cost of the Work for changes 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.1, 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 paragraph 11.01.A.
- C. *CONTRACTOR's Fee*: When all of the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the CONTRACT. 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 shall establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to DISTRICT an itemized cost breakdown together with supporting data.

#### 11.02 Owner Directed 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 DISTRICT. 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 allowance price, and no demand for additional payment on account of any of the foregoing will be valid.
- B. Prior to final payment, a Change Order may be issued by the DISTRICT to reflect actual amounts due CONTRACTOR on account of Work covered by allowances.

#### 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 CONTRACT. 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 DISTRICT 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. DISTRICT or CONTRACTOR may make a Claim for an adjustment in the CONTRACT Price in accordance with paragraph 16.02 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 CONTRACT; and
  2. there is no corresponding adjustment with respect to 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 DISTRICT believes that it is entitled to a decrease in CONTRACT Price and the parties are unable to agree as to the amount of any such increase or decrease.

### ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

#### 12.01 Change of CONTRACT Price

- A. The CONTRACT Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the CONTRACT Price shall be based on written notice submitted to the DISTRICT in accordance with the provisions of Article 16.02.
- 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); 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 ten percent (10%);
  - b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be ten percent (10%);
  - c. 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;
  - d. the amount of credit to be allowed by CONTRACTOR to DISTRICT 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 ten percent (10%) percent of such net decrease; and
  - e. 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.d, inclusive.

D. The CONTRACTOR acknowledges that agreement on any Change Order shall constitute a final settlement and full accord and satisfaction of all matters relating to the change directly or indirectly changed or unchanged in the Work which is the subject of the Change Order, including, but not limited to, all direct, indirect costs, and impact costs associated with such change and any and all adjustments to the CONTRACT Price and CONTRACT Times, and schedule.

#### 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 CONTRACTOR to the DISTRICT in accordance with the provisions of paragraph 16.02. All adjustments for additional time must include a detailed Critical Path Analysis of the CONTRACT schedule.
- 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.
- C. The CONTRACTOR expressly agrees that in undertaking to complete the Work within the time specified, it has made allowances for certain foreseeable hindrances and delays including the types described below.
- D. The CONTRACTOR acknowledges that certain hindrances and delays are ordinarily encountered on projects of this type. The parties specifically anticipate and contemplate such hindrances and delays, including but not limited to, labor

disputes; those reasonable delays caused by or arising from minor design conflicts and issues; schedule adjustments; the action of CONTRACTOR's supplier and subcontractors; late or out of sequence DISTRICT-furnished equipment, materials and facilities not affecting the critical path; reasonable turnaround or approval of CONTRACTOR's shop drawings, schedules, or submittals; normal unfavorable weather, wet grounds, or other similar unsuitable construction conditions likely to occur in South Florida; reasonable turnaround to CONTRACTOR's requests for information or direction; change order processing; and access and coordination by the DISTRICT, or CONSTRUCTION MANAGER, that does not create any new critical paths in the schedule. The CONTRACTOR agrees that such delays are included in its bid price and schedule and that they shall not constitute the basis for a time extension or a claim for additional compensation of any type.

12.03 *Delays Beyond CONTRACTOR's Control:* 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) may be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR may include 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. If abnormal weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that (1) weather conditions were abnormal for the period of time, (2) the abnormal weather could not have been reasonably anticipated, and (3) that weather conditions had an adverse effect on the scheduled construction's critical path.

12.04 *Delays Within CONTRACTOR's Control:* 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 DISTRICT's and CONTRACTOR's Control:* 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 DISTRICT and CONTRACTOR, an extension of the CONTRACT Times (or Milestones) in an amount equal to the time lost on the critical path due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

#### 12.06 *Delay Damages*

- A. In no event shall DISTRICT 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 DISTRICT and CONTRACTOR including but not limited to fires, floods, droughts, 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. To the extent that delays occur for which time and compensation are properly allowed, the DISTRICT shall not be liable for time-related or delay damages in the following categories:

1. profit on the additional costs beyond those allowed elsewhere;
2. loss of anticipated profit;
3. indirect expenses;
4. impact costs;
5. loss of productivity;
6. inefficiency costs;
7. home office overhead;
8. consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency; and
9. legal fees, claims preparation expenses, or costs of disputes resolution.

CONTRACTOR hereby expressly agrees to waive its right to such delay or time-related costs or damages, but may be entitled to direct any reasonable jobsite costs caused by or resulting from the delay. All prime CONTRACTORS and all subcontractors shall coordinate all work one with the other, so as to facilitate the general progress of the Work.

C. Except as provided in Paragraph B., no claim for damages or any claim other than for an extension of time, provided solely at the discretion of the DISTRICT, shall be made or asserted against the DISTRICT by reason of any delays caused by scheduling and coordination of work of separate prime CONTRACTORS.

D. The CONTRACTOR shall not be entitled to an increase in the CONTRACT Amount or payment or compensation of any kind from the DISTRICT for costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause caused by scheduling and coordination of work of separate prime CONTRACTORS, provided, however, that this provision shall not preclude recovery or damages by the CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of the DISTRICT or its authorized agents. Otherwise, the CONTRACTOR shall be entitled only to extensions of the CONTRACT Time as the sole exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided herein.

## **ARTICLE 13 - WARRANTY AND GUARANTEE, TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

13.01 *Warranty and Guarantee*: CONTRACTOR warrants and guarantees that all Work shall be in accordance with the CONTRACT Documents and will not be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article and Article 6.19. The

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obligations of CONTRACTOR under this paragraph shall be in addition to and not in limitation of any obligation imposed upon it by special guarantees required by the CONTRACT Documents or otherwise prescribed by Laws or Regulations.

13.02 *Access to Work*: DISTRICT, DESIGN ENGINEER, its representatives, testing agencies and governmental entities with jurisdiction shall be permitted access to the Work for its observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for such access.

### *13.03 Tests and Inspections*

A. CONTRACTOR shall give DISTRICT timely notice of readiness of the Work for all required inspections, tests or approvals. Inspections, tests or observations by CONSTRUCTION MANAGER, DESIGN ENGINEER, DISTRICT or its agents may be performed at its discretion to provide information to the DISTRICT on the progress of the Work. However, such information is not intended to fulfill the CONTRACTOR's obligations in accordance with the CONTRACT Documents.

B. If any Law, Ordinance, Rule, Regulation, code or order of any public body, government entity or court having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore, pay all related costs, schedule related activities at appropriate times, and furnish DISTRICT the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs, in connection with any inspection or testing required in connection with DISTRICT's or DESIGN ENGINEER's acceptance of a proposed manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of material or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation of the Work. All inspections, tests or approvals shall be performed by persons or organizations acceptable to DISTRICT.

C. The CONTRACTOR shall perform sufficient testing and inspection of the Work to support the Warranty and Guarantee requirements.

D. Neither observations by DESIGN ENGINEER or DISTRICT nor inspections, tests or approvals by others shall relieve CONTRACTOR from its obligations to perform the Work in accordance with the CONTRACT Documents.

E. If any testing, inspection or approval under this paragraph reveal defective Work, CONTRACTOR shall not be allowed to receive any associated costs and DISTRICT shall be entitled to deduct from the CONTRACT Price, by issuing a Change Order, DISTRICT's costs arising out of the defective Work, including costs of repeated procedures, compensation for DISTRICT's and DESIGN ENGINEER's services and other related costs.

### *13.04 Uncovering Work*

A. If any Work that is to be inspected, tested or approved is covered without written concurrence of DISTRICT, it must, if requested by DISTRICT, be uncovered for observation. Such uncovering

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shall be at CONTRACTOR's expense and will exclude the right to an increase in the CONTRACT Price or CONTRACT Times unless CONTRACTOR has given DISTRICT timely written notice of CONTRACTOR's intention to cover such Work and DISTRICT has not acted with reasonable promptness in response to such notice.

- B. If DISTRICT considers it necessary or advisable that covered Work be observed by DISTRICT or inspected or tested by others, CONTRACTOR, at DISTRICT's request, shall uncover, expose or otherwise make available for observation, inspection or testing as DISTRICT 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 bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, any additional expenses experienced by the DISTRICT due to delays to others performing additional work, other contractual obligations, and attorneys' fees and DISTRICT shall be entitled to issue an appropriate deductive Change Order. CONTRACTOR shall further bear the responsibility for maintaining the schedule and will not be allowed an increase in CONTRACT Price or CONTRACT Time due to the uncovering. If, however, such Work is not found to be defective, and paragraph 13.04.A is not applicable, CONTRACTOR shall be allowed an increase in the CONTRACT Price or the CONTRACT Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if it makes a claim therefore as provided in Article 10.

#### *13.05 Correction or Removal of Defective Work:*

CONTRACTOR shall immediately, without cost to DISTRICT and as specified by DISTRICT, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by DISTRICT, remove it from the site and replace it with conforming Work. The CONTRACTOR shall bear the cost of repairing or replacing all Work and property of the DISTRICT or others destroyed or damaged or in any way impacted by such correction or removal.

#### *13.06 Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, DISTRICT prefers to accept it, DISTRICT may do so. In such case, if acceptance occurs prior to Final Payment, DISTRICT shall be entitled to issue a Change Order incorporating the necessary revisions in the CONTRACT Documents, including appropriate reduction in the CONTRACT Price. If the acceptance occurs after such Final Payment, an appropriate amount shall be paid by CONTRACTOR to DISTRICT.
- B. DISTRICT shall employ 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.B;

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.

#### *13.07 DISTRICT May Correct Defective Work*

- A. If CONTRACTOR fails within ten (10) days after written notice from DISTRICT to correct defective Work or to remove and replace rejected Work as required by DISTRICT in accordance with the Contract Documents, 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, DISTRICT may correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Article, DISTRICT shall proceed expeditiously. In connection with such corrective and remedial action, DISTRICT 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 DISTRICT has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow DISTRICT, DISTRICT's Consultant, DISTRICT's representatives, agents, employees, and other contractors access to the Site to enable DISTRICT to exercise the rights and remedies under this Article.
- C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by DISTRICT in exercising such rights and remedies under this Article will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and DISTRICT shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, DISTRICT may make a Claim therefore.
- 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 DISTRICT of DISTRICT's rights and remedies under this Article.

#### *13.08 Warranty Period*

- A. The Warranty Period shall commence on the date of Substantial Completion of the entire Work or any part of the Work as designated by the DISTRICT, or a later date if so specified in the CONTRACT Documents, and extend until one (1) year after that date (or whatever longer period may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee, Supplemental Conditions, or specific provision of the CONTRACT Documents.) CONTRACTOR's obligation under this paragraph are in addition to any other obligation or



warranty. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

- B. If within the designated Warranty Period, the Work, or any part of the Work, is discovered to be defective, CONTRACTOR shall immediately, without an adjustment in CONTRACT Price and in accordance with DISTRICT's written instructions, either correct that defective Work, or if it has been rejected by DISTRICT, remove it from the site and replace it with non-defective Work. If circumstances warrant it, including, but not limited to, in an emergency, DISTRICT may have the defective Work corrected or the rejected Work removed and replaced. In that event, CONTRACTOR shall not be allowed to recover any associated costs, and it shall reimburse DISTRICT for all direct, indirect and consequential costs of DISTRICT, or DISTRICT shall be entitled to issue a Change Order to incorporate an appropriate decrease in CONTRACT Price if prior to Final Payment. DISTRICT shall reserve and retain all of its rights and remedies at law and equity against CONTRACTOR and its Surety for damages and for corrections of any and all latent defects.

#### 13.09 Warranty Period and Guarantees

- A. DISTRICT may at its sole discretion advance or defer the date of commencement of the Warranty Period, in which case CONTRACTOR shall maintain the warranties and guarantees in full force and effect until the revised date for commencement of the Warranty Period. If such advancement or deferral in the date for commencement of the Warranty Period causes an increase or decrease in the cost of the warranties and guarantees provided by CONTRACTOR, DISTRICT shall make an adjustment in CONTRACT Price or CONTRACT Times, as provided in Article 12.
- B. In circumstances where DISTRICT undertakes Partial Utilization of a portion of the Work which was specifically identified in the CONTRACT Documents, CONTRACTOR shall maintain the warranties and guarantees in full force and effect during the period between the applicable commencement of Partial Utilization date, and the date of commencement of the Warranty Period, and for such warranties and guarantees CONTRACTOR shall receive no adjustment in CONTRACT Price.
- C. In special circumstances where CONTRACTOR fails to complete the Work, or a separable portion of the Work within the corresponding CONTRACT Time, including any authorized adjustments, and DISTRICT undertakes Partial Utilization, CONTRACTOR shall maintain the warranties and guarantees in full force and effect during the period between the applicable commencement of Partial Utilization date, and the date of commencement of the Warranty Period, and for such warranties and guarantees CONTRACTOR shall receive no adjustment in CONTRACT Price.

13.10 *Special Maintenance Requirements:* In special circumstances where the Work, or a designated part, reaches Substantial Completion, but as provided in the CONTRACT Documents, is not placed in continuous service until the

commencement of the Warranty Period, CONTRACTOR shall maintain the Work, or designated part, in good order and in proper working condition, provide suitable drainage, and take all other actions as are necessary for its protection during the period between the applicable Substantial Completion date and the date of commencement of the Warranty Period, and for such maintenance CONTRACTOR shall receive no adjustment in CONTRACT Price. In the event that Work suffers loss or damage, however caused, CONTRACTOR shall rebuild, repair, restore, and make good without an increase in CONTRACT Price all losses or damages to any portion of any Work and shall without an increase in CONTRACT Price provide suitable drainage and erect such temporary structures and take all other actions as are necessary for its protection. Suspension of Work or the granting of an extension in CONTRACT Time for any cause shall not relieve CONTRACTOR of its responsibility for the Work, or designated part, as specified in this paragraph.

