

FLORIDA KEYS AQUEDUCT AUTHORITY
NAVY SYSTEM UPGRADES – WASTEWATER PUMPING SYSTEMS
BOCA CHICA KEY, SIGSBEE PARK, AND FLEMING KEY

FCAA PROJECT # 4072-17

BID CONTRACT DOCUMENTS

APRIL 2018

MONROE COUNTY
FLORIDA

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INVITATION TO BID

FKAA PROJECT # 4072-17

NAVY SYSTEM UPGRADES – WASTEWATER PUMPING SYSTEMS

Sealed Proposals for NAVY SYSTEM UPGRADES – WASTEWATER PUMPING SYSTEMS will be received at the Engineering Department of the Florida Keys Aqueduct Authority (FKAA), 1100 Kennedy Drive, Key West, Florida 33040, until 2:00 p.m., local time on the 4th day of May, 2018 and then will be publicly opened and read. Any bids received after the time and date specified will not be considered.

The proposed project consists of the rehabilitation of four sewer lift stations on U.S. Navy property, including the replacement of piping and appurtenances ranging in size from 4-inch to 10-inch diameter, as well as pump guide rails, supports, and pull chains; the lining of one sewer lift station wet well; and cutting and capping a gravity overflow line at one sewer lift station.

Drawings and Specification may be obtained on Demand Star by Oniva at www.demandstar.com/supplier or call toll free 1-800-711-1712, they will also be available at www.fkaa.com under “Bid Opportunities”.

A mandatory Pre-bid Meeting is scheduled on Thursday, April 26th, 2018 at 9:00am at the Florida Keys Aqueduct Authority, Conference Room at 1100 Kennedy Drive, Key West, Florida 33040. The Pre-bid Meeting will be followed by a mandatory tour of the work sites, which are on U.S. Navy property.

Each proposal must be submitted on the prescribed form and accompanied by a certified check or bid bond executed on the prescribed form, payable to the Florida Keys Aqueduct Authority, in an amount not less than 5 percent of the amount bid.

The Contract, if awarded, will be awarded to the responsive and responsible bidder submitting the lowest combined lump sum price bid, accepted by the FKAA.

All bid bonds, contract bonds, insurance contracts, and certificates of insurance shall be either executed by or countersigned by a licensed resident agent of the surety or insurance company having his place of business in the State of Florida, and in all ways complying with the insurance laws of the State of Florida. Further, the said surety or insurance company shall be duly licensed and qualified to do business in the State of Florida.

In order to perform public work, the successful Bidder shall hold or obtain such Contractors’ and Business Licenses as required by State Statutes.

Before a Contract will be awarded for the work contemplated herein, the FKAA will conduct such investigation as is necessary to determine the performance record and ability of the apparent low bidder to perform the size and type of work specified under this Contract. Upon request, the Bidder shall submit such information as deemed necessary by the FKAA to evaluate the Bidder’s qualifications.

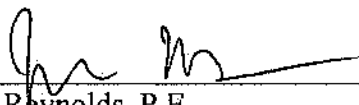
The FKAA reserves the right to reject all Proposals where the FKAA deems rejection to be in its best interest, or to reject any Proposal not in compliance with the Contract Documents. The FKAA reserves the right to waive any informalities and irregularities in said Proposals.

Firms are hereby placed on formal notice that neither the FKAA Board of Directors, nor any employees of the FKAA are to be lobbied either individually or collectively concerning this project.

The Governing Board of Directors of the Florida Keys Aqueduct Authority reserves the right to reject any and all bids, in whole or in part, to waive any irregularities or informalities in any bid, and to award to any party considered to be in the best interest of the Authority.

Dated this 12th day of April 2018.

FLORIDA KEYS AQUEDUCT AUTHORITY

By 

Jolynn Reynolds, P.E.
Manager of Engineering

END OF SECTION

INSTRUCTIONS TO BIDDERS

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INSTRUCTIONS TO BIDDERS

1. FORMAT

The Contract Documents are divided into parts, divisions, and sections to separate categories of subject matter for convenient reference. Generally, there has been no attempt to divide the Specification sections into work performed by the various building trades, work by separate subcontractors, or work required for separate facilities in the project.

2. SPECIFICATION LANGUAGE

Command type sentences are used in the Contract Documents. These refer to and are directed to the Contractor.

3. GENERAL DESCRIPTION OF THE PROJECT

A general description of the work to be done is contained in the Invitation To Bid. The scope of work is further indicated on the accompanying Drawings and specified in applicable parts of these Contract Documents.

4. QUALIFICATION OF CONTRACTORS

The prospective bidders must meet the statutorily prescribed requirements before Award of Contract by the FKAA.

The FKAA reserves the right before awarding the Contract to require a Bidder to submit such evidence of his qualifications as it may deem necessary, and may consider any evidence available to the FKAA of the financial, technical, and other qualifications and abilities of a Bidder. The Bidder must submit in letter form, with his Proposal, a statement of his qualifications to perform in a satisfactory manner, and within the time specified, and in fulfillment of all applicable provisions of the Contract Documents, all of the work to which his bid pertain. He must submit information as to the following Qualification Requirements:

- A. The Bidder has the authorization to conduct business and holds at a minimum, an Underground Utility Contractors license for the installation of main sanitary sewer collection systems, repair of main sanitary sewer or similar type work or a General Contractors License for construction of building structures, and valid certifications of competency of qualifications, (issued by the public agencies having jurisdiction of the area where the project is located) required to perform the work proposed by these Contract Documents.
- B. The Bidder has the financial resources deemed necessary to permit the project to proceed without interruption and complete as specified herein.

- C. The Bidder has a well trained and competent organization which has done work of similar character and magnitude. An organizational structure as intended, including total manpower, to complete the project will be submitted with the Bidder's proposal.
- D. The Bidder will have adequate equipment available to do the work at the proper time. A complete list of all equipment intended for use on this project will be submitted with the Bidder's proposal.
- E. The Bidder has ample repair parts and supplies to maintain all FKAA facilities properly, and with a minimum of delay.
- F. The Bidder will have an adequate sewage bypass pumping plan in place for the duration of sewer lift station outages. A bypass pumping plan for each sewer lift station will be submitted with the Bidder's proposal.