13.11 *Extended Warranty Period Due to Defective Work:* Any defective Work that is either corrected or rejected and replaced will be warranted and guaranteed for a period of one (1) year from the date of acceptance of such correction or removal and replacement, even if it had previously been corrected or replaced, in accordance with the provisions of this Article 13. If within such extended Warranty Period, that Work is once again found to be defective, DISTRICT shall be entitled to all of DISTRICT's rights and remedies under this Article.

#### ARTICLE 14 – CONTRACT PRICE / INDEMNIFICATION, PAYMENTS TO CONTRACTOR AND COMPLETION

- A. The DISTRICT shall pay CONTRACTOR for performance of the Work in accordance with the CONTRACT Documents on the basis of the prices indicated on the Bid Form.
- B. The total consideration, for the full and complete performance under this CONTRACT, shall be as indicated on the cover/signature page of this CONTRACT, subject only to any additions and/or deductions as provided in the CONTRACT Documents and formally approved by the DISTRICT.
- C. For value received, which is hereby acknowledged, the CONTRACTOR shall indemnify and hold the DISTRICT, its officers and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of the CONTRACT.
- D. In the event the CONTRACTOR subcontracts any part or all of the work hereunder to any third party, the CONTRACTOR shall require each and every subcontractor to identify the DISTRICT as an additional insured on all insurance policies as required. Any contract awarded by CONTRACTOR for work under this Agreement shall include a provision whereby the subcontractor agrees to defend, indemnify, and pay on behalf, save and hold the DISTRICT harmless from all damages arising in connection with the subcontract.
- E. The CONTRACTOR further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and

employees with the terms of this CONTRACT. This paragraph shall survive the expiration of termination of this CONTRACT.

- F. Notwithstanding the foregoing, the amount expended under this CONTRACT shall be paid in accordance with, and subject to the multi-year funding allocations for each DISTRICT fiscal year indicated on the cover/signature page of this CONTRACT. Funding for each applicable fiscal year of this CONTRACT is subject to DISTRICT Governing Board budgetary appropriation. In the event the DISTRICT does not approve funding for any subsequent fiscal year, this CONTRACT shall terminate upon expenditure of the current funding, notwithstanding other provisions in this CONTRACT to the contrary. The DISTRICT will notify the CONTRACTOR in writing after adoption of the final DISTRICT budget for each subsequent fiscal year if funding is not approved for this CONTRACT.

#### 14.01 Prompt Payment Procedures

- A. All pay requests shall reference the DISTRICT'S CONTRACT Number, and shall follow the same format as shown on the Application for Payment provided in the Bidding Documents, and shall be in accordance with the terms specified in the General Terms & Conditions.
- B. CONTRACTOR shall submit Applications for Payment in accordance with this Article.
- C. DISTRICT shall make progress payments on the basis of CONTRACTOR'S Applications for Payment as recommended by CONSTRUCTION MANAGER, in accordance with this Article and pursuant to applicable Florida Statutes.
- D. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Terms & Conditions, DISTRICT shall pay the remainder of the CONTRACT Price.
- E. It is the policy of the DISTRICT that payment for all goods and services shall be made in a timely manner and that interest payments are made on late payments. In accordance with Florida Statutes, Section 218.70, Florida Prompt Payment Act, a "proper" invoice (Application for Payment) is defined as an invoice (Application for Payment) that conforms to all statutory requirements and all DISTRICT requirements as specified in the CONTRACT for invoice (Application for Payment) submission. The time at which payment shall be due from the DISTRICT shall be twenty (20) business days (or twenty-five [25] business days if DISTRICT agent approval is required) from receipt of a proper invoice (Application for Payment) and acceptance of services, based on compliance with the statutory requirements set forth in Section 218.70, F.S. and upon satisfaction of the DISTRICT conditions as detailed in the CONTRACT.
- F. Failure of the CONTRACTOR to follow the instructions set forth in the CONTRACT regarding a proper invoice (Application for Payment) and acceptable services may result in an unavoidable delay in payment by the DISTRICT.

- G. Any early payment discount offered by the CONTRACTOR shall be clearly indicated on the invoice (Application for Payment), including the percentage of the discount and the time period for which the discount is valid. The DISTRICT reserves the option to accept such early payment discounts.

#### 14.02 Progress Payments

##### A. Applications for Payments

1. At least twenty (20) business days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to CONSTRUCTION MANAGER 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. Refer to Form 00940-4 "Construction Invoice Checklist".
2. Each application for payment shall be accompanied by the DISTRICT's *SBE UTILIZATION REPORT* included herein (if SBE subcontractor(s) used).
3. 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 DISTRICT 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 DISTRICT's interest therein, all of which must be satisfactory to the DISTRICT.
4. 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 in full to discharge CONTRACTOR's obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in this Article 14.

##### B. Review of Applications

1. DISTRICT will, after receipt of each Application for Payment, either make payment or return the Application to CONTRACTOR, indicating in writing the DISTRICT's reasons for refusing to make payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.
2. DISTRICT may refuse to make the whole or any part of any payment if, in DISTRICT's opinion, it would be incorrect to make such payment because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment previously made, to such extent as may be necessary in DISTRICT's opinion to protect DISTRICT 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. DISTRICT has been required to correct defective Work or complete Work in accordance with Article 13; or
- d. DISTRICT has actual knowledge of the occurrence of any of the events enumerated in Article 15.01, Article 15.02, Article 15.03 and Article 15.04."
- e. CONTRACTOR fails to comply with the SBE requirements as stated in the CONTRACT;
- f. CONTRACTOR fails to submit the required Insurance Policy Declaration Page & Endorsement Forms as stated in the CONTRACT;
- g. CONTRACTOR fails to comply with progress schedule updates in keeping with GENERAL REQUIREMENTS.
- h. CONTRACTOR has failed to comply with Article 4.01, A.3.

#### C. *Reduction in Payment*

1. DISTRICT may refuse to make payment of the full amount because:
  - a. Claims have been made against DISTRICT based on 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 DISTRICT to secure the satisfaction and discharge of such Liens;
  - c. There are other items entitling DISTRICT to an off-set against the amount recommended, including the assessment of liquidated damages; or
  - d. DISTRICT has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.2.a through 14.02.B.2.h or if the CONTRACTOR is otherwise in breach.
2. If DISTRICT refuses to make payment of the full amount, DISTRICT must give CONTRACTOR written notice stating the reasons for such action and pay CONTRACTOR any amount remaining after deduction of the amount so withheld. DISTRICT shall pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by DISTRICT and CONTRACTOR, when CONTRACTOR corrects to DISTRICT's satisfaction the reasons for such action.
3. The CONTRACTOR waives all claims against the DISTRICT other than those previously made in writing and still unsettled.

14.03 *CONTRACTOR's Warranty of Title:* 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 DISTRICT no later than the time of final payment free and clear of all Liens.

#### 14.04 *Substantial Completion*

Prior to issuance of the certificate of substantial completion, the CONTRACTOR and the DISTRICT shall develop a list of items (punchlist) required to render complete, satisfactory, and

acceptable the construction services purchased by the DISTRICT, including:

- a) the responsibilities of the DISTRICT and the CONTRACTOR in developing and reviewing the list, and;
- b) a reasonable time for developing the list.
- c) The DISTRICT and CONTRACTOR will agree upon a mutually agreeable date and time to inspect the site together along with any key sponsors and constituents to develop the Punch List. The Punch List will be typewritten and attached to the Certificate of Substantial Completion and mailed to the CONTRACTOR for his resolution. The date of this Substantial Completion Inspection establishes the official date of Substantial Completion for the Project. In the instance that there are no Punch List items, the CONTRACTOR and DISTRICT will reach agreement on the date of Substantial Completion to be reflected in the Certificate, which will be issued without an attached Punch List. In either case, the CONTRACTOR will then proceed toward Contract Closeout inclusive of all documentary requirements of the CONTRACT to include Record Drawings, equipment training sessions and ultimately, cleanup and demobilization.
- d) For multi-phased construction projects or projects with services on more than one building or structure, the punch list shall be developed for each building, structure, or phase of the project within the time limitations corresponding to the estimated project cost provided in paragraphs c and d.
- e) The CONTRACTOR shall not be relieved of its duties and responsibilities to complete all construction services purchased pursuant to the contract, in the event the parties fail to include certain corrective work or pending on the list. All items that require correction under the contract and that are identified after the preparation and delivery of the list shall remain the obligation of the contractor as defined by the contract.
- f) Upon completion of all items on the list, the CONTRACTOR may submit a payment request for remaining retainage. However, if a good-faith dispute exists, the DISTRICT may continue to withhold an amount not to exceed 150 percent of the total costs to complete such items.

Warranty items may not affect the final payment of retainage as provided in this section or as provided in the contract between the contractor and its subcontractors and suppliers.

The DISTRICT shall not pay or process any payment request for retainage if the CONTRACTOR has, in whole or in part, failed to cooperate with the DISTRICT in the development of the list or failed to perform its contractual responsibilities, if any, with regard to the development of the list.

- A. When CONTRACTOR considers the entire Work, or an agreed upon portion thereof, ready for its intended use, and has satisfied all prerequisites to Substantial Completion contained in the GENERAL REQUIREMENTS the CONTRACTOR shall notify CONSTRUCTION MANAGER certifying in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete), submit to DISTRICT all operation and maintenance manuals and instructions and spare parts required by the CONTRACT Documents, and request that the DISTRICT issue a certificate

of Substantial Completion. Promptly thereafter, DISTRICT, CONTRACTOR, and CONSTRUCTION MANAGER shall make an inspection of the Work to determine the status of completion. If CONSTRUCTION MANAGER or DISTRICT does not consider the Work substantially complete, CONSTRUCTION MANAGER will notify CONTRACTOR in writing giving the reasons therefore. If DISTRICT considers the Work substantially complete, CONSTRUCTION MANAGER will prepare a certificate of Substantial Completion which shall fix the date of Substantial Completion.

- B. There shall be attached to the certificate a list of items (punchlist), which should be minor in scope and nature, to be completed or corrected before final payment. CONTRACTOR shall have thirty (30) days after receipt of the certificate, but not later than the contract time to complete or correct items to the satisfaction of the DISTRICT.
- C. DISTRICT shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but DISTRICT shall allow CONTRACTOR reasonable access to complete or correct items on the list.

#### 14.05 Partial Utilization of Completed Work

- A. Use by DISTRICT at its option of any substantially completed part of the Work which has specifically been identified in the CONTRACT Documents, or which DISTRICT, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by DISTRICT 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. DISTRICT at any time may request to the CONTRACTOR in writing for the DISTRICT to use any such part of the Work. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify in writing to DISTRICT that such part of the Work is substantially complete and request DISTRICT to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify DISTRICT and CONSTRUCTION MANAGER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request CONSTRUCTION MANAGER to issue a certificate of Substantial Completion for that part of the Work.
  - 2. Within a reasonable time after either such request, DISTRICT, CONTRACTOR, and CONSTRUCTION MANAGER shall make an inspection of that part of the Work to determine its status of completion. If CONSTRUCTION MANAGER or DISTRICT does not consider that part of the Work to be substantially complete, CONSTRUCTION MANAGER will notify DISTRICT and CONTRACTOR in writing giving the reasons therefore. If CONSTRUCTION MANAGER 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.
- B. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Article 5 regarding Insurance.

14.06 *Final Inspection:* Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, and that the CONTRACTOR has satisfied all prerequisites to Final Inspection contained in the GENERAL REQUIREMENTS, CONSTRUCTION MANAGER will promptly make a final inspection with DISTRICT and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete, non-conforming or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies, and notify CONSTRUCTION MANAGER upon completion.

#### 14.07 Final Payment

##### A. Application for Payment

- 1. After CONTRACTOR has, in the opinion of CONSTRUCTION MANAGER and DISTRICT, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the CONTRACT Documents, all maintenance and operating instructions, schedules, warranties, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents acceptable to the DISTRICT. CONTRACTOR may make application for final payment following the procedure for progress payments.
- 2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the CONTRACT Documents;
  - b. consent of the surety, if any, to final payment;
  - c. contractor's affidavit and final release;
  - d. complete and legally effective releases or waivers (satisfactory to DISTRICT) of all Lien rights arising out of or Liens filed in connection with the Work; and
  - e. certification that the work has been completed in accordance with the CONTRACT Documents.
  - f. the DISTRICT's FINAL SBE UTILIZATION REPORT form included herein;
  - g. certification that the District furnished keys (Article 4.01 A.3.) have been returned to the District.

- B. *Review of Application and Acceptance:* If, on the basis of CONSTRUCTION MANAGER's observation of the Work during construction and final inspection, and CONSTRUCTION MANAGER's review of the final Application for Payment and accompanying documentation as required by the CONTRACT Documents, CONSTRUCTION MANAGER and DISTRICT are satisfied that the Work has

been completed and CONTRACTOR's other obligations under the CONTRACT Documents have been fulfilled, DISTRICT will make payment. Otherwise, CONSTRUCTION MANAGER 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.

#### 14.08 *Incentive Payment*

- A. Each incentive payment will be invoiced and paid separately from all other Contract payments. Incentive Payments for early completion may be billed, and will be paid, only after completion and acceptance by the District of the Work.
- B. This Contract is not intended to confer any rights or remedies upon any other persons other than the parties hereto.
- C. For purposes of the calculation and the determination of entitlement to the Incentive Payment stated herein, the Substantial Completion Date will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault. The parties anticipate that delays may be caused by or arise from any number of events during the course of this Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, action of suppliers, subcontractors or other contractors, actions by third parties, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions if Contractor's operation, or any other foreseeable delays not listed above. Such delays or events and their potential impacts on performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the Substantial Completion Date for the purposes of calculation of the Incentive Payment as set forth herein. Further, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays or events in an effort to complete the Work by the Substantial Completion Date, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.
- D. In the event of a catastrophic event (i.e. hurricane or a declared state of emergency) directly and substantially affecting the Contractor's operations on the Contract, the District will unilaterally determine the number of calendar days, if any, to extend the Substantial Completion Date if the District deems it reasonably necessary and due solely to such catastrophic event. The Contractor shall have no right whatsoever to contest such determination.
- E. The Contractor shall have no rights under the Contract to make any claim arising out of this Incentive Payment except as is expressly set forth in this Article.
- F. As conditions precedent to the Contractor's entitlement to any Incentive Payment the Contractor must:
  - 1. Have settled any and all claims by the Substantial Completion Date.

- 2. Actually complete the Work and obtain a written Certificate of Substantial Completion from the District's Designated Representative on or before the Substantial Completion Date as indicated herein.
- 3. The Contractor shall notify the District in writing, within 60 days of receiving the Certificate of Substantial Completion by District's Designated Representative per (2) above, that the Contractor elects to be paid the Incentive Payment which the Contractor is eligible to be paid based on the actual Substantial Completion Date, and such written notice shall constitute a full and complete waiver, release and acknowledgement of such satisfaction by the Contractor of any and all claims, causes of actions, issues, demands, disputes, matters or controversies, of any nature or kind whatsoever, known or unknown, against the District, its employees, officers, agents, representative consultants, and their respective employees, officers and representatives, the Contractor has or may have as to work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers or subcontractors or other Contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of the Contractor's operations, extended or unabsorbed home office or job site overhead, lump sum maintenance or traffic adjustments, lost profits, prime mark-up on subcontractor work, acceleration costs, any and all direct and indirect costs, any other adverse impacts, events, conditions, circumstances or potential damages, on or pertaining to, or as to or arising out of the Contract up to and including the date of the applicable Substantial Completion Date. This waiver, release and acknowledgement of satisfaction shall be all-inclusive and absolute.

#### 14.09 *Incentive Bonus*

- A. Each incentive Bonus will be invoiced and paid separately from all other Contract payments. Incentive Bonus for completion of a Milestone may be billed, and will be paid, only after completion and acceptance by the District of the Milestone.
- B. This Contract is not intended to confer any rights or remedies upon any other persons other than the parties hereto.
- C. For purposes of the calculation and the determination of entitlement to the Incentive Bonus stated herein, the Milestone Date will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault. The parties anticipate that delays may be caused by or arise from any number of events during the course of this Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, action of suppliers, subcontractors or other contractors, actions by third parties, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions if

Contractor's operations, or any other foreseeable delays not listed above. Such delays or events and their potential impacts on performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the Milestone Date for the purposes of calculation of the Incentive Bonus as set forth herein. Further, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays or events in an effort to attain Incentive Bonus or to complete the Work by the Milestone Date, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.

- D. In the event of a catastrophic event (i.e. hurricane or a declared state of emergency) directly and substantially affecting the Contractor's operations on the Contract, the District will unilaterally determine the number of calendar days, if any, to extend the Milestone Date if the District deems it reasonably necessary and due solely to such catastrophic event. The Contractor shall have no right whatsoever to contest such determination.
- E. The Contractor shall have no rights under the Contract to make any claim arising out of this Incentive Bonus except as is expressly set forth in this Article.
- F. As conditions precedent to the Contractor's entitlement to any Incentive Bonus, the Contractor must:
  - 1. Have settled any and all claims by the Milestone Date.
  - 2. Actually complete the Work as specified and obtain a written verification of Milestone completion from the District's Designated Representative on or before the Milestone Date as indicated herein.
  - 3. The Contractor shall notify the District in writing, within 60 days of receiving the written Milestone completion by District's Designated Representative per (2) above, that the Contractor elects to be paid the Incentive Bonus which the Contractor is eligible to be paid based on the actual Milestone Date, and such written notice shall constitute a full and complete waiver, release and acknowledgement of such satisfaction by the Contractor of any and all claims, causes of actions, issues, demands, disputes, matters or controversies, of any nature or kind whatsoever, known or unknown, against the District, its employees, officers, agents, representative, consultants, and their respective employees, officers and representatives, the Contractor has or may have as to work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers or subcontractors or other Contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of the Contractor's operations, extended or unabsorbed home office or job site overhead, lump sum maintenance or traffic adjustments, lost profits, prime mark-up on subcontractor work, acceleration costs, any and all direct and indirect costs, any other adverse impacts, events, conditions, circumstances or potential damages, on or

pertaining to, or as to or arising out of the Contract up to and including the date of the applicable Milestone Date. This waiver, release and acknowledgement of satisfaction shall be all-inclusive and absolute.

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

### *15.01 DISTRICT May Stop the Work*

- A. If the Work is defective and the CONTRACTOR has been notified by CONSTRUCTION MANAGER or DISTRICT, or if CONTRACTOR fails to furnish or perform the Work in such a way that the completed Work will conform to the CONTRACT Documents, or if CONTRACTOR fails to supply sufficient supervisory personnel or skilled workmen or suitable materials or equipment, or if CONTRACTOR fails to obtain, maintain or renew insurance in conformance with the CONTRACT Documents in a form acceptable to DISTRICT, or if any insurance or surety company CONTRACTOR has obtained insurance or bonds from declares bankruptcy or is declared bankrupt, or if CONTRACTOR fails to prosecute the Work or endangers persons or property, DISTRICT may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated. DISTRICT's order to stop the Work may be communicated through CONSTRUCTION MANAGER or by DISTRICT. This right of DISTRICT to stop the Work shall not give rise to any duty on the part of DISTRICT or CONSTRUCTION MANAGER to exercise this right for the benefit of CONTRACTOR or any other party. CONTRACTOR shall bear all direct, indirect, and consequential costs of such order to stop the Work (including but not limited to fees and charges of engineers, attorneys and other professionals, any additional expenses incurred by DISTRICT due to delays to others performing work under a separate CONTRACT with DISTRICT, and other obligations), and CONTRACTOR shall further bear the responsibility for maintaining the Progress Schedule and shall not be entitled to any extension of CONTRACT Time or increase in the CONTRACT Price. DISTRICT shall be entitled to deduct any expenses so incurred from the CONTRACT Price by issuing a Change Order.
- B. The DISTRICT's CONSTRUCTION MANAGER or delegate may, but is not required to, order the Work be stopped if an Immediate Danger to Life and Health (IDLH) is believed to exist. Nothing shall be construed to shift responsibility or risk of loss for injuries or damages, cost of stoppage or delay of work, from the CONTRACTOR to the DISTRICT.

### *15.02 Suspension for Convenience*

- A. Without invalidating the CONTRACT, and without notice to any surety, DISTRICT may, at any time, order CONTRACTOR in writing to stop, delay or interrupt Work for such a period of time as DISTRICT may deem appropriate. Upon receipt of that order, CONTRACTOR shall immediately proceed in accordance with any specific provisions or instructions, protect

and maintain the Work, and make reasonable and diligent efforts to mitigate costs associated with the suspension order.

- B. In the event said suspension of work by the DISTRICT, is deemed by the DISTRICT in its sole discretion to be unreasonable, then an adjustment may be made for documented increases in the cost of performance of this CONTRACT necessarily caused by the unreasonable suspension, and the CONTRACT modified in writing accordingly. However, regardless of the reason for suspension, the DISTRICT shall not be liable for (a) profit on additional costs, (b) loss of anticipated profit, (c) indirect expenses, (d) impact costs, (e) loss of productivity, (f) inefficiency costs, (g) home-office overhead, (h) consequential costs in connection with such suspension. Further, no adjustment shall be made under this paragraph for any suspension, to the extent that performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR, or for which an equitable adjustment is provided for or excluded under any other term or condition of this CONTRACT. Claims by the CONTRACTOR for change in the time for performance or an adjustment of the CONTRACT Price, due to work suspensions ordered by the DISTRICT shall be made in accordance with the requirements of Articles 10 & 11. The CONTRACTOR shall use all means to minimize the consequences of such suspension.

#### 15.03 Termination for Cause

It is the policy of the DISTRICT to encourage good business practices by requiring contractors to materially perform in accordance with the terms and conditions of the DISTRICT CONTRACT. In accordance with DISTRICT Rule 40E-7.215 (5), F.A.C., "material breach" is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the CONTRACT.

If the CONTRACTOR materially fails to fulfill its obligations under this CONTRACT, the DISTRICT will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The CONTRACTOR shall have thirty (30) days to cure the breach. If the CONTRACTOR fails to cure the breach within the thirty (30) day period, the DISTRICT shall issue a Termination for Default Notice. Once the DISTRICT has notified the CONTRACTOR that it has materially breached its CONTRACT with the DISTRICT, by sending a Termination for Default Notice, the DISTRICT's Governing Board shall determine whether the CONTRACTOR should be suspended from doing future work with the DISTRICT, and if so, for what period of time. The DISTRICT's Governing Board will consider the factors detailed in Rule 40E-7.218, F.A.C. in making a determination as to whether a CONTRACTOR should be suspended, and if so, for what period of time. Should the DISTRICT terminate for default in accordance with this provision, the DISTRICT shall be entitled to recover procurement costs in addition to all other remedies under law and/or equity. If CONTRACTOR leaves the site at any time during the thirty (30) day period, DISTRICT shall

have the right to secure the site to protect the property from damage and to insure the health and safety of the public.

- A. CONTRACTOR. DISTRICT shall be entitled to deduct these costs from the CONTRACT Price by issuing a Change Order.
- B. After terminating the CONTRACTOR and to the extent permitted by laws and regulations, the DISTRICT may 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 or DISTRICT for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which DISTRICT has paid CONTRACTOR but which are stored elsewhere, and finish the Work as DISTRICT may deem expedient. CONTRACTOR shall assign all of its interest in any or all Subagreements to DISTRICT upon DISTRICT's request. 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 the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs including costs for appellate proceedings) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to DISTRICT.
- C. Notwithstanding the above notice period, in the event of an emergency, the DISTRICT may take over the site and perform any or all of the activities set out above immediately. DISTRICT shall provide notice of such takeover within 24 hours after its occurrence.
- D. Where CONTRACTOR's services have been terminated by DISTRICT, the termination shall not affect any rights of DISTRICT against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment due CONTRACTOR by DISTRICT will not release CONTRACTOR from liability.
- E. In the event of such termination, the surety shall have the right to take over and complete the work, provided that if the surety does not commence performance within twenty (20) days after receipt of written notice from the DISTRICT to CONTRACTOR and Surety, the DISTRICT may take over and prosecute the work to completion, at the CONTRACTOR's and Surety's expense, by CONTRACT or otherwise. Upon the termination of the services of CONTRACTOR, the DISTRICT shall exclude CONTRACTOR from the Site, and take possession of the Work.

#### 15.04 Termination for Convenience

- A. DISTRICT may, without prejudice to any other right or remedy, terminate this CONTRACT in whole or in part at any time for its convenience by giving CONTRACTOR and surety seven (7) days written notice. DISTRICT shall have the right, in that event, to take over any or all of CONTRACTOR's materials (whether stored on or off site), supplies, equipment, Subagreements or other obligations to complete the Work and



CONTRACTOR shall assign them to DISTRICT upon DISTRICT's request. CONTRACTOR shall proceed to complete any part of the Work, as directed by DISTRICT, and shall settle all its claims and obligations under the CONTRACT.

- B. In any such termination for the convenience of DISTRICT, CONTRACTOR shall be paid for Work completed in accordance with the CONTRACT Documents prior to receipt of the notice of termination, and for termination settlement costs that in the District's sole discretion relate to commitments which had become firm prior to the termination. Any payment made to CONTRACTOR after the termination and as settlement of any claim submitted by the CONTRACTOR as a result of the termination for convenience will exclude any and all anticipated supplemental costs, administrative expenses overhead and profit. CONTRACTOR shall justify its claims as requested by DISTRICT with thorough, accurate records and data.

#### 15.05 Suspension of Contractor for Material Breach of DISTRICT Contracts

- A. Pursuant to Rule 40E-7.218, F.A.C. the DISTRICT's Governing Board, upon recommendation by the Procurement Bureau Chief, may temporarily or permanently suspend CONTRACTORS from doing business with the DISTRICT whenever a CONTRACTOR materially breaches its CONTRACT with the DISTRICT. Any bid submitted by a bidder shall not be considered where either the bidder or its proposed subcontractors are included on the DISTRICT's Suspension List.
- B. During the term of any contract, CONTRACTOR shall have an ongoing obligation to fully inform the DISTRICT by providing immediate written notice of any suspension or debarment proceedings that it, or any of its affiliates are presently involved with or were involved with, including any with Federal, State or local agencies.
- C. CONTRACTOR shall have an ongoing obligation to fully inform the District by providing immediate written notice of any prosecution, conviction, or finding of guilt of the CONTRACTOR, any director, or officer of the CONTRACTOR or any of its affiliates, by a Federal, State or Local tribunal or other public agency.

## ARTICLE 16 – CLAIMS AND DISPUTES

### 16.01 General

- A. Claims and disputes, as defined herein and under the CONTRACT, include disagreements, claims, counterclaims, matters in question, and differences of opinion between the DISTRICT and CONTRACTOR, regarding the Work and modifications or changes to the work. Disputes may involve interpretation of CONTRACT Documents, acceptability of the Work, costs and/or time for performance.
- B. The procedures specified herein shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this CONTRACT. The parties will participate in good faith in the procedures

specified in this Article.

- C. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Article are pending. The parties will take such action, if any, required to effectuate such tolling.
- D. In the event any dispute occurs under this CONTRACT which cannot be readily resolved, it shall be referred to the appropriate executives of the respective parties to this CONTRACT (hereinafter "Party" or "Parties") for negotiation and resolution as described below.