The Contract will be awarded only to a Bidder who, in the opinion of the FKAA, is fully qualified to perform the work proposed by these Contract Documents. Each Bidder shall complete and submit with his bid the attached document entitled Information Required of Bidder.

The above Qualification Requirements will be deemed met, and the Information Required of Bidder need not be submitted, provided the Bidding Contractor has timely and successfully completed similar work with the FKAA within the past two years.

At the request of a Bidding Contractor, the FKAA may accept evidence of qualification with other agencies of the State of Florida in lieu of all or a portion of the above Qualification Requirements.

5. DOCUMENT INTERPRETATION

The Contract Documents governing the work proposed herein consist of the Drawings and all material bond herewith. These Contract Documents are intended to be mutually complementary and to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any person contemplating the submission of a Proposal shall have thoroughly examined all of the various parts of these documents, and should there be any doubt as to the meaning or intent of said Contract Documents, the Bidder should request of the FKAA, in writing (at least 6 working days prior to bid opening) an interpretation thereof. Any interpretation or change in said Contract Documents will be made only in writing, in the form of Addenda to the Contract Documents which will be furnished to all Bidders receiving a set of the Contract Documents. Bidders shall submit with their Proposals, or indicate receipt of, all Addenda. The FKAA will not be responsible for any other explanation or interpretations of said Contract Documents not issued in writing by Addendum.

6. BIDDER'S UNDERSTANDING

Each Bidder must inform himself of the conditions relating to the execution of the work, and it is assumed that he will inspect the site and make himself thoroughly familiar with all the Contract Documents. Failure to do so will not relieve the successful Bidder of his obligation to enter into a Contract and complete the contemplated work in strict accordance with the Contract Documents. It shall be the Bidder's obligation to verify for himself and to his complete satisfaction all information concerning site and subsurface conditions. Each Bidder shall inform himself of, and the Bidder awarded a Contract shall comply with all Federal, State, and local laws, statues, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees, maintenance of traffic and similar subjects.

7. DRAWINGS

Design Drawings or Shop Drawings submitted to the FKAA by the Bidder must be standard size prints (Refer to Florida Keys Aqueduct Minimum Design and Construction Standards and Specifications).

8. TYPE OF PROPOSAL

A. LUMP SUM

When the Proposal for the work is to be submitted on a lump sum basis, a single lump sum price shall be submitted in the appropriate place. The total amount to be paid the Contractor shall be the amount of the lump sum proposal as adjusted for additions or deletions resulting from changes in construction. The Bidder shall furnish, in the spaces provided in the Proposal, a breakdown of his lump sum bid.

B. COMBINED UNIT PRICE - LUMP SUM

When the Proposal for the work is to be submitted on a combined unit price - lump sum basis, unit prices or lump sum price amounts shall be submitted for all items of work set forth in the Proposal. All items required to complete the work specified or shown on the Drawings but not included in the Proposal shall be considered incidental to those set forth in the Proposal. The estimate of quantities of work to be done is tabulated in the Proposal and, although stated with as much accuracy as possible, is approximate only and is assumed solely for the basis of calculation upon which the award of Contract shall be made. Payment to the Contractor for unit price work will be made on the measurement of the work actually performed by the Contractor as specified in the Contract Documents. The total amount to be paid the Contractor for the lump sum work shall be the amount of the lump sum Proposal as

adjusted for additions or deletions resulting from FKAA-authorized changes in the project.

9. PREPARATION OF PROPOSALS

All blank spaces in the proposal form must be filled in, preferably in BLACK ink, in both words and figures where required. No changes shall be made in the phraseology of the forms. Written amounts shall govern in cases of discrepancy between the amounts stated in figures. In case of discrepancy between unit prices and totals, unit prices will prevail.

Any Proposal may be deemed nonresponsive which contains material omissions, or irregularities, or in which any of the prices are obviously unbalanced, or which in any manner shall fail to conform to the conditions of the published Invitation To Bid.

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

The Bidder shall sign his Proposal in the blank space provided therefore. If Bidder is a corporation, the legal name of the corporation shall be set forth above, together with the signature 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 above, together with the signature of the partner or partners authorized to sign Contracts in behalf of the partnership. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a notarized power-of-attorney must be on file with the FKAA prior to opening of Proposals or submitted with the Proposal.

A. CHANGES IN QUANTITIES

The FKAA reserves the right to increase or decrease the amount of class of work item shown in the Proposal that may be deemed necessary. In the event of increase or decrease, the unit prices for such work items may be subject to adjustment as provided in Section 8.2, of the General Conditions.

10. STATE AND LOCAL SALES AND USE TAXES

Unless any Supplementary Conditions contain a statement that the FKAA is exempt from State sales tax on materials incorporated into the work due to the qualification of the work under this Contract, all State and local sales and use taxes, as required by the laws and statutes of the State and its political subdivisions, shall be paid by the Contractor. Prices quoted in the Proposal shall include all nonexempt sales and use taxes, unless provision is made in the Proposal form to separately itemize the tax.

If any Supplementary Conditions state that the FKAA is exempt from State sales tax on any materials, the Contractor must follow such procedures as may be necessary to preserve the sales tax exemption. If the Contractor fails to do so, he must pay all resulting sales taxes, including applicable interest, penalties or other costs.

11. SUBMISSION OF PROPOSALS

All Proposals must be submitted not later than the time prescribed, at the place, and in the manner set forth in the Invitation To Bid. Proposals must be made on the Proposal forms provided herein. Each Proposal must be submitted in a sealed envelope, so marked as to indicate its contents without being opened, and addressed in conformance with the instructions in the Invitation To Bid.

12. TELEGRAPHIC OR WRITTEN MODIFICATION OF PROPOSAL

Any Bidder may modify his bid by telegraphic or written communication at any time prior to the scheduled closing time for receipt of bids, provided such communication is received by the FKAA prior to the closing time. The telegraphic or written communication should not reveal the bid price; it should, however, state the addition or subtraction or other modification so that the final prices or terms will not be known by the FKAA until the sealed bid is opened.

13. WITHDRAWAL OF PROPOSAL

Any Proposal may be withdrawn prior to the scheduled time for the opening of Proposals either by telegraphic or written request, or in person. If, within twenty-four hours after Bids are opened, any Bidder files a duly signed written notice with the FKAA and promptly thereafter demonstrates to the reasonable satisfaction of the FKAA that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the work to be provided under the Contract Documents.