### 16.02 Notice

- A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the CONTRACTOR to DISTRICT immediately, but in no event later than ten (10) 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 DISTRICT within thirty (30) days after the start of such event (unless DISTRICT allows additional time for CONTRACTOR 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 Times shall be prepared in accordance with the provisions of paragraph 12.02. Each Claim shall be accompanied by CONTRACTOR's written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR believes it is entitled as a result of said event. In its claim the CONTRACTOR must provide justification for each line item of the CONTRACTOR'S claim including but not limited to specifying the section of the Terms and Conditions which provides an entitlement to the claim. **Failure by the CONTRACTOR to submit its claim with supporting data within 30 days after the start of the event giving rise to the claim shall be a waiver by the CONTRACTOR of said claim.**
- B. *DISTRICT's Decision:* DISTRICT will render a formal decision in writing within sixty (60) days after receipt of the last submittal of the CONTRACTOR, if any. DISTRICT's written decision on such Claim, dispute, or other matter will be final and binding upon DISTRICT and CONTRACTOR unless an appeal from DISTRICT's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16. DISTRICT may issue unilateral change orders as referenced in Article 8.04.

### 16.03 Step Negotiations

- A. Either party must give the other party written notice of any dispute not resolved in the normal course of business.
- B. STEP1: Executives of both Parties at level one step above the project personnel who have not previously been involved in the dispute shall meet at District Headquarters, in West Palm Beach, at a mutually acceptable time and date after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
- C. STEP 2: If the matter has not been resolved, then executives of



both Parties at levels one step above the personnel who have not previously been involved in the dispute shall meet at District Headquarters, in West Palm Beach, at a mutually acceptable time and date after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

- D. STEP 3: If the matter has not been resolved by these persons within thirty (30) days from the referral of the dispute to senior executives, either Party may initiate mediation as provided hereinafter provided mediation is not scheduled prior to the project being deemed Substantially Complete by the DISTRICT.

To the extent allowed by law, all negotiations, Settlement Agreements and/or other written documentation pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and Florida Rules of Evidence.

#### 16.04 Mediation

If the dispute has not been resolved by the negotiation as provided herein, the Parties shall endeavor to settle the dispute by mediation. In no event shall mediation occur prior to the project being deemed Substantially Complete by the District Either Party may initiate a mediation proceeding by a request in writing to the other Party, thereupon; both Parties will be obligated to engage in mediation. The proceeding will be conducted at DISTRICT Headquarters, 3301 Gun Club Road, West Palm Beach, FL 33406:

1. The DISTRICT will provide a list of mediators from which the CONTRACTOR shall choose; and
2. Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: (a) a written settlement is reached, or (b) the mediator concludes and informs the Parties in writing that further efforts would not be useful, or (c) the Parties agree in writing that an impasse has been reached. Neither Party may withdraw before the conclusion of the proceeding.
3. The Parties regard the aforesaid obligation to mediate as an essential provision of this CONTRACT and one that is legally binding on them. In case of violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction in Palm Beach County, FL.

#### 16.05 Litigation

- A. If the dispute has not been resolved by negotiation or mediation as provided herein within sixty (60) days of the initiation of such mediation procedure, either Party may initiate litigation upon ten (10) days written notice to the other Party; provided, however, that if one Party has requested the other to participate in a nonbinding procedure, as provided for under this Article, and the other has failed to participate, the requesting Party may initiate litigation before expiration of the above period.
- B. The parties hereto agree that all actions or proceedings

arising in connection with this agreement shall be tried and litigated exclusively in the State and Federal courts of competent jurisdiction located in the State of Florida, Palm Beach County. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. The CONTRACTOR agrees to waive any objections to venue or jurisdiction in Palm Beach County, Florida, for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

- C. Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement and the transactions it contemplates. This waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise.

16.06 *Auditing of Claims:* All claims filed by CONTRACTOR shall be subject to audit at any time following the filing of the claim whether or not such claim is the subject of litigation. The audit and review of records may be performed by the DISTRICT or its consultants. Such right of audit shall include the records of the CONTRACTOR and its Subcontractors and Suppliers. The audit may begin on 10 day notice to the CONTRACTOR, Subcontractors, or Suppliers. The CONTRACTOR, Subcontractors and Suppliers shall be required to cooperate with the auditors and provide such information and records as are necessary for analysis of the claim.

### ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice:* 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, unless otherwise required herein or by law, to the last business address known to the giver of the notice.

17.02 *Computation of Times:* 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.

17.03 *Cumulative Remedies:* The duties and obligations imposed by these General Terms & 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:* All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the CONTRACT Documents, as well as all continuing obligations indicated in the CONTRACT Documents,

will survive final payment, completion, and acceptance of the Work or termination or completion of the CONTRACT.

**17.05 Controlling Law:** This CONTRACT shall be governed by the Laws of the State of Florida and be decided in the appropriate State or Federal Court having jurisdiction in Palm Beach County, FL, as agreed to in the CONTRACT Documents, which shall have exclusive jurisdiction and venue in Palm Beach County, FL over all matters in question between the DISTRICT and CONTRACTOR.

**17.06 Notice to Other Agencies:** CONTRACTOR shall notify all public and private entities or agencies in accordance with any and all ordinances, laws, agreements, licenses, and any other directions of construction activity, disruption of access or services. DISTRICT shall not be responsible for any such notification.

**17.07 No Conflict with Laws or Regulations:** The duties, obligations, criteria or procedure imposed by these General Terms & Conditions and the rights and remedies made available 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, except that in the event that a specific part or detailed requirement of a provision, criterion or procedure in these General Terms & Conditions and a specific part or detailed requirement of a provision, criterion or procedure imposed or available by Laws or Regulations are in conflict the specific part or detailed requirement of Laws and Regulations shall govern. All other specific parts or detailed requirements in the provisions, criteria or procedures of the applicable Laws or Regulations and these General Terms & Conditions not in conflict shall remain in full force and effect and be read with the controlling specific part or detailed requirement.

**17.08 Advertising:** No advertising shall be permitted upon any part of the site or structures located on the site. News or press releases pertaining to the services, work product(s), or performance of CONTRACTOR under this CONTRACT or the Project to which it relates shall be at the sole discretion of DISTRICT.

**17.09 Non-Solicitation:** CONTRACTOR shall not directly or indirectly, or through any other person, agency, company or organization solicit employees of the DISTRICT to undertake employment with it, its parent company, or any subsidiary company or any affiliated company during the performance of this CONTRACT and for a period of one (1) year thereafter (the "Non-solicitation Period"). CONTRACTOR acknowledges that actual or threatened violations of this paragraph may give rise to irreparable injury to the DISTRICT, inadequately compensable in damages and, therefore, the DISTRICT may seek and obtain injunctive relief against the breach or threatened breach of CONTRACTOR's obligations and undertakings thereunder, in addition to any other legal remedies which may be available. This paragraph will survive the termination of this agreement. Violation of this paragraph during the Non-solicitation Period will be deemed a material breach of CONTRACT.

**17.10 Use of Terms:** Terms used in this CONTRACT which are defined in Article 1 of the General Terms & Conditions shall have the meanings indicated in the General Terms & Conditions.

**17.11 Assignment:** The CONTRACTOR shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this CONTRACT without the prior written consent of the DISTRICT. Any attempted assignment in violation of this provision shall be void.

**17.12 Binding Agreement:** DISTRICT and CONTRACTOR each binds itself, partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the CONTRACT Documents.

**17.13 Entire Agreement:** This CONTRACT states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The CONTRACTOR recognizes that any representations, statements or negotiations made by DISTRICT staff or DISTRICT consultants, do not suffice to legally bind the DISTRICT in a contractual relationship unless they have been reduced to writing, approved, and signed by an authorized DISTRICT representative. This CONTRACT, once properly executed, shall bind the parties, their assigns, and successors in interest.

**17.14 Future Amendments:** This CONTRACT may be amended only with the prior written approval of the parties.

**17.15 Obligation for Payment:** The CONTRACTOR fully understands and agrees that the DISTRICT shall not pay for any obligation or expenditure made by the CONTRACTOR prior to the commencement date of this CONTRACT, unless the DISTRICT authorizes such payment in writing.

**17.16 Pledge of Credit:** The CONTRACTOR shall not pledge the DISTRICT's credit or make the DISTRICT a guarantor of payment or surety for any CONTRACT, debt, obligation, judgment, lien or any form of indebtedness.

**17.17 Severability:** Should any term or provision of this CONTRACT be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this CONTRACT, to the extent that the CONTRACT shall remain operable, enforceable and in full force and effect to the extent permitted by law.

**17.18 Waiver of Performance:** Failures or waivers to insist on strict performance of any covenant, condition, or provision of this CONTRACT by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this CONTRACT. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this CONTRACT specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a

continuing waiver unless the writing states otherwise.

17.19 *Counterparts:* This CONTRACT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, email or facsimile copy of this CONTRACT and any signatory hereon shall be considered for all purposes as original.

## ARTICLE 18 - VALUE ENGINEERING

18.01 *General:* The CONTRACTOR is encouraged to develop, prepare, and submit value engineering proposals (VEPs) voluntarily. The CONTRACTOR shall share in any CONTRACT savings realized from accepted VEPs in accordance with paragraph 18.05 below.

18.02 *VEP Preparation:* As a minimum, the CONTRACTOR shall include in each VEP the information described in subparagraphs below:

- A. A description of the difference between the existing CONTRACT requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.
- B. A list and analysis of the CONTRACT requirements that must be changed if the VEP is accepted, including any suggested specification revisions.
- C. A separate, detailed cost estimate for: 1) the affected portions of the existing CONTRACT requirement, and 2) the VEP. The cost reduction associated with the VEP shall take into account the CONTRACTOR's costs, including any amount attributable to subcontracts.
- D. A description and estimate of costs that the DISTRICT may incur in implementing the VEP, such as test and evaluation, operating, maintenance and support costs.
- E. A prediction of any effects the proposed change would have on the operating costs of the DISTRICT.
- F. A statement of the time by which a CONTRACT amendment accepting the VEP must be issued in order to achieve the maximum cost reduction, noting any effect on the CONTRACT completion time.
- G. Identification of any previous submissions of the VEP, including the dates submitted, the CONTRACT numbers involved, and previous DISTRICT actions.
- H. Any design change to the plans and specifications must be prepared under the supervision of a Professional Engineer in the State of Florida at the CONTRACTOR's expense. Such changes must be approved by the CONSTRUCTION MANAGER.

18.03 *Submission:* The CONTRACTOR shall submit VEPs to the CONSTRUCTION MANAGER.

### 18.04 DISTRICT Action

- A. The CONSTRUCTION MANAGER shall notify the CONTRACTOR of the status of the VEP within fourteen (14) calendar days after CONSTRUCTION MANAGER receives

it. If additional time is required, the CONSTRUCTION MANAGER shall provide the reason for the delay and the expected date of the decision. The DISTRICT will review VEPs timely however, it shall not be liable for any delay in acting upon a VEP.

- B. If the VEP is not accepted, the CONSTRUCTION MANAGER shall notify the CONTRACTOR in writing, explaining the reasons for rejection. The CONTRACTOR may withdraw any VEP, in whole or in part, at any time before it is accepted by the DISTRICT. The CONSTRUCTION MANAGER may require that the CONTRACTOR provide written notification before undertaking significant expenditures for VEP effort.
- C. At the sole discretion of the DISTRICT, any VEP may be accepted, in whole or in part, by the DISTRICT's execution of a Change Order to this CONTRACT. Until a Change Order is executed which applies a VEP to this CONTRACT, the CONTRACTOR shall perform in accordance with the existing CONTRACT. The DISTRICT's decision to accept or reject, all or part of any VEP, shall be final and not subject to the Disputes clause or otherwise subject to litigation.

### 18.05 Sharing

- A. The CONTRACTOR's share of savings is determined by subtracting DISTRICT costs (as listed herein) from CONTRACT savings and multiplying the result by fifty percent (50%) for fixed-price contracts.
- B. Payment of any share due the CONTRACTOR for use of a VEP on this CONTRACT shall be authorized by a Change Order to this CONTRACT to:
  1. Accept the VEP; and
  2. Reduce the CONTRACT price by the net savings of the VEP less CONTRACTOR's share.

18.06 *Subcontracts:* The CONTRACTOR is encouraged to include an appropriate value engineering clause in any subcontract and to share any cost savings with its subcontractors.

18.07 *Substitution:* Substitution of materials and/or equipment in lieu of that specified shall not necessarily be considered a VEP. To be considered as a VEP, the substitution must involve cost savings other than a simple reduction in price of the equipment or materials.

## ARTICLE 19 – SMALL BUSINESS ENTERPRISE (SBE) UTILIZATION

19.01 *SBE Utilization.* The DISTRICT has implemented a Small Business Enterprise Program as part of the DISTRICT's competitive solicitation and contracting activity in accordance with DISTRICT Rule 40E-7, F.A.C. ("SBE Rule"). The purpose of the program is to spur economic development and support small businesses, including women-owned and minority-owned businesses, to successfully expand in the marketplace.

As consideration for being awarded this CONTRACT, CONTRACTOR shall maintain the level of SBE participation agreed upon and as indicated on the cover/signature page of this CONTRACT.

The CONTRACTOR shall take all necessary steps to achieve and maintain its SBE utilization commitment. At any time during the term of this CONTRACT, the DISTRICT may request information on the SBE status of the CONTRACTOR and/or any and all of its subcontractor(s). The CONTRACTOR shall notify the DISTRICT immediately of any change in the status of the CONTRACTOR or any of its subcontractor(s), that could affect the CONTRACTOR's SBE status or the CONTRACTOR's ability to comply with the SBE requirements of this CONTRACT including but not limited to gross revenue and licensing.

**19.02 SBE Utilization Plan.** The CONTRACTOR shall identify DISTRICT certified SBE subcontractors which will perform work on this CONTRACT. The CONTRACTOR must provide proof that each firm to be utilized as an SBE subcontractor is certified with the DISTRICT. The CONTRACTOR, must list the CONTRACTOR's firm and each SBE subcontractor on the SBE Subcontractor Utilization Plan and submit it to the DISTRICT. The CONTRACTOR represents that the SBE's listed in the SBE Utilization Plan are technically and financially qualified and available to perform the assigned work.