14. BID SECURITY

Proposals must be accompanied by, a certified check, or cashier's check drawn on any State or National Bank, or a bid bond issued by a Surety authorized to issue such bonds in the State where the work is located, in the amount of 5 percent of the total amount of the proposal submitted. This bid security shall be given as a guarantee that the Bidder will execute the attached Contract and furnish properly executed Performance and Payment Bonds, each in the full amount of the Contract price within the time specified.

The Attorney-in-Fact who executes this bond in behalf of the Surety must attach a notarized copy of his power-of-attorney as evidence of his authority to bind the Surety on the date of execution of the bond. Where State Statute requires, certification by a resident agent shall also be provided.

If the Bidder elects to furnish a Bid Bond, he shall use the Bid Bond form bound herewith, or one conforming substantially thereto in form and content.

15. RETURN OF BID SECURITY

Within 30 days after the award of the Contract, the FKAA will return the bid securities to all Bidders whose Proposals are not to be further considered in awarding the Contract. Retained bid securities will be held until the Contract has been finally executed, after which all bid securities, other than Bidder's bonds and any guarantees which have been forfeited, will be returned to the respective Bidders whose Proposals they accompanied.

16. AWARD & BASIS OF CONTRACT

The FKAA reserves the right to accept any Bid or combination of Bid alternates which, in the FKAA's judgment will best serve the FKAA's interest, reject any and all Bids, to waive any and all informalities and/or irregularities, and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. The FKAA reserves the right to reject any one or all Bids, or any part of any Bid, to waive any informality in any Bid, and to award the purchase in the best interest of the FKAA. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

Within 30 calendar days after the opening of Proposals, unless otherwise stated in the Invitation To Bid or Supplementary Conditions of these Documents, the FKAA will issue notice that it intends to accept one of the proposals or will act in accordance with BASIS OF AWARD, below. Acceptance of the Proposal by the FKAA will be by written Notice of Award, mailed or delivered to the office designated in the Proposal. In the event of failure of the lowest responsible and responsive qualified Bidder to sign and return the Contract, as prescribed herein, the FKAA may award the Contract to the next lowest responsible and responsive qualified Bidder. Such award, if made by the FKAA will be made within 30 days after the opening of Proposals.

17. BASIS OF AWARD

The Contract will be awarded to the responsible Bidder submitting the lowest acceptable Proposal.

The award will be made by the FKAA on the basis of that Proposal from the lowest responsive*, responsible**, qualified Bidder. When projects are paid for in part with Federal funds, the award will be made on the basis of that Proposal submitted by the responsive, responsible, qualified Bidder submitting the lowest Proposal acceptable to the financing agency.

*RESPONSIVE BIDDER: Any person, firm or corporation submitting a bid for the work contemplated whose Bid Form is complete and regular, free of exclusions or special conditions and has no alternative bids for any item unless requested in the technical specifications.

**RESPONSIBLE BIDDER: Any person, firm or corporation submitting a bid for the work contemplated who maintains a permanent place of business, has adequate plant equipment to do the work properly and within the time limit that is established, and has complied with FKAA's procedures to establish to FKAA's reasonable satisfaction that he is qualified to perform the Contract, and has adequate financial status to meet his obligations contingent to the work.

18. EXECUTION OF CONTRACT

The successful Bidder shall, within 15 calendar days, not including Sundays and legal holidays, after receiving Notice of Award, sign and deliver to the FKAA the Contract hereto attached together with the acceptable bonds as required in these Documents. Within 5 days, not including Sundays and legal holidays, after receiving the signed Contract with acceptable bonds from the successful Bidder, and if the FKAA is satisfied that all conditions of these Contract Documents have been satisfied, the Executive Director of the FKAA or his authorized agent will sign the Contract. Signature by both parties constitutes formation of the Contract.

19. PLANS FOR CONSTRUCTION

The successful Bidder will be furnished 3 sets of documents without charge. Any additional copies required will be furnished to the Contractor at reproduction cost.

20. PERFORMANCE AND PAYMENT BONDS

The successful Bidder shall file with the FKAA separate Performance Bond and Payment Bonds on the forms bound herewith, each in the full amount of the Contract price in accordance with the requirements of Florida Statutes Section 255.05, as security for the faithful performance of the Contract and the payment of all persons supplying labor and materials for the construction of the work, and to cover all guarantees against defective workmanship or materials, or both, for a period of one (1) year after the date of final acceptance of the work by the FKAA, except that materials supplied by the FKAA shall not be covered by the Payment Bond.

The Surety furnishing these bonds shall be authorized to do business in the State of Florida, shall be in compliance with the provisions of the Florida Insurance Code, shall have twice the minimum surplus and capital required by the Florida Insurance Code, and shall hold a currently valid certificate of authority issued by the United States Department of Treasury pursuant to Section 31, Paragraphs 9304-9308, of the United States Code.

For contracts in which the amount is greater than \$500,000.00 the Surety must, in addition to the above requirements, have a rating of not less than (A-) by the latest edition of the KEY RATING GUIDE as published by A.M. Best Company, A.M. Best Road, Oldwick, NJ 08858.

For contracts \$200,000 or less, the alternate bonding procedure described in Paragraph 22 may be utilized.

The Attorney-in-Fact (Resident Agent) who executes the Performance and Payment Bonds in behalf of the Surety must attach a notarized copy of his power-of-attorney as evidence of his authority to bind the Surety on the date of execution of the bonds.

All Contracts, Performance and Payment Bonds, and respective powers-of-attorney will have the same date.

21. FAILURE TO EXECUTE CONTRACT AND FURNISH BOND

The Bidder who receives Notice of Intended Award to him and who fails to promptly and properly execute the Contract and furnish the Performance and Payment Bonds shall forfeit the bid security that accompanied his bid, and the bid security shall be retained as liquidated damages by the FCAA, and it is agreed that this sum is a fair estimate of the amount of damages the FCAA will sustain in case the Bidder fails to enter into a Contract and furnish the bonds as hereinbefore provided. Bid security deposited in the form of, a certified check, or cashier's check shall be subject to the same requirements as a Bid Bond.