The SBE Subcontractor Utilization Plan shall consist of the following DISTRICT forms and information as submitted by the CONTRACTOR in its bid:

1. *Small Business Enterprise Subcontractor Participation Schedule – form 0956*
2. *Statement of Intent to Perform as a Small Business Enterprise Contractor form – form 0957*

Items (1 and (2) above are hereinafter collectively referred to as the "SBE Subcontractor Utilization Plan". Items (1) and (2) are attached hereto and made a part of this CONTRACT.

**19.03 Subcontractor Substitution or Addition.** The CONTRACTOR must notify the DISTRICT's Small Business Enterprise staff prior to substituting or adding an SBE subcontractor for any reason, or otherwise modifying the SBE Plan as defined above. The CONTRACTOR must submit to the DISTRICT's SBE Staff the following forms attached herein:

1. *Small Business Enterprise Subcontractor **Revised** Participation Schedule – form 1373*
2. *Statement of Intent to Perform as a Small Business Enterprise Contractor form for each firm that is substituted or added. – form 0957*

**19.04 Utilization Reporting.** In an effort to monitor the achievement of the SBE goal the CONTRACTOR agrees to submit, a completed SBE Subcontractor Utilization Report form, attached hereto as Exhibit "E" and made a part of this CONTRACT. The timing of these reports must coincide with invoice submission. In addition to the Subcontractor Utilization Report form, the CONTRACTOR shall also provide proof of payment made to each SBE Subcontractor which shall take the form of cancelled checks or check register photocopies, or any other valid form of documentation that serves to substantiate all

payment amounts included in the Subcontractor Utilization Report. The CONTRACTOR understands that each SBE utilized for the CONTRACT must be certified by the DISTRICT. The CONTRACTOR shall submit a completed Final SBE Subcontractor Utilization Report form, attached hereto as Exhibit "F" and made a part of this CONTRACT, at the time a final invoice is submitted.

**19.05 Compliance.** CONTRACTOR must comply with the SBE Subcontractor Utilization Plan and the DISTRICT will monitor compliance with it and the SBE Rules. The CONTRACTOR shall maintain the level of SBE utilization as established in the CONTRACTOR's SBE Subcontractor Utilization Plan. Compliance shall include all Work under this CONTRACT, including amendments, change orders, and work orders. Failure to comply with the SBE requirements of this CONTRACT will be considered a material breach of CONTRACT and may result in suspension or debarment under DISTRICT Rule 40E-7.218, Florida Administrative Code.

**19.06 Not-To-Compete Agreements.** The CONTRACTOR is prohibited from entering into any agreements with an SBE subcontractor in which the SBE subcontractor has agreed not to provide subcontracting quotations to other respondents or potential respondents.

## **ARTICLE 20 – PARTNERING**

### **20.01 Partnering**

A. **INFORMAL PARTNERING:** It is the DISTRICT's intent to use partnering for this project. Partnering is a structured approach to improve communication between all parties and to facilitate problem solving, conflict avoidance, and issue resolution. The partnering objective is to maximize the effectiveness of each project participant's resources while developing relationships based upon trust, dedication to common goals, and an understanding of each participant's individual expectations and values.

The DISTRICT does not intend to use a formal partnering process for this project. Instead, each team member will utilize the principals of partnering, learned from past experiences, to achieve the specified project objectives. It is anticipated the partnering process will involve occasional meetings of project participants. The type and location of the partnering meetings will be scheduled in conjunction with progress meetings or at other times as mutually agreed to with the DISTRICT.

Partnering is a management technique which would not create new duties or obligations not otherwise existing in this CONTRACT.

**[OR]**

B. **FORMAL PARTNERING** - In order to most effectively and efficiently accomplish the work provided for in this contract, the DISTRICT encourages the formation of a cohesive, mutually beneficial partnership with the CONTRACTOR and its subcontractors. This partnership would strive to draw on the strengths, skills and knowledge of each organization to

achieve a quality project done right the first time, within budget, safely and on schedule. The focus of partnering is to build cooperative relationships, avoid or minimize disputes, and actively pursue the attainment of common goals by the contracting parties. Success will be dependent upon teamwork characterized by open and effective communication while adhering to the high professional standards. This partnership would be bilateral in makeup and participation will be totally voluntary. The cost associated with the facilitation of this partnership would be paid by the DISTRICT.

## **ARTICLE 21 – CONTRACTOR’S REPRESENTATIONS**

In order to induce DISTRICT to enter into this CONTRACT, CONTRACTOR makes the following representations:

1. CONTRACTOR has familiarized itself with the nature and extent of the CONTRACT Documents, Work, locality, weather, and with all local conditions and federal, state and local laws, ordinances, rules, policies and regulations that in any manner may affect cost, progress or performance of the Work.
2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions of the site or otherwise affecting cost, progress or performance of the Work.
3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as the CONTRACTOR deems 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; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
4. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the CONTRACT Documents.
5. CONTRACTOR has given the DISTRICT written notice of all conflicts, errors or discrepancies that it has discovered in the CONTRACT Documents and the written resolution thereof by DISTRICT is acceptable to CONTRACTOR.

## **ARTICLE 22 - STANDARDS OF COMPLIANCE**

1. The CONTRACTOR, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this CONTRACT. The DISTRICT undertakes no duty to ensure such compliance, but will attempt to advise the CONTRACTOR, upon request, as to any such laws of which it has present knowledge.
2. The CONTRACTOR and its agents will not discriminate against any person on legally protected bases in any activity under this Contract. The CONTRACTOR shall take all measures necessary to effectuate these assurances.

3. CONTRACTOR warrants that it has not employed or retained any person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this CONTRACT. Further the CONTRACTOR warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this CONTRACT. For breach of this provision, the DISTRICT may terminate this CONTRACT without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
4. The CONTRACTOR, by its execution of this CONTRACT, acknowledges and attests that neither he, nor any of his suppliers, subcontractors, or consultants who shall perform Work which is intended to benefit the DISTRICT, is a convicted vendor or has been placed on the discriminatory vendor list. If the CONTRACTOR or any affiliate of the CONTRACTOR has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than thirty-six (36) months has passed since that person was placed on the convicted vendor or discriminatory vendor list. The CONTRACTOR further understands and accepts that this CONTRACT shall be either voidable by the DISTRICT or subject to immediate termination by the DISTRICT, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The DISTRICT, in the event of such termination, shall not incur any liability to the CONTRACTOR for any work or materials furnished.
5. The CONTRACTOR, by its execution of this CONTRACT, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the DISTRICT is included on the list of Specially Designated Nationals and Blocked Persons (SDN List) which is administered by the U.S. Department of Treasury, Office of Foreign Assets Control. The CONTRACTOR further understands and accepts that this CONTRACT shall be either void by the DISTRICT or subject to immediate termination by the DISTRICT, in the event there is any misrepresentation. The DISTRICT, in the event of such termination, shall not incur any liability to the CONTRACTOR for any work or materials furnished.
6. Pursuant to Section 216.347, F.S., the CONTRACTOR is prohibited from the expenditure of any funds under this CONTRACT to lobby the Legislature, the judicial branch or another state agency.
7. The DISTRICT is a governmental entity responsible for performing a public service and therefore has a legitimate interest in promoting the goals and objectives of the agency. The work under this CONTRACT involves a project consistent with these goals and objectives. Consequently, the DISTRICT is desirous of satisfactorily completing and successfully promoting this project with the cooperation of its CONTRACTOR. Therefore, the CONTRACTOR assures the DISTRICT that the CONTRACTOR, its employees, subcontractors and assigns will refrain from acting adverse to the DISTRICT’S legitimate interest in promoting the goals and objectives of this project. The CONTRACTOR agrees to

take all reasonable measures necessary to effectuate these assurances. In the event the CONTRACTOR determines it is unable to meet or promote the goals and objectives of the project, it shall have the duty to immediately notify the DISTRICT. Upon such notification the DISTRICT, in its discretion, may terminate this CONTRACT.

## **ARTICLE 23 - RELATIONSHIP BETWEEN THE PARTIES**

1. CONTRACTOR shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this CONTRACT shall be interpreted to establish any relationship other than that of independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this CONTRACT. Both parties are free to enter into contracts with other parties for similar services. In the event the CONTRACTOR is providing staff who will be working on-site at DISTRICT facilities, CONTRACTOR and the DISTRICT further agree that the DISTRICT shall not pay the CONTRACTOR staff any direct remuneration, expense reimbursement or compensation of any kind and CONTRACTOR's staff shall not be eligible for any benefit programs the DISTRICT offers to its employees. All benefits available to the CONTRACTOR's staff shall be exclusively provided by the CONTRACTOR. The CONTRACTOR shall provide all billing, collection, payroll services and tax withholding, among other things, for all CONTRACTOR staff performing services under this CONTRACT.
2. It is the intent and understanding of the Parties that this CONTRACT is solely for the benefit of the CONTRACTOR and the DISTRICT. No person or entity other than the CONTRACTOR or the DISTRICT shall have any rights or privileges under this CONTRACT in any capacity whatsoever, either as third-party beneficiary or otherwise.
3. The CONTRACTOR shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this CONTRACT without the prior written consent of the DISTRICT. Any attempted assignment in violation of this provision shall be null and void.
4. The CONTRACTOR shall not pledge the DISTRICT's credit or make the DISTRICT a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.
5. The DISTRICT assumes no duty with regard to the supervision of the CONTRACTOR and the CONTRACTOR shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of CONTRACT performance. Further, the CONTRACTOR shall be responsible for compliance with all labor and unemployment laws.
6. CONTRACTOR expressly understands and agrees that CONTRACTOR, its officers, agents, and employees, are not entitled to any employment benefits from the DISTRICT. CONTRACTOR expressly and voluntarily waives and agrees not to make any claim to participate in any of the DISTRICT's employee benefits or benefit plans

should CONTRACTOR or any of its officers, agents, or employees be adjudicated for any reason to be an employee of the DISTRICT. In the event CONTRACTOR is self-employed, CONTRACTOR expressly represents that CONTRACTOR is an independent CONTRACTOR and hereby waives any entitlement to overtime or other benefits that CONTRACTOR may be entitled to receive should CONTRACTOR be adjudicated for any reason to be an employee of the DISTRICT."

7. At its sole discretion, the DISTRICT has the right to order the immediate dismissal of any individual(s) working on behalf of the CONTRACTOR at DISTRICT facilities. In such event, the CONTRACTOR shall be responsible for carrying out such dismissal and for returning DISTRICT property in accordance with DISTRICT policies and procedures. The CONTRACTOR may propose a replacement for the individual(s), subject to the optional approval of the DISTRICT. The DISTRICT may also elect to terminate this CONTRACT, for this reason, without any liability whatsoever to the CONTRACTOR, including but not limited to liability for unfinished work product.
8. CONTRACTOR expressly understands and agrees that CONTRACTOR, its officers, agents, and employees, are not entitled to any unemployment compensation or workers' compensation benefits from the DISTRICT. CONTRACTOR expressly and voluntarily waives and agrees not to make any claim for such benefits should CONTRACTOR or any of its officers, agents, or employees be adjudicated for any reason to be an employee of the DISTRICT.

## **ARTICLE 24 - RECORDS**

1. The CONTRACTOR shall maintain records and the DISTRICT shall have inspection and audit rights as follows:

(a) Maintenance of Records: The CONTRACTOR shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this CONTRACT including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of ten (10) years from completing performance and receiving final payment under this CONTRACT. Contractor shall make available all Records related to any litigation, appeals or settlements of claims arising from performance under this CONTRACT until a final disposition has been made of the litigation, appeals or claims.

(b) Examination of Records: The DISTRICT or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this CONTRACT.

(c) Cost and Pricing Data: The CONTRACTOR, by executing this CONTRACT, warrants that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The CONTRACTOR agrees that the DISTRICT may adjust the consideration for this CONTRACT to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs.

(d) Pursuant to Florida Statutes any part of the Work which include building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which



depict the internal layout and structural elements of a building, water treatment facility, or other structure, must be maintained in a confidential manner and secured by the CONTRACTOR and parties associated with projects assigned under the CONTRACT. Review by any unauthorized provider or outside/third party not performing work necessary for the assigned Work is prohibited. This paragraph shall survive the expiration or termination of this CONTRACT.

(e) The CONTRACTOR and parties associated with projects assigned under the CONTRACT shall complete, comply with and furnish to the DISTRICT a signed copy of a Plan and Specification Request Form, prior to obtaining such documents for bidding purposes.

## 2. CONTRACTOR's Duties Regarding Public Records

(a) Compliance with Laws: The Contractor, its employees, subcontractors, and agents, shall comply with all applicable federal, state, and local laws, regulations, and requirements relating to the performance of this Contract including those pertaining to safety, labor and unemployment. The District undertakes no duty to ensure such compliance, but will attempt to advise the Contractor, upon request, as to any such laws of which it has present knowledge. The Contractor is responsible for the compliance of its subcontractors with this section.

(b) Recordkeeping and Public Access: Under Florida Statutes 119.0701(3)(a) [2016], a request to inspect or copy public records relating to a District contract for services must be made directly to the District. In addition, Contractor must: (1) keep and maintain public records required by the District in order to perform the service; (2) upon request from the District's custodian of public records, provide the District 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 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 District; and (4) transfer, at no cost, to the District, all public records in possession of the Contractor or keep and maintain public records required by the District to perform the service. If the Contractor transfers all public records to the District 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 the public records. All records stored electronically must be provided to the District upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District. At the conclusion of the Contract with the District, Contractor shall provide all applicable records associated with this Contract on electronic media (CD-ROM or USB flash drive).

## GENERAL TERMS & CONDITIONS

**(c) 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 TELEPHONE NUMBER (561) 682-2729, EMAIL ADDRESS [PUBLICRECORDS@SFWMD.GOV](mailto:PUBLICRECORDS@SFWMD.GOV) AND MAILING ADDRESS: 3301 GUN CLUB ROAD, WEST PALM BEACH, FL 33406.**

## 3. Trade Secrets

Under Florida laws including Sections 119.071(1)(f) and 1004.22 Florida Statutes, trade secrets are exempt from disclosure as a public record. If a records request is made of the DISTRICT for public disclosure of trade secrets owned by or licensed to the CONTRACTOR and the CONTRACTOR has clearly marked the record as "Trade Secret – Exempt from Public Disclosure" the DISTRICT will advise the Contractor of such request. In the event a dispute arises regarding the records request, CONTRACTOR has the sole burden and responsibility to take all legal measures necessary to protect the record from disclosure. This Article shall survive the expiration or termination of this CONTRACT.

## ARTICLE 25 - CONTRACT DOCUMENTS

The CONTRACT Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference, shall become a part of the CONTRACT as though physically attached as a part thereof:

- (a) Work Change Directives, Change Orders, Field Orders, with those of a later date taking precedence.
- (b) Supplemental Conditions
- (c) General Terms & Conditions
- (d) General Requirements (Division 1)
- (e) Bonds and Insurance
- (f) Bidding Documents, including but not limited to: Request for Bids and Addenda, Contractor's Bid, and SBE Utilization Plan.
- (g) Technical Specifications (excluding Division 1)
- (h) Drawings
- (i) Figure Dimensions
- (j) Scale Dimensions

## ARTICLE 26 - NOTICES

1. All notices, demands, or other communications to the CONTRACTOR under this CONTRACT shall be in writing and shall be deemed received if sent by email, letter, or otherwise

required by law.

2. All notices to the DISTRICT under this CONTRACT shall be in writing.
3. The CONTRACTOR shall provide all notices to the persons listed on the cover page of this CONTRACT. All notices required by this CONTRACT shall be considered delivered *upon receipt*. Should either party change its address, written notice of such new address shall promptly be sent to the other party.
4. All correspondence to the DISTRICT under this CONTRACT shall reference the DISTRICT's CONTRACT Number.

## ARTICLE 27 – DAVIS BACON ACT

### 27.01 Definition.—“Site of the work”—

#### (a) Means—

(1) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(2) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(i) Located in the United States; and

(ii) Established specifically for the performance of the contract or project;

(b) Except as provided in paragraph (c) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(1) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(2) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(2)(i), or the “secondary site of the work” as defined in paragraph (a)(2)(ii) of this definition;

(c) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

27.02 (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual

relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the CONTRACTOR or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(c) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(d) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

27.03 (a) The DISTRICT shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The DISTRICT shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the DISTRICT agree on the classification and wage rate (including the amount designated for fringe benefits,



where appropriate), a report of the action taken shall be sent by the DISTRICT to the Procurement Bureau. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the DISTRICT or will notify the DISTRICT within the 30-day period that additional time is necessary.

(c) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification, or their representatives, and the DISTRICT do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the DISTRICT shall refer the questions, including the views of all interested parties and the recommendation of the DISTRICT, to the Administrator of the Wage and Hour Division within the Employment Standards Administration of the Department of Labor for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the DISTRICT or will notify the DISTRICT within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs b and c of this clause shall be paid to all workers performing work in the classification under this CONTRACT from the first day on which work is performed in the classification.

27.04 Whenever the minimum wage rate prescribed in the CONTRACT for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

27.05 If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the CONTRACTOR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **ARTICLE 28 – COPELAND ACT**

Compliance with Copeland Act Requirements (Feb 1988). The CONTRACTOR shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

# **POST AWARD FORMS**

The following forms are part of the Contract Documents and are required to be used during the course of the Contract by CONTRACTOR and DISTRICT except as otherwise allowed by DISTRICT.

00910	NOTICE OF APPARENT LOW BIDDER
00915	CONTRACTOR'S AFFIDAVIT, WORK INVOLVING DISTRICT FACILITIES OR EQUIPMENT
00920	NOTICE TO PROCEED
00935	STORED MATERIALS
00940	APPLICATION FOR PAYMENT CONTRACTOR'S AFFIDAVIT INVOICE CHECKLIST
00950	SBE SUBCONTRACTOR UTILIZATION REPORT – EXHIBIT “E”
00953	SMALL BUSINESS ENTERPRISE SUBCONTRACTOR REVISED PARTICIPATION SCHEDULE
00960	SHOP DRAWING SUBMITTAL
00965	REQUEST FOR INFORMATION
00970	CHANGE ORDER
00972	FIELD ORDER
00975	WORK CHANGE DIRECTIVE
00980	CERTIFICATE OF SUBSTANTIAL COMPLETION
00990	CERTIFICATE OF FINAL ACCEPTANCE
00994	SBE FINAL SUBCONTRACTOR UTILIZATION REPORT – EXHIBIT “F”
00995	CONTRACTOR'S AFFIDAVIT AND FINAL RELEASE
00996	CONSENT OF SURETY TO FINAL PAYMENT

[DATE]

[INSERT Name  
Address  
City, State, Zip]

Dear [INSERT Name]:

**Subject: Title:  
Contract No.:  
NOTICE OF APPARENT LOW BIDDER**

**ITEM 1: BID CONFIRMATION.**

Bids were opened for the subject work on \_\_\_\_\_. Your firm is the Apparent Low Bidder of the project at this time. Please take this opportunity to review your Bid Tabulation worksheets for possible errors or omissions. Should you consider your bid price to be correct as submitted, it is requested you provide the District a written verification to that effect. Article 18.02 of the Instructions to Bidders requires you to submit your confirmation no later seven (7) business days from the date of this Notice.

In the event you discover an error has been made and wish to request withdrawal of your bid, you must supply a detailed written statement indicating the nature and cause of the error claimed. Also include your original worksheets and clearly mark in red where the error occurred. Any requested modifications or withdrawals of bids are subject to the limitations outlined in Article 15 of the Instructions to Bidders. Additionally, you must supply a statement to the fact that, if permitted to withdraw, you will not participate in the work. Affirmation by you and your bonding company, for your total bid, will be required prior to any award of this Contract. An authorized withdrawal does not prevent you from bidding on the same project if the current bids are all rejected and the project is re-advertised.

**ITEM 2: INSURANCE CERTIFICATE.**

Article 5.04 of the General Terms & Conditions requires you to submit to the District evidence of insurance coverage within seven (7) business days of the date of this Notice. Please refer to Article 5.04 for minimum requirements of insurers and limits of coverage. Please refer your insurance agent to the DISTRICT's Insurance Requirements Checklist provided on Page 00600-2 of the bidding documents and return to my attention within seven (7) business days from the date of this Notice.

*Note: The CONTRACTOR shall have thirty (30) business days after CONTRACT execution, to produce the required Insurance Declaration Page of Policy, additional insured endorsement forms and a waiver of subrogation endorsement set forth in the General Terms & Conditions, and the Insurance Requirements Checklist.*

**ITEM 3: PERFORMANCE AND PAYMENT BONDS**

Articles 5.02 and 5.03 of the General Terms & Conditions requires you to submit to the District performance and payment bonds, if the bid amount exceeds \$200,000.00, within seven (7) business days of this Notice. Refer to the referenced articles for minimum bond and surety requirements. Please have an authorized surety agent complete the District bond forms in full, attach the Affidavit for Surety Form and return to my attention within seven (7) business days of the date of this Notice. **Bidders are reminded that before commencing the work, the contractor shall provide a certified copy of the recorded bond. Substitute bond forms will not be accepted by the District.**

#### ITEM 4: CORRESPONDENCE

All correspondence shall be addressed as follows:

Contract Specialist Name  
Procurement Bureau  
South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, FL 33406

#### ITEM 5: SUBCONTRACTORS AND SUPERINTENDENT

Article 18.05 of the Instructions to Bidders requires you to submit to the District the name and qualifications of the Superintendent, Project Manager, Quality Control Manager, Safety Manager and a list of all Subcontractors and other persons and organizations you intend to use on this project, including those who are to furnish the principle items of material and equipment. Please return this information to the District within seven (7) business days of the date of this Notice.

#### ITEM 6: AWARD

Award of this Contract is subject to further District approval. You may check the District's bid postings to determine when the official Notice of Intent to Award has been posted. All awards are subject to the approval of the District's Governing Board or Executive Office. In the event your firm is not awarded the Contract, the District shall not be responsible for any costs related to bidding or securing award, including but not limited to, bid preparation, bond and insurance costs. If you have any questions, please contact me at telephone number .

**Please note that failure to provide the requested items (Items 1, 2, 3, & 5) within the time specified herein shall be sufficient cause for the District to determine your firm as non-responsible, to nullify the Contract award, and to cause forfeiture of your Bid Guaranty.**

Sincerely,

Contract Specialist Name  
Contract Specialist  
Procurement Bureau

**CONTRACTOR'S AFFIDAVIT**

**WORK INVOLVING DISTRICT FACILITIES OR EQUIPMENT**

The undersigned individual or legal entity representative (hereafter referred to as Contractor/Consultant/Vendor) certifies that it shall comply with all obligations set forth below and all other Terms and Conditions of contract/purchase order number \_\_\_\_\_.

**POLICY CODE ACKNOWLEDGEMENT** – Pursuant to the Terms and Conditions of the contract/purchase order, Contractor's employees or hired workers working on-site at District facilities, using District equipment, or working on District plans and specifications or software, have submitted a signed "Consultant Policy Code Acknowledgement" form for each individual performing such work.

**BACKGROUND CHECKS** - Pursuant to the Terms and Conditions of the contract/purchase order, Contractor affirms that a thorough background check, pursuant to section 373.6055, Florida Statutes has been conducted for all its employees and hired workers who will be working at any District site. The background check consisted of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status. The results of the background check did not result in any reason to disqualify Contractor's employee or hired worker from working at a District site. Contractor acknowledges that it has an ongoing obligation to perform updated background checks on all employees, including new hires and existing employees and hired workers performing their respective duties on District facilities, and advise the District of any material changes.

**DISTRICT CRITICAL STRUCTURES** – Pursuant to the Terms and Conditions of the contract/purchase order, if the project or work under this Contract requires that the Contractor or its agents have unrestricted access to any District critical structures, Contractor affirms that a fingerprint-based criminal history check, pursuant to section 373.6055, Florida Statutes on all employees who will have access to any District critical structure has been completed. None of the employees or hired workers have been convicted of criminal violations as set forth in section 373.6055, Florida Statutes that will prohibit unrestricted access to District critical structures.

Signed and attested to this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Contractor/Consultant/Vendor Signature

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

\_\_\_\_\_  
Title

# **NOTICE TO PROCEED**

Date:

CONTRACTOR's NAME: \_\_\_\_\_

Attn: \_\_\_\_\_

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

**Contract No.:**

**Contract Title:**

**County Location:**

**Subject:**

**Effective Date of Notice:**

**Calendar Days:**

\_\_\_\_\_  
**C-43 West Caloosahatchee Basin Storage Reservoir, - Part 2**

**Hendry County**

**NOTICE TO PROCEED**

\_\_\_\_\_ **Days to Substantial Completion**

\_\_\_\_\_ **Days to Final Completion**

**Completion Date:**

\_\_\_\_\_ **Substantial Completion**

**Completion Date:**

\_\_\_\_\_ **Final Completion**

Dear \_\_\_\_\_:

In accordance with the terms of the Contract Documents for the performance of the Work included in the referenced project, you are hereby authorized to begin Work on the Effective Date of Notice provided above, which shall constitute the date of the Commencement of the Contract Time.

The **Completion Date** for all Work under this CONTRACT is as specified above.

Liquidated damages in the amount of **\$ 30,000.00** per calendar day shall be deducted from the Contract Price for failure to complete this Work by the Substantial Completion Date or any extension thereof. Liquidated damages in the amount of **\$ 20,000.00** per calendar day shall be deducted from the Contract Price for failure to complete this Work by the Final Completion Date or any extension thereof.

Contractor shall mobilize and be working on site within ten (10) calendar days following this date, unless agreed to otherwise in writing.

If you have any questions or need any additional information, please contact me.