22. ALTERNATIVE TO PERFORMANCE AND PAYMENT BONDS

If the total contract amount is \$200,000 or less, the Bidder who has a contract awarded to him is not required to furnish the Performance and Payment Bonds described above. If the Contractor elects not to furnish said bonds, Contractor shall be required to conform to the following procedures relative to payment of contractors, subcontractors, laborers and materialmen.

I.

At any time prior to final completion of the contract, the FCAA shall not authorize or make payment to the Contractor in excess of ninety percent (90%) of the amount due on the contract on the basis of the work suitably completed and material suitably stored on the site. In case of default by the Contractor, the Laborers, Materialmen, and Subcontractors, making claims for unpaid bills, will be paid from the ten percent (10%), retainage (as defined in Florida Statutes section 713.01), on a pro rata basis as follows. The sum all valid claims made shall be divided into each individual claim thereby deriving a percentage value for each individual claim. The total retainage will then be multiplied by the percentage value for each individual claim and the result shall be the pro rata share of the retainage to be paid to each claimant. However, no payment shall exceed the valid claim made.

II.

The Contractor shall provide a certified list of all subcontractors, laborers and material suppliers to the FCAA's Construction Manager within ten days of his receiving his Notice to Proceed with the work. This list shall be immediately updated thereafter with notice of subcontractors provided prior to such subcontractors entering the job site(s). Each month a certified statement shall be sent to the FCAA stating that the list and its updates include the names and addresses of all of those subcontractors, laborers, and material suppliers furnishing labor and/or material for the project.

III.

The FCAA shall place a notice in the following form, on three successive weeks, in a local newspaper and the Contractor shall post such notice in a conspicuous place on the project site:

“Notice is hereby made to all those concerned and affected that (CONTRACTOR'S NAME) is performing (PROJECT NAME), (PROJECT NUMBER) at (LOCATION) for the Florida Keys Aqueduct Authority. All parties furnishing labor and/or materials to said project are requested to provide notice of such in writing by certified mail to the Construction Manager, Florida Keys Aqueduct Authority, 1100 Kennedy Drive, Key West, Florida 33040, within twenty days of first providing such labor and/or materials.”

IV.

When a Contractor receives any payment from the FCAA, the Contractor shall pay such moneys received to each Subcontractor and Supplier in proportion to the percentage of work completed by each Subcontractor and Supplier at the time of receipt of the payment. If the Contractor receives less than full payment, then the Contractor shall be required to disburse only the funds received on a pro rata basis with the Contractor, Subcontractors, and Suppliers, each receiving a prorated portion based on the amount due on the payment. The Contractor shall make such payments within seven (7) working days after receipt by the Contractor of such full or partial payment, and if the Contractor without reasonable cause fails to do so, the Contractor shall in addition pay the penalties imposed by Florida Statutes section 287.0585.

V.

The Contractor shall provide a written statement with each pay request to the FCAA's Construction Manager which indicates which Subcontractors and Suppliers will be paid and how much to each. This pay request breakdown shall define the disbursement intended for all of the funds requested.

VI.

With all but the first payment request, the Contractor shall provide a written statement from each of the Subcontractors and Suppliers indicated in V. above that payments is indicated in the preceding statements have been made as indicated. In the event any payment is not made as indicated on a prior statement noted V. above, the Contractor shall immediately furnish an explanation as to the reasons for such deviation and shall request approval from the FKAA's Construction Manager.

VII.

The final payment of retainage (i.e., the last 10% of the amount due on the contract) shall not be made until the project has been inspected by the person designated by the FKAA for that purpose and until he has verified that the project has been constructed in accordance with the approved plans, specifications and approved change orders and until the project has been accepted.

The final payment of retainage (i.e., the last 10% of the amount due on the contract) shall not be made until the Contractor has supplied the FKAA with signed and dated statements, from all Laborers, Materialmen, and Subcontractors identified under II, above, stating that they have not claims against the Contractor for the work under the contract. Said statements shall identify the project by name and project number.

23. **PERFORMANCE OF WORK BY CONTRACTOR**

The Contractor shall perform on the site and with his own organization, labor equivalent to at least sixty percent of the total amount of the work to be performed under this Contract. If, during the progress of the work hereunder, the Contractor requests a reduction of such percentage, and the FKAA determines that it would be to the FKAA's advantage, the percentage of the labor required to be performed by the Contractor's own organization may be reduced; PROVIDED prior written approval of such reduction is obtained by the Contractor from the FKAA.

24. **TIME OF COMPLETION**

The time of completion of the work to be performed under this Contract is the essence of the Contract. Delays and extensions of time may be allowed in accordance with the provisions stated in Article 7.7, of the General Conditions. The time allowed for the completion of the work is stated in the Proposal.

25. **SHOP DRAWINGS**

The Contractor shall submit a minimum of four (4) copies, each, of shop drawings. Three (3)

of these will be retained by the FKAA with one (1) being returned to the Contractor. If the Contractor requires more than one (1) shop drawing to be returned, he may submit the number as required to a maximum of eight (8) total. Shop drawings shall consist of illustrative data, specifications, setting plans, installation instructions where required, and other data as may be requested, to the FKAA, for approval prior to ordering fabrication of specially fabricated materials to be furnished. Any purchase, fabrication or shipment of materials and equipment prior to such approval, shall be of the Contractor's risk and of such materials and equipment may be rejected if they do not meet all the requirements of the Contract Documents.

The Contractor shall submit all Drawings at least one (1) month prior to the time the equipment will be installed or in accordance with a schedule submitted at the time of the preconstruction conference and agreed upon by the FKAA.

Prior to his submission of shop drawings, the Contractor shall have verified any necessary field dimensions, and shall have determined conformance with the requirements of the Contract Documents, or, upon submission, advise the FKAA of any deviations. The submitted shop drawings shall bear the Contractor's stamp of approval indicating that the Contractor has made such verification and determination. Shop drawings shall be clearly detailed and dimensioned. If, in the opinion of the Engineer, the shop drawings submitted are incomplete, or inaccurate, he may reject them without checking and require re-submission.

The FKAA or its designee shall review shop drawings with reasonable promptness, but the review and approval shall be only for conformance with the design concept of the project, and compliance with the requirements of the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions or programs incident thereto. The FKAA's approval of shop drawings shall not relieve the Contractor of any deviation from the requirements of the Contract Documents, without the Engineer's written specific approval of such deviation, nor shall it relieve the Contractor from responsibility for errors and omissions in shop drawings nor from his basic responsibility of satisfactory completion of the project in accordance with the requirements of the Contract Documents.