Sincerely,

District Project Manager  
Engineering & Construction Bureau

# STORED MATERIALS FORM

CONTRACT NAME: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida						PAYMENT NO.:		
CONTRACT NUMBER:						PERIOD ENDING:		
CONTRACTOR:								
ITEM/ DESCRIPTION		(PRIOR MONTH)		(CURRENT MONTH)		(TOTALS TO DATE)		
(BID ITEM NO. & DESC) LINE 1 (SUPPLIER NAME) LINE 2		(A) INVOICE VALUE DELIVERED (+)	(B) INVOICE VALUE INSTALLED (-)	(C) INVOICE VALUE DELIVERED (+)	(D) INVOICE VALUE INSTALLED (-)	(E) INVOICE VALUE DELIVERED (+)	(F) INVOICE VALUE INSTALLED (-)	(G) TOTAL VALUE STORED (=)
		\$	\$	\$	\$	\$	\$	\$

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**  
**APPLICATION FOR PAYMENT**

PAGE 1

CONTRACT TITLE: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida							INVOICE NO.:		
CONTRACT NUMBER:							PERIOD ENDING:		
CONTRACTOR:					PC NO.:		LN:		
STREET ADDRESS:					CITY STATE:				
VENDOR NO.:			COMMODITY NO.:			RC NO.:			
INVOICE DATE:									
ITEM NO.	DESCRIPTION	EST QTY	UNIT	UNIT PRICE	BID AMOUNT	EARNED THIS PERIOD		EARNED TO DATE	
						QTY	AMOUNT	QTY	AMOUNT
SUBTOTAL THIS PAGE 1					\$		\$		\$

Contractor's Remittance Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



# **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

## **APPLICATION FOR PAYMENT**

PAGE 2

ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT PRICE	BID AMOUNT	EARNED THIS PERIOD		EARNED TO DATE	
						QTY	AMOUNT	QTY	AMOUNT
SUBTOTAL THIS PAGE 2							\$		\$
SUBTOTAL PAGE 1							\$		\$
TOTAL STORED MATERIALS (NOT INCORPORATED IN THE WORK)									
<b>TOTAL</b>							\$		\$
01.TOTAL WORK COMPLETED TO DATE & STORED MATERIAL									\$
02.TOTAL									
03. 50% OF TOTAL CONTRACT AMOUNT									\$
04. LESS RETAINAGE									
A. IF LINE 02 IS LESS THAN LINE 03 – THEN 10% OF LINE 02									(      )
B. IF LINE 02 IS GREATER THAN LINE 03 – THEN 10% OF LINE 03									(      )
05. AMOUNT DUE TO DATE									\$
06. LESS PREVIOUS PAYMENTS									(      )
07. GROSS AMOUNT DUE THIS PERIOD									\$
08.LESS PAYMENT DISCOUNT (OPTIONAL) __%, ____ DAYS									(      )
09. NET PAYMENT DUE THIS PERIOD									\$

# **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

## **APPLICATION FOR PAYMENT**

### **CONTRACTOR'S AFFIDAVIT**

#### **CONTRACT PRICE INFORMATION**

ORIGINAL CONTRACT PRICE	\$ _____
CONTRACT CHANGE ORDER(S) AMOUNT TO DATE	\$ _____
C.O.'S TO DATE NO. _____ TO _____	
CURRENT CONTRACT PRICE	\$ _____

#### **CONTRACTOR'S AFFIDAVIT**

The undersigned hereby swears under penalty of perjury that:

1. all previous progress payments received from the DISTRICT on account of Work performed under the contract referred to above and have been applied by the Contractor to discharge in full all obligations of the Contractor incurred in connection with Work covered by prior Applications for Payment under said contract, being Applications for Payment 1 through \_\_\_\_ inclusive;
2. all materials and equipment incorporated in said Project or otherwise listed in or covered by this Application for Payment are free and clear of all liens, security interests and encumbrances;
3. all previous progress payments have been applied by the Contractor to pay in full (less retainage) all amounts owed to its Subcontractors, Suppliers, Materialmen and Equipment Suppliers reflected (and listed) in prior Applications for Payments, except as stated on the attached.
4. The undersigned Contractor certifies to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the District and that current payment shown herein is now due.
5. The undersigned Contractor certifies that he has not received any Notices of Non-Payment and if any such notices have been received shall list them here: \_\_\_\_\_
6. The undersigned Contractor certifies that the percentage of the amount paid to his subcontractor(s) is as indicated below:

Subcontractor	Amount of Project	Payment Amount This Month	Amount Paid to Date

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

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

CONTRACTOR

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

\_\_\_\_\_  
(NAME AND TITLE)

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

Before me on this \_\_\_\_\_ day of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me, who duly sworn, deposes and says that (s)he is the \_\_\_\_\_ of the Contractor above mentioned; that (s)he executed the above Application for Payment and statement on behalf of said Contractor; and that all statements contained therein are true, correct and complete.

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

NOTARY PUBLIC

# **CONSTRUCTION INVOICE CHECKLIST**

The following items should accompany the monthly pay request:

<b>Item Number</b>	<b>Description</b>	<b>Reference Section</b>	<b>Attached (Y or N) Comments or N/A</b>
1	Cost-Loaded Construction Baseline Schedule	00700 – 2.07.1	
2	SFWMD Application for Payment Form	00700 – 14.02 A.1	
3	SFWMD SBE Utilization Report	00700 – 14.02 A.2	
4	SFWMD Stored Materials Form (if billed)	00700 – 14.02.A.3	
5	SFWMD Contractor's Affidavit	00700 – 14.02.A.4	
6	SFWMD Keys (Receipt of keys returned to District must accompany final payment application)	00700 – 14.07.A.2	
7	Contractor's Progress Photos	01 32 34	
8	Contractor's Construction Schedule Updates, Cost & Activity Reports and Narrative	01 32 16	
9	Contractor's Record Documents – Review prior to payment approval	00700 – 6.12	
10	Insurance Policy Declaration Page & Endorsement Forms (Must be received within 30 days of Contract Execution)	00600 -1	

# Small Business Enterprise Subcontractor Utilization Report

Exhibit "E"

Project Name (1) C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida		Contract Number and Work Order Number (if applicable) (2)	
Report Number (3)	Reporting Period (4) to	Small Business Enterprise Contract Goal (5)	Contract Completion Date (6)
Contractor Name (7)		Contractor Telephone Number (8) ( ) -	Contractor Email Address (9)
Contractor Street Address (10)	Project Manager Name (11)	Project Manager Telephone Number (12) ( ) -	Project Manager Email Address (13)

## Small Business Enterprise Payment Report

Federal Identification Number (14)	SBE Subcontractor Business Name (15)	Description of Work (16)	Project Amount (17)	Amount Paid this Reporting Period (18)	Invoice Number (19)	Total Paid to Date (20)
Total Paid to Date for All Small Business Enterprise Subcontractors (21) \$						

**I certify that the above information is true to the best of my knowledge.**

Contractor Name – Authorized Personnel (print) (22)	Contractor Name – Authorized Personnel (sign) (23)	Title (24)	Date (25)
---	--	------------	-----------

## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

### Instructions

- Box (1) Project Name** - Enter the entire name of the project.
- Box (2) Contract Number (work order)** – Enter the District contract number and work order number, if applicable (i.e., 4600001234, and if work order contract include work order number – 4600000568 WO 01).
- Box (3) Report Number** – Enter the Small Business Enterprise (SBE) Subcontractor Utilization Report number. Reports must be in a numerical series (i.e., 1, 2, 3).
- Box (4) Reporting Period** – Enter the beginning and end dates for which this report covers (i.e., 10/01/2011 – 11/01/2011).
- Box (5) SBE Contract Goal** – Enter the SBE Contract Goal on entire contract.
- Box (6) Contract Completion Date** – Enter the expiration date of the contract, (not work order).
- Box (7) Contractor Name** – Enter the complete legal business name of the Prime Contractor.
- Box (8) Contractor Telephone Number** – Enter the telephone number of the Prime Contractor.
- Box (9) Contractor Email Address** – Enter the email address of the Prime Contractor.
- Box (10) Contractor Street Address** – Enter the mailing address of the Prime Contractor.
- Box (11) Project Manager Name** – Enter the name of the Project Manager for the Prime Contractor on the project.
- Box (12) Project Manager Telephone Number** – Enter the direct telephone number of the Prime Contractor’s Project Manager.
- Box (13) Project Manager Email Address** – Enter the email address of the Prime Contractor’s Project Manager.
- Box (14) Federal Identification Number** – Enter the federal identification number of the SBE Subcontractor(s).
- Box (15) SBE Subcontractor Business Name** – Enter the complete legal business name of the SBE Subcontractor(s).
- Box (16) Description of Work** – Enter the type of work being performed by the SBE Subcontractor(s) (i.e., electrical services).
- Box (17) Project Amount** – Enter the dollar amount allocated to the SBE Subcontractor(s) for the entire project (i.e., amount in the subcontract agreement).
- Box (18) Amount Paid this Reporting Period** – Enter the total amount paid to the SBE Subcontractor(s) during the reporting period.
- Box (19) Invoice Number** – Enter the SBE Subcontractor’s invoice number related to the payment reported this period.
- Box (20) Total Paid to Date** – Enter the total amount paid to the SBE Subcontractor(s) to date.
- Box (21) Total Paid to Date for All SBE Subcontractor(s)** – Enter the total dollar amount paid to date to all SBE Subcontractors.
- Box (22) Contractor Name Authorized Personnel (print)** – Print the name of the employee that is authorized to execute the SBE Subcontractor Utilization Report.
- Box (23) Contractor Name Authorized Personnel (sign)** – Signature of authorized employee to execute the SBE Subcontractor Utilization Report.
- Box (24) Title** – Enter the title of authorized employee completing the SBE Subcontractor Utilization Report.
- Box (25) Date** – Enter the date of submission of the SBE Subcontractor Utilization Report to the District.

# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

## SMALL BUSINESS ENTERPRISE SUBCONTRACTOR REVISED PARTICIPATION SCHEDULE

Contract No.		Date Submitted
Project Name & Location	C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida	Project Start Date
Bidder/Proposer		
Address		
Contact Person	Email Address	Telephone No.

### ORGANIZATION STATUS

Business Association	Business Name	Business Address	Business Phone #	Work to be Performed		
				Describe Type of Work to be Performed	% of Work	Dollar Amount
Prime Bidder/Proposer						
Non SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
SBE Subcontractor						
					100%	\$0.00
						\$0.00

The prime contractor must notify the District when the need to replace a Small Business Enterprise (SBE) Subcontractor. Please provide a Revised SBE Subcontractor Utilization Plan and a brief explanation of the need for the addition or replacement. Please enter the explanation in the space provided below.

The listing of a SBE shall constitute a representation by the bidder/proposer to the District that the bidder/proposer believes such SBE to be technically and financially qualified and available to perform the work described. Bidders/Proposers are advised that the information contained herein may be verified.

\_\_\_\_\_  
Bidder/Proposer Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# **SHOP DRAWING SUBMITTAL**

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
PROJECT/CONSTRUCTION MANAGEMENT**

SUBMITTAL NO. \_\_\_\_\_

**TO:** \_\_\_\_\_  
\_\_\_\_\_

**FROM:** \_\_\_\_\_

**SUBJECT:** \_\_\_\_\_

**PROJECT:** C-43 West Caloosahatchee Basin Storage  
Reservoir – Part 2, Hendry County, Florida

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

**SUBMITTED BY:** \_\_\_\_\_

**Contractor**

**Date**

Any Contractor deviations to Drawings and Technical Specifications listed below:

ITEM NO.	
Copies	
Description	
Previous Submittal #	
Specification Section	
Plan Sheet #	

  

<input type="checkbox"/>	Accepted As Submitted
<input type="checkbox"/>	Accepted As Noted
<input type="checkbox"/>	Returned For Revision (see comments)
<input type="checkbox"/>	Not Acceptable (see comments)
<input type="checkbox"/>	Preliminary Submittal
<input type="checkbox"/>	For Reference Only
<input type="checkbox"/>	Distribution Copy

**Comments:** \_\_\_\_\_

**Project Engineer:** \_\_\_\_\_

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

RFI NO. \_\_\_\_\_

**REQUEST FOR INFORMATION**

Project: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida

Contract No.

Contractor: \_\_\_\_\_

**QUESTION**

Reference: Specification Section: \_\_\_\_\_ Drawing No. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Requested by: \_\_\_\_\_ Date: \_\_\_\_\_

**REPLY**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Reply by: \_\_\_\_\_ Date: \_\_\_\_\_



**CHANGE ORDER NO. \_\_\_\_**  
**BETWEEN**  
**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**  
**AND**

---

CONTRACT NO: 46xxxxxxxx  
CONTRACT TITLE: \_\_\_\_\_ COUNTY, FLORIDA

The following changes to the CONTRACT are hereby made part of the Contract Documents. All requirements of the Original Contract Documents shall remain in full force and effect except as modified herein.

**I. ORIGINAL CONTRACT PRICE:** \_\_\_\_\_  
Price of all previous Change Orders: \_\_\_\_\_  
PRICE of this Change Order: \_\_\_\_\_  
The CURRENT CONTRACT PRICE including this Change Order: \_\_\_\_\_

**II. ORIGINAL SUBSTANTIAL COMPLETION DATE:** \_\_\_\_\_  
Original Contract Time: \_\_\_\_\_ Days  
Total of all previous Contract Times Adjustments \_\_\_\_\_ Days  
Contract Times Adjustments this Change Order \_\_\_\_\_ Days  
REVISED Total Contract Times: \_\_\_\_\_ Days  
Revised SUBSTANTIAL COMPLETION DATE including this Change Order: \_\_\_\_\_

**III. ORIGINAL FINAL COMPLETION DATE:** \_\_\_\_\_  
Original Contract Time: \_\_\_\_\_ Days  
Total of all previous Contract Times Adjustments \_\_\_\_\_ Days  
Contract Times Adjustment this Change Order: \_\_\_\_\_ Days  
REVISED Total Contract Times: \_\_\_\_\_ Days  
Revised FINAL COMPLETION DATE including this Change Order: \_\_\_\_\_

All requirements of the original Contract Document shall remain in full force and effect except as modified herein.

**VI. WORK CHANGED BY CHANGE ORDER**

**A.** \_\_\_\_\_

1. **Scope of Work:**
2. **Original contract scope impacted by the change order:**
3. **Cost of Work:**
4. **Justification:**

## V. ACKNOWLEDGEMENTS

The aforementioned change, and work affected thereby, is subject to all provisions of the original contract not specifically changed by this Change Order; and, it is expressly understood and agreed that the approval of the Change Order shall have no effect on the original, other than matters expressly provided herein. This change order constitutes the full compensation for the work described, including any costs which may result from protracted performance, delays, or extended overhead. This Change Order is not to be construed as an admission of any liability on the part of the District. This Change Order states the entire understanding and agreement between the parties regarding the change order work and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this change order. This Change Order is the final and full expression of the parties' agreement for payment hereunder. Upon execution, this change order shall be in accord and satisfaction concerning all potential claims related to the Change Order work, including inefficiencies or acceleration based claims.

## VI. APPROVAL AND CHANGE ORDER AUTHORIZATION

Engineering and Construction Bureau Chief	Date
---	------

SFWMD Procurement Reviewed	Date
----------------------------	------

**ACCEPTED BY CONTRACTOR:**

---

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

**APPROVED BY:**

# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Division Director, Administrative Services \_\_\_\_\_ Date \_\_\_\_\_

Field Order No. \_\_\_\_\_

# **FIELD ORDER**

Date of Issuance: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Contract No.: \_\_\_\_\_

Contract Title: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida

Contractor: \_\_\_\_\_

**Contractor is hereby directed to promptly execute this Field Order, issued in accordance with General Terms & Conditions Article 9.03, for minor variations in the work which do not involve an adjustment in Contract Price or Contract Time.**

Reference: Specification Section(s) \_\_\_\_\_ Drawing(s) No. \_\_\_\_\_

Attachment(s):

\_\_\_\_\_

Description (Field Oder Direction, Error, Omission or Correction): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Justification: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **ISSUED BY:**

\_\_\_\_\_  
South Florida Water Management (Signature) Date

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

\_\_\_\_\_  
Title

## **ACCEPTED BY CONTRACTOR:**

\_\_\_\_\_  
Contractor (Signature) Date

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

\_\_\_\_\_  
Title

**WORK CHANGE DIRECTIVE NO. \_\_\_\_\_**  
**TO**  
**[Contractor \_\_\_\_\_]**

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

CONTRACT NO: \_\_\_\_\_

CONTRACT TITLE: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida

**I. CONTRACTOR IS DIRECTED TO PROCEED PROMPTLY WITH THE FOLLOWING CHANGE(S):**

Scope of Work: \_\_\_\_\_

\_\_\_\_\_

Justification: \_\_\_\_\_

\_\_\_\_\_

All requirements of the original Contract Document shall remain in full force and effect except as modified herein.

**II. ATTACHMENTS** (list documents supporting change): \_\_\_\_\_

\_\_\_\_\_

**III. PURPOSE FOR WORK CHANGE DIRECTIVE:**

Authorization for Work described herein to proceed on the basis of Cost of the Work due to:

- ☐ Non-agreement on changes to Contract Price and/or Contract Time.
- ☐ Necessity to expedite Work described herein prior to agreeing to change to Contract Price and/or Contract Time.

**IV. NOT-TO-EXCEED ESTIMATED CHANGES IN CONTRACT PRICE AND/OR CONTRACT TIME:**

The amounts referenced below are only estimates and are subject to negotiations and approval by the parties herein.

Contract Price \$ \_\_\_\_\_ (increase/decrease) and/or Contract Time \_\_\_\_\_ days (increase/decrease)

**V. ACKNOWLEDGEMENTS**

The aforementioned work, and work affected thereby, is subject to all provisions of the original Contract not specifically changed by this Work Change Directive. Upon execution, this Work Change Directive becomes effective immediately and the Contractor shall proceed with the change(s) described above. This is not a Change Order, but only a directive to proceed with work that may be included in a subsequent Change Order. Upon completion of the work covered by this Work Change Directive, or final costs and times are determined, the Contractor shall submit documentation for inclusion in a Change Order. A Change Order will be processed to cover any undisputed sum or amount of time for work performed under this Work Change Directive. This Work Change Directive is not to be construed as an admission of any liability on the part of the District.

**VI. APPROVAL AND WORK DIRECTIVE AUTHORIZATION:**

SFWMD Project Mgmt. Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Section Administrator

SFWMD Procurement Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Contract Specialist

**ACKNOWLEDGED BY CONTRACTOR:** \_\_\_\_\_ Date: \_\_\_\_\_  
Name/Title

**APPROVED BY: SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

\_\_\_\_\_ Date: \_\_\_\_\_  
Division Director Administrative Services

# **CERTIFICATE OF SUBSTANTIAL COMPLETION**

**CONTRACT NO:** \_\_\_\_\_

**PROJECT:**     **\_\_ C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida**  
\_\_\_\_\_

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

**CONTRACT DATE:**\_\_\_\_\_

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

Work covered by this Certificate:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_  
(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 [NTS thirty (30) / sixty (60)] days of the above date of Substantial Completion.

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

**PREPARED BY DISTRICT:**

\_\_\_\_\_  
Project/Construction Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Certifying Engineer

\_\_\_\_\_  
Date

**ACCEPTED BY CONTRACTOR:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**APPROVED:**  
**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

\_\_\_\_\_  
Field Station Superintendent/Field Rep

\_\_\_\_\_  
Date

# **CERTIFICATE OF FINAL ACCEPTANCE**

## **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

**PROJECT:** C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida

**CONTRACT NO.:** \_\_\_\_\_

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

A joint inspection of the work described in the Contract Documents has been made by the Resident Engineer, DISTRICT and the CONTRACTOR on \_\_\_\_/\_\_\_\_/\_\_\_\_ in accordance with the Contract General Terms & Conditions, and is accepted by the District, subject to the provisions contained in the Contract General Terms & Conditions, or for a period of warranty as otherwise agreed upon and attached.

**PREPARED BY DISTRICT:**

\_\_\_\_\_  
Project/Construction Manager Date

\_\_\_\_\_  
Engineer of Record Date

**ACCEPTED BY CONTRACTOR:**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title

**APPROVED: SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

\_\_\_\_\_  
Sponsor/Field Operations Bureau Chief Date

\_\_\_\_\_  
Engineering/Construction Bureau Chief Date

# Small Business Enterprise Final Subcontractor Utilization Report

Exhibit "F"

Project Name (1) C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida		Contract Number and Work Order Number (if applicable) (2)	
Report Number (3)	Reporting Period (4) to	Small Business Enterprise Contract Goal (5)	Contract Completion Date (6)
Contractor Name (7)		Contractor Telephone Number (8) ( ) -	Contractor Email Address (9)
Contractor Street Address (10)	Project Manager Name (11)	Project Manager Telephone Number (12) ( ) -	Project Manager Email Address (13)

## Small Business Enterprise Payment Report

Federal Identification Number (14)	SBE Subcontractor Business Name (15)	Description of Work (16)	Project Amount (17)	Amount Paid this Reporting Period (18)	Invoice Number (19)	Total Paid to Date (20)
Total Paid to Date for All Small Business Enterprise Subcontractors (21) \$						
I certify that the above information is true to the best of my knowledge.						
Contractor Name – Authorized Personnel (print) (22)		Contractor Name – Authorized Personnel (sign)(23)		Title (24)		Date (25)

## South Florida Water Management District Instructions to Small Business Enterprise Subcontractor Utilization Report

- Box (1) Project Name** - Enter the entire name of the project.
- Box (2) Contract Number (work order)** – Enter the District contract number and work order number, if applicable. (i.e., 4600001234, and if work order contract include work order number – 4600000568 WO 01)
- Box (3) Report Number** – Enter the Small Business Enterprise (SBE) Subcontractor Utilization Report number. Reports must be in a numerical series. (i.e., 1, 2, 3)
- Box (4) Reporting Period** – Enter the beginning and end dates for which this report covers. (i.e., 10/01/2011 – 11/01/2011)
- Box (5) SBE Contract Goal** – Enter the SBE Contract Goal on entire contract.
- Box (6) Contract Completion Date** – Enter the expiration date of the contract, (not work order).
- Box (7) Contractor Name** – Enter the complete legal business name of the Prime Contractor.
- Box (8) Contractor Telephone Number** – Enter the telephone number of the Prime Contractor.
- Box (9) Contractor Email Address** – Enter the email address of the Prime Contractor.
- Box (10) Contractor Street Address** – Enter the mailing address of the Prime Contractor.
- Box (11) Project Manager Name** – Enter the name of the Project Manager for the Prime Contractor on the project.
- Box (12) Project Manager Telephone Number** – Enter the direct telephone number of the Prime Contractor’s Project Manager.
- Box (13) Project Manager Email Address** – Enter the email address of the Prime Contractor’s Project Manager.
- Box (14) Federal Identification Number** – Enter the federal identification number of the SBE Subcontractor(s).
- Box (15) SBE Subcontractor Business Name** – Enter the complete legal business name of the SBE Subcontractor(s).
- Box (16) Description of Work** – Enter the type of work being performed by the SBE Subcontractor(s). (i.e., electrical services)
- Box (17) Project Amount** – Enter the dollar amount allocated to the SBE Subcontractor(s) for the entire project. (i.e., amount in the subcontract agreement)
- Box (18) Amount Paid this Reporting Period** – Enter the total amount paid to the SBE Subcontractor(s) during the reporting period.
- Box (19) Invoice Number** – Enter the SBE Subcontractor’s invoice number related to the payment reported this period.
- Box (20) Total Paid to Date** – Enter the total amount paid to the SBE Subcontractor(s) to date.
- Box (21) Total Paid to Date for All SBE Subcontractor(s)** – Enter the total dollar amount paid to date to all SBE Subcontractors.
- Box (22) Contractor Name Authorized Personnel (print)** – Print the name of the employee that is authorized to execute the SBE Subcontractor Utilization Report.
- Box (23) Contractor Name Authorized Personnel (sign)** – Signature of authorized employee to execute the SBE Subcontractor Utilization Report.
- Box (24) Title** – Enter the title of authorized employee completing the SBE Subcontractor Utilization Report.
- Box (25) Date** – Enter the date of submission of the SBE Subcontractor Utilization Report to the District.



# **CONTRACTOR'S AFFIDAVIT AND** **FINAL RELEASE**

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

CONTRACT NO.:

CONTRACT TITLE: C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_ first duly sworn and says that:

1. He/She is \_\_\_\_\_ of \_\_\_\_\_ authorized to do business in  
(title) (company)  
the State of Florida, (hereinafter called "CONTRACTOR").
2. CONTRACTOR, pursuant to CONTRACT dated \_\_\_\_\_, (hereinafter referred to as "CONTRACT") with SOUTH FLORIDA WATER MANAGEMENT DISTRICT, (hereinafter referred to as "DISTRICT"), has heretofore furnished or caused to be furnished labor, material and services for the construction of certain improvements as more particularly set forth in the CONTRACT.
3. CONTRACTOR represents that all work to be performed under the CONTRACT has been fully completed; that all persons and firms who furnished material, labor and/or services incident to the completion of said work have been paid in full; and that there are no suits pending against the undersigned CONTRACTOR or anyone in connection with the work done and materials furnished or otherwise under said CONTRACT.
4. The CONTRACTOR, for and in consideration of final CONTRACT PRICE in the amount of \$ \_\_\_\_\_, does hereby waive, release, remise and relinquish the CONTRACTOR's right to claim, demand or impose a lien or liens for work done or materials and/or services furnished or any other class of liens whatsoever, on any of the premises owned by DISTRICT on which improvements have been completed in connection with the CONTRACT. Further, CONTRACTOR does hereby and for its heirs, executors, administrators, successors and assigns release, acquit and forever discharge and hold harmless the DISTRICT, and its employees, agents, servants, successors, heirs, executors, and administrators, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses, and compensation whatsoever, which the undersigned now has or which may hereafter accrue on account of or in any way relating to the CONTRACT.
5. The undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.
6. The CONTRACTOR herein makes this Affidavit and Final Release for the express purpose of inducing DISTRICT to make final disbursement and payment to the CONTRACTOR in the amount of \$ \_\_\_\_\_.
7. This Affidavit and Final Release is made by CONTRACTOR with full knowledge of the applicable laws of the State of Florida. In addition to such rights as may be afforded to DISTRICT under said applicable laws, CONTRACTOR expressly agrees to indemnify and save DISTRICT harmless from any and all actual costs and expenses, including reasonable attorney's fees, arising out of claims by laborers, sub-contractors or materialmen who might claim that they have not been paid for services or material furnished by or through the CONTRACTOR in connection with the work performed under the CONTRACT.

8. To the best of CONTRACTOR's knowledge and belief, the following is a list of all employed under this CONTRACT who have filed a Notice to Owner with the DISTRICT:

	NAME	ADDRESS	AMOUNT DUE (If known)
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

(Attach a separate sheet if necessary)

The CONTRACTOR herein does hereby represent that he/she has the authority to execute a full and final release for and in behalf of the CONTRACTOR as set forth above.

(Corporate Seal) By: \_\_\_\_\_

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

SWORN TO and subscribed before me this \_\_\_\_\_ day of,  
\_\_\_\_\_ 20 \_\_\_\_ .

(Notary Seal) By: \_\_\_\_\_  
Notary Public

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

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

# CONSENT OF SURETY TO FINAL PAYMENT

We, the \_\_\_\_\_ (“**SURETY**”), having heretofore executed the Performance and Payment Bonds for \_\_\_\_\_ (“**CONTRACTOR**”) covering the Project known as C-43 West Caloosahatchee Basin Storage Reservoir – Part 2, Hendry County, Florida, in the sum of \$\_\_\_\_\_ hereby agree that the **DISTRICT** may make full payment of the outstanding contract balance, including the retained percentage, to said **CONTRACTOR**. The **SURETY** concurs that full payment to the **CONTRACTOR** is appropriate and the **SURETY** expressly releases the **DISTRICT** from all liability to **SURETY** resulting from full payment to **CONTRACTOR**.

It is fully understood that the acknowledging of the right of the **DISTRICT** to make payment of the final estimate to said **CONTRACTOR** and/or his assigns, shall in no way relieve this **SURETY** company of its obligations under its bonds, as set forth in the Contract Documents and Bonds pertaining to the above Project.

This **SURETY** company further hereby agrees to the following:

1. Owner is under no obligation, as to **SURETY**, to conserve any additional funds on the project;
2. Owner has not made any improper payments on the Project to the **CONTRACTOR**;
3. **SURETY** hereby releases Owner of any potential claim that Owner’s final payment, including retainage, to **CONTRACTOR** is premature or in any way improper;
4. **SURETY** has satisfied for itself that **CONTRACTOR** has performed all conditions precedent entitling it to final payment on the Project, including but not limited to the securing of all necessary releases, affidavits, and sworn statements of accounts that **SURETY** may require from **CONTRACTOR** on the Project;
5. **SURETY** has satisfied for itself that **CONTRACTOR** has performed all Work that would thus entitled it to final payment on the Project; and
6. **SURETY**’s representations in this Consent Agreement are in no way based upon the representations of the Owner, including but not limited to, any representations of payments **CONTRACTOR** allegedly made to subcontractors, suppliers, laborers, or any other lower-tiered persons or entities on the Project.

In no way do the representations and agreements made in this Consent Agreement affect **CONTRACTOR**’s obligations to the Owner or **SURETY** on the Project. **CONTRACTOR** is not an intended third-party beneficiary to this Consent Agreement.