26. SUB-CONTRACTING/MBE PARTICIPATION

The FKAA reserves the right to accept or reject any or all bids wherein a subcontractor is named and to make the award to the Bidder, who, in the opinion of the FKAA will be in the best interest of and/or most advantageous to the FKAA. The FKAA also reserves the right to reject a bid of any Bidder if the bid names a subcontractor who has previously failed in the proper performance of an award or failed to deliver on time contracts of a similar nature, or who is not in a position to perform properly under this award. The FKAA reserves the right to make said determination.

Bidders are hereby informed that the FKAA encourages the utilization and participation of Minority and Women Business Enterprises in contracts financed with FKAA funds. Bidders are encouraged to seek Minority and Women Business Enterprises for participation in subcontracting opportunities.

27. PUBLIC ENTITY CRIMES

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

* * * * *

PROPOSAL

NOTE TO BIDDER: Use Ink, preferably **BLACK**, for completing this PROPOSAL FORM.

To: **Hand Delivered, U.S. Postal Service or Overnight Services**
Florida Keys Aqueduct Authority
Purchasing Department
FKAA Project #4072-17
1100 Kennedy Drive
Key West, Florida 33040

Project Title: NAVY SYSTEM UPGRADES – WASTEWATER PUMPING SYSTEMS

FKAA Project: # 4072-17

Bidder’s person to contact for additional information on this Proposal:

Name: Justin Dacey, Water Systems Specialist

Telephone: (305) 295-2151

BIDDER’S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the FKAA, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

The Bidder further declares that the Bidder has carefully examined the Contract Documents for the construction of the project, that the Bidder has personally inspected the site, that the Bidder has satisfied himself as to the quantities involved, including materials and equipment, and conditions of work involved, including the fact that the description of the quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the Contract Documents, and that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal.

The Bidder further agrees that the Bidder has exercised his own judgment regarding the interpretation of subsurface information and has utilized all data which the Bidder believes pertinent from the Engineer, FKAA, and other sources in arriving at his conclusions.

SALES AND USE TAXES

The Bidder agrees that all sales and use taxes are included in the stated bid prices for the work, unless provision is made herein for the Bidder to separately itemize the estimated amount of sales tax.

UNIT PRICE WORK

The Bidder further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on the following unit price amounts, it being expressly understood that the unit prices are independent of the exact quantities involved. The Bidder agrees that the unit prices represent a true measure of the labor and materials required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents. The amounts shall be shown in both words and figures. In case of a discrepancy, the amount shown in words shall govern.

PUBLIC ENTITY CRIMES

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

FLORIDA TRENCH SAFETY ACT

The Bidder further acknowledges that included in the various items of the Proposal and in the total bid price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. These costs shall not be paid for in a separate bid item.

UNIT PRICE BID

FLORIDA KEYS AQUEDUCT AUTHORITY

FCAA PROJECT # 4072-17

<u>ITEM</u>	<u>QUAN.</u>	<u>UNIT</u>	<u>UNIT PRICE FIGURES</u>	<u>UNIT PRICE WORDS</u>	<u>TOTAL EXT. AMOUNT FIGURES</u>
1. General Conditions					
(a) Mobilization & Demobilization (Maximum of 5%-See Section 01025)					
			Lump Sum		
			\$ _____	_____	\$ _____
(b) Bonds and Insurance					
			Lump Sum		
			\$ _____	_____	\$ _____
(c) Maintenance of Traffic (MOT)					
			Lump Sum		
			\$ _____	_____	\$ _____
(d) As-Built Record Drawings					
			Lump Sum		
			\$ _____	_____	\$ _____
2. Rehabilitation of Lift Station A-647					
(a) Lift Station A-647 Equipment Removal and Storage					
			Lump Sum		
			\$ _____	_____	\$ _____
(b) Lift Station A-647 Bypass					
			Lump Sum		
			\$ _____	_____	\$ _____
(c) Lift Station A-647 Mechanical Work					
			Lump Sum		
			\$ _____	_____	\$ _____
(d) Lift Station A-647 Pump and Control Re-Connection and Testing					
			Lump Sum		
			\$ _____	_____	\$ _____
(e) Lift Station A-647 Site Restoration					
			Lump Sum		
			\$ _____	_____	\$ _____

3. Rehabilitation of Lift Station A-939

- (a) Lift Station A-939 Equipment Removal and Storage
Lump Sum
\$ _____ \$ _____
- (b) Lift Station A-939 Bypass
Lump Sum
\$ _____ \$ _____
- (c) Lift Station A-939 Mechanical Work
Lump Sum
\$ _____ \$ _____
- (d) Lift Station A-939 Pump and Control Re-Connection and Testing
Lump Sum
\$ _____ \$ _____
- (e) Lift Station A-939 Site Restoration
Lump Sum
\$ _____ \$ _____

4. Rehabilitation of Lift Station V-4155

- (a) Lift Station V-4155 Equipment Removal and Storage
Lump Sum
\$ _____ \$ _____
- (b) Lift Station V-4155 Bypass
Lump Sum
\$ _____ \$ _____
- (c) Lift Station V-4155 Mechanical Work
Lump Sum
\$ _____ \$ _____
- (d) Lift Station V-4155 Cut and Cap 8-inch Overflow Line
Lump Sum
\$ _____ \$ _____
- (e) Lift Station V-4155 Pump and Control Re-Connection and Testing
Lump Sum
\$ _____ \$ _____
- (f) Lift Station V-4155 Site Restoration
Lump Sum
\$ _____ \$ _____

5. Rehabilitation of Lift Station K-100

(a) Lift Station K-100 Equipment Removal and Storage

Lump Sum

\$ _____ \$ _____

(b) Lift Station K-100 Bypass

Lump Sum

\$ _____ \$ _____

(c) Lift Station K-100 Sandblasting, Patching, and Lining

Lump Sum

\$ _____ \$ _____

(d) Lift Station K-100 New 48-inch by 72-inch Valve Vault

Lump Sum

\$ _____ \$ _____

(e) Lift Station K-100 Mechanical Work

Lump Sum

\$ _____ \$ _____

(f) Lift Station K-100 Pump and Control Re-Connection and Testing

Lump Sum

\$ _____ \$ _____

(g) Lift Station K-100 Site Restoration

Lump Sum

\$ _____ \$ _____

6. Contingency Allowance

(a) **Lump Sum** \$30,000

\$ _____ \$ _____

SUM OF EXTENDED TOTALS

BASIS OF AWARD

\$ _____ \$ _____

Name of Firm Submitting Bid

Signature of Bidder

Title

SUBCONTRACTORS

The Bidder further proposes that the following subcontracting firms or businesses will be awarded subcontracts for the following portions of the work in the event that the Bidder is awarded the Contract:

_____, _____, \$ _____
Name Type Work Value

_____, _____, _____, _____
Street City State Zip Code

_____, _____, \$ _____
Name Type Work Value

_____, _____, _____, _____
Street City State Zip Code

_____, _____, \$ _____
Name Type Work Value

_____, _____, _____, _____
Street City State Zip Code

SURETY

The Bidder is awarded a construction Contract on this Proposal, the Performance and Payment Bonding will be handled in the following manner (Bidder to check one):

[] In accordance with Paragraph 22 of "Instructions to Bidders", Performance and Payment Bonds will not be furnished. Bidder agrees to abide by the conditions of Paragraph 22 (**FOR CONTRACTS LESS THAN \$200,000 ONLY**).

[] Payment and Performance Bonds will be furnished by a Surety. The Surety who will provide the Payment and Performance Bonding will be _____ whose address is _____

Street
_____, _____, _____
City State Zip Code

BIDDER

The name of the Bidder submitting this Proposal is _____
_____, doing business at

Street City State Zip Code

which is the address to which all communications concerned with this Proposal and with the Contract shall be sent.

The names of the principal officers of the corporation submitting this Proposal, or of the partnership, or of all persons interested in this Proposal as principals are as follows:

If Sole Proprietor or Partnership

IN WITNESS hereto the undersigned has set his (its) hand this day of _____, _____.

Signature of Bidder

Title

If Corporation

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this _____ day of _____, 20____.

(SEAL)

Name of Corporation

By _____

Title _____

Attest _____
Secretary

Information Required of Bidder

GENERAL INFORMATION

The Bidder shall furnish the following information. Failure to comply with this requirement may render the Proposal nonresponsive and may cause its rejection. Additional sheets shall be attached as required.

1. Contractor's Telephone Number: _____
2. Contractor's License: _____
Primary Classification: _____
Florida State License No.: _____
Supplementary classifications held, if any: _____

3. Number of years as a contractor in construction work of this type: _____
4. Names of persons who inspected site of proposed work for your firm:
Name: _____
Dates of Inspection: _____
Name: _____
Dates of Inspection: _____
5. ATTACH TO THIS BID the experience resume of the person who will be designated chief construction superintendent.
6. ATTACH TO THIS BID references and other information sufficiently comprehensive to permit an appraisal of contractor's current financial condition.
7. ATTACH TO THIS BID Contractor's organizational structure, including manpower, to complete the project within the specified limits.
8. ATTACH TO THIS BID Contractor's list of equipment intended for use to complete the project within the specified limits.
9. ATTACH TO THIS BID a list of all construction contracts completed by the Contractor during the last five (5) years involving work of similar type and comparable value. This list

shall include the following information as a minimum:

Name, address, and telephone number of Owner

Name of project

Location of project

Brief description of the work involved

Contract amount

Date of completion of contract

Name, address, and telephone number of architect or engineer

Name of the Owner's Construction Manager

10. ATTACH TO THIS BID a bypass pumping plan for each of the four sewer lift stations in the Scope of Work. This plan shall, as a minimum, include the following information:

Lift station identification for each plan

Bypass pump noise level at 30 feet

Location(s) and size of line(s) to be plugged and type of plug(s) to be used

Modification(s) to influent pipe routing

Bypass pump location(s) and influent wet well plan (utilization of pumping from terminal manhole(s), use of temporary wet well, etc.)

Capacity and quantity of bypass pumps

Approximate location of discharge force main tie-in point(s)

Redundancy, back-up, and emergency response plan

PRINCIPAL herein, has caused these presents to be signed in its name by its _____ and _____ attested by its _____ under its corporate seal, and the said _____ as SURETY herein, has caused these presents to be signed in its name by its _____ corporate seal, this _____ day of _____ A.D., 20__.

Signed, sealed and delivered in presence of:

_____ the Principal-Contractor

By _____
Title _____ As
to Principal

Surety

By _____
Attorney-in-Fact
(Power-of-Attorney to be attached)

_____ to Surety

By _____ As
Resident Agent

CONTRACT

THIS AGREEMENT, made and entered into on the _____ day of _____, by
And between” _____”, the “**CONTRACTOR**” and the “**FLORIDA KEYS
AQUEDUCT AUTHORITY**”. **THE FKAA**

WITNESSETH:

That the Contractor, for the consideration hereinafter fully set out, hereby agrees with the FKAA as follows:

1. That the Contractor shall furnish materials as required, and perform all of the work in manner and form as provided by the following enumerated Contract Documents, which are attached hereto and made a part hereof, as if fully contained here:

Invitation to Bid; Instructions to Bidders; General Conditions; Supplementary Conditions; Specifications; Proposal; Addenda; and the Drawings.

As contained in:

2. The work must be substantially completed, as defined by Article 1.16 of the General Conditions, within **150 calendar days** from the date of the Notice to Proceed. The work as provided in Article 1.15, of the General Conditions, and completed and ready for final payment in accordance with Article 1.17, of the General Conditions within **30 calendar days** from the date of Substantial Completion.
3. Liquidated Damages: The Contractor recognizes that time is of the essence of the FKAA Contract and that the FKAA will suffer financial loss if the work is not completed within the times specified in paragraph 2 above, plus any extensions thereof allowed in accordance with Article 7.9 of the General Conditions.

All parties recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the FKAA if the work is not completed on time. Accordingly, instead of requiring any such proof, the FKAA and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the FKAA [\$1,000.00] for each day that expires after the time specified for substantial completion until the work is substantially complete. After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining the work within the contract time or any proper extension thereof granted by the FKAA, Contractor shall pay the FKAA[\$500.00] for each day that expires after the time specified for completion and readiness for final payment. Sundays and legal holidays shall be included in determining days in default.

4. That the FKAA hereby agrees to pay to the Contractor for the faithful performance of this Contract, subject to additions and deductions as provided in the Contract Documents, in lawful money of the United States, the amount of:

_____ Dollars (\$_____), based on the estimated quantities and Unit or Lump Sum Prices contained herein.

5. That on or before the 30th day of each calendar month, the FKAA shall make partial payments to the Contractor on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the FKAA, **LESS** the retainage provided in the Contract Documents, which is to be withheld by the FKAA until all work within a particular part has been performed strictly in accordance with this Contract and until such work has been accepted by the FKAA.
6. That upon submission by the Contractor, of evidence satisfactory to the FKAA that all payrolls, material bills, and other costs incurred by the Contractor, in connection with the construction of the work have paid in full, final payment on account of this Contract shall be made with 60 days after the completion by the Contractor, of all work covered by this Contract and the acceptance of such work by the FKAA.
7. It is further mutually agreed between the parties hereto that if, at any time after the execution of the Contract and the Surety Bonds, hereto attached for its faithful performance and payment, the FKAA shall deem the Surety or Sureties upon any such bond to be unsatisfactory or if, for any reason any such bond ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within 5 days after the receipt of notice from the FKAA so to do, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the FKAA. In such event, no further payment 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 manner and form satisfactory to the FKAA.
8. No additional work or extras shall be done unless the same shall be duly authorized by appropriate action by the FKAA and written notice shall be delivered to Contractor directing Contractor to proceed with such additional work or extras.
9. That the Contractor shall:

Check One Only

- (a) Furnish Payment and Performance Bonds which comply with Chapter 255, Florida Statutes, and other applicable law.
- (b) Agree to follow the Alternative to Performance and Payment Bonds Procedures found in Instructions to Bidders Paragraph No. 22 (**FOR CONTRACTS LESS THAN \$200,000 ONLY**).

PERFORMANCE BOND

BOND NO. _____

AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, that in accordance with Florida Statutes Section 255.05, _____

with offices at _____

hereinafter called the CONTRACTOR (Principal), and _____

with offices at _____

a corporate duly organized and existing under and by virtue of the laws of the State of hereinafter called the SURETY, and authorized to transact business within the State of Florida, as SURETY, are held and firmly bound unto **FLORIDA KEYS AQUEDUCT AUTHORITY**, represented by its Board of Directors, as FCAA (Obligee), in the sum of:

_____ DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which, well and truly be made to the FCAA, the CONTRACTOR and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the CONTRACTOR has executed and entered into a certain Contract hereto attached, with the FCAA, dated _____, 20____, to furnish at his own cost, charges, and expense all the necessary materials, equipment, and/or labor in strict and express accordance with said Contract and the Contract Documents as defined therein, all of which is made a part of said Contract by certain terms and conditions in said Contract more particularly mentioned, which Contract, consisting of the various Contract Documents is made a part of this Bond as fully and completely as if said Contract Documents were set forth herein;

NOW THEREFORE, the conditions of this obligation are such that if the above bounden CONTRACTOR shall in all respects comply with the terms and conditions of said Contract and his obligation thereunder, including the Contract Documents and shall indemnify, defend and save harmless the above FCAA against and from all costs, expenses, damages, attorney’s fees, including appellate proceedings, injury or loss of whatever kind and however arising including without limitation delay damages to which said FCAA may be subject by reason of any wrongdoing,

misconduct, want of care or skill, negligence, failure of performance, breach, failure to petition within the prescribed time, or default, including patent infringements, on the part of said CONTRACTOR, his agents or employees, in the execution or performance of said Contract; then this obligation shall be void; otherwise, to remain in full force and effect for the term of said Contract, including any and all guarantee periods as specifically mentioned in said Contract Documents;

AND, the said Surety for value received, hereby stipulates and agrees that no change involving any extension of time, or addition to the terms of the Contract Documents, or to the work to be performed, or materials to be furnished thereunder shall affect said obligation of said Surety on this Bond, and the said Surety does hereby waive notice of any such changes, extension of time, alterations, or additions of the terms of the Contract Documents, or to the work. Claimant shall give written notice to the Contractor and to the Surety as required by Florida Statutes, Section 255.05. Any actions against the Contractor or the Surety shall be brought within the time specified by Section 255.05.

IN WITNESS WHEREOF, the above parties bounded together have executed this instrument this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACTOR

By _____ (SEAL)

ATTEST

SURETY

By _____ (SEAL)

ATTEST

PAYMENT BOND

BOND NO. _____

AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, that in accordance with Florida Statutes Section 255.05, _____

with offices at _____

hereinafter called the CONTRACTOR, (Principal), and _____

with offices at _____

a corporation duly organized and existing under and by virtue of the laws of the State of _____, hereinafter called the SURETY, and authorized to transact business within the State of Florida, as SURETY, are held and firmly bound unto **FLORIDA KEYS AQUEDUCT AUTHORITY**, represented by its Board of Directors, as FCAA (Obligee), in the sum of:

_____ DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which, well and truly be made to the FCAA, and the CONTRACTOR and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the CONTRACTOR has executed and entered into a certain Contract hereto attached, with the FCAA, dated _____, 20__, to furnish at his own cost, charges, and expense the necessary materials, equipment, and/or labor in strict and express accordance with said Contract and the Contract Documents as defined therein, all of which is made a part of said Contract by certain terms and conditions in said Contract more particularly mentioned, which Contract, consisting of the various Contract Documents is made a part of this Bond as fully and completely as if said Contract Documents were set forth herein;

NOW THEREFORE, the conditions of this obligation are such that if the above bounden CONTRACTOR shall in all respects comply with the terms and conditions of said Contract and his obligation thereunder, including the Contract Documents and further that if said CONTRACTOR shall promptly make payments to all persons supplying materials, equipment, and/or labor used directly or indirectly by said Contractor or Subcontractors in the prosecution of the work provided for in said Contract in accordance with Florida Statutes, Section 255.05; then this obligation shall be void; otherwise, to remain in full force and effect for the term of said Contract, including any and all

guarantee periods as specifically mentioned in said Contract Documents;
AND, the said SURETY for value received, hereby stipulates and agrees that no change involving any extension of time, or addition to the terms of the Contract or to the work to be performed, or materials to be furnished thereunder, or in the Contract Documents shall affect said obligation of said SURETY on this Bond, and the said SURETY does hereby waive notice of any such changes, extension of time, alternations, or additions of the terms of the Contract, or to the work, o to the Contract Documents. Claimant shall give written notice to the Contractor and to the SURETY as required by Florida Statutes, Section 255.05. Any actions against the Contractor or the SURETY shall be brought within the time specified by Section 255.05.

IN WITNESS WHEREOF, the above parties bounded together have executed this instrument this _____ day of _____, 20__, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACTOR

By _____ (SEAL)

ATTEST

SURETY

By _____ (SEAL)

ATTEST

**STANDARD
GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT
FOR THE
FLORIDA KEYS AQUEDUCT AUTHORITY**

GENERAL CONDITIONS
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GENERAL CONDITIONS

This part of the Contract Documents is preprinted. Any modifications to the following Articles required for this project are made in the Supplementary Conditions.

ARTICLE I - DEFINITIONS

Wherever in the Contract Documents the following terms are used, the intent and meaning shall be interpreted as follows:

1.1 AS APPROVED

The words “as approved”, unless otherwise qualified, shall be understood to be followed by the words “by the FKAA for conformance with the Contract Document”.

1.2 AS SHOWN, AND AS INDICATED

The words “as shown” and “as indicated” shall be understood to be followed by the words “on the Drawings”.

1.3 BIDDER

The person or persons, partnership, firm, or corporation submitting a Proposal for the work contemplated.

1.4 CONTRACT DOCUMENTS

The “Contract Documents” consist of the Bidding Requirements, Contract forms, Conditions of the Contract, the Specifications, and the Drawings, including all Addenda or other modifications thereof incorporated into the documents before their execution and all Change Orders, Supplemental Agreements, Amendments, Settlement Agreements or other modifications thereof incorporated into the documents after their execution and including all other requirements incorporated by specific reference thereto. These form the Contract.

1.5 CONTRACTOR

The person or persons, partnership, firm, or corporation who enters into the Contract awarded him by the Owner.

1.6 CONTRACT COMPLETION

The “Contract Completion” is the date the Owner accepts the entire work as being in compliance with the Contract Documents, or formally waives nonconforming work to the extent of nonconformity, and issues the final payment in accordance with the requirements set forth in Article, “Final Payment” of these General Conditions.

1.7 DAYS

Unless otherwise specifically stated, the term “days” will be understood to mean calendar days, Sundays and legal holidays included.

1.8 DRAWINGS

The term “Drawings” refers to the official Drawings, profiles, cross sections, elevations, details, and other working drawings and supplementary drawings, or reproductions thereof, signed by the FKAA, which show the location, character, dimensions, and details of the work to be performed. Drawings may either be bound in the same book as the balance of the Contract Documents or bound in separate sets, and are a part of the Contract Documents, regardless of the method of binding.

1.9 **ENGINEER**

Wherever in these Documents the word “Engineer” appears, it shall be understood to mean the Manager of Engineering of the Florida Keys Aqueduct Authority (FKAA) or his authorized representative.

1.10 **NOTICE**

The term “Notice” or the requirements to notify, as used in the Contract Documents or applicable State or Federal statutes, shall signify a written communication delivered in person or by certified or registered mail to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended. Certified or registered mail shall be addressed to the last business address known to him who gives the notice.

1.11 **OR EQUAL**

The term “or equal” shall be understood to indicate that the “equal” product is the same or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the FKAA. Such “equal” products shall not be purchased or installed by the Contractor without the FKAA’s written approval.

1.12 **FKAA**

Wherever in these Documents the word “FKAA” appears, it shall be understood to mean the Florida Keys Aqueduct Authority whose address is 1100 Kennedy Drive, Key West, Florida 33041-1239.

1.13 **PLANS (See DRAWINGS)**

1.14 **SPECIFICATIONS**

The term “Specifications” refers to those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the work and certain administrative details applicable thereto. Where standard specifications, such as those of ASTM, AASHTO, etc., have been referred to the applicable portions of such standard specifications shall become a part of these Contract Documents. If referenced specifications conflict with specifications contained herein, the requirements contained herein shall prevail.

1.15 **NOTICE TO PROCEED**

A written notice given by the FKAA to the Contractor fixing the date on which the Contract time will commence to run and on which the Contractor shall start to perform his obligation under the

Contract Documents. The Notice to Proceed shall be given within 30 days following execution of the Contract by the FKAA.

1.16 SUBSTANTIAL COMPLETION

“Substantial Completion” shall be that degree of completion of the project or a defined portion of the project, as evidenced by the FKAA’s written notice of Substantial Completion, sufficient to provide the FKAA the full-time use of the project or defined portion of the project for the purposes for which it was intended. “Substantial Completion” of an operating facility shall be that degree of completion that has provided a minimum of 7 continuous days of successful, trouble-free, operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the FKAA. All equipment contained in the work, plus all other components necessary to enable the FKAA to operate the facility in the manner that was intended, shall be complete on the substantial completion date.

1.17 FINAL COMPLETION

“Final Completion” shall mean completion of all work under the Contract Documents, including all conditions to final payment as set forth in Article 9.9, FINAL PAYMENT of these General Conditions.

1.18 WORK

The word “Work” within these Contract Documents shall include all material, labor, tools, and all appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure. As used herein, “Provide” shall be understood to mean “Furnish and install, complete, in-place”.

1.19 UNSUITABLE MATERIALS

Are those subsurface substrates of a naturally occurring nature that are occasionally encountered in underground construction unsuitable for bedding, back filling or embedment of piping. The contractor shall expect to encounter unsuitable materials during the prosecution of the work but such conditions are common and shall not be construed as “Differing Site Conditions”.

ARTICLE II - PRELIMINARY MATTERS

2.1 DELIVERY OF DOCUMENTS

When the Contractor delivers the signed Agreements to the FKAA, the Contractor shall also deliver to the FKAA such Bonds and Insurance Policies, Certificates or other documents as the Contractor may be required to furnish in accordance with the Contract Documents.

2.2 COPIES OF DOCUMENTS

The FKAA shall furnish to Contractor two copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents or as are reasonably necessary for the execution of the work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.3 **COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED**

The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement.

2.4 **STARTING THE PROJECT**

Contractor shall start to perform the work on the date when the Contract Time commences to run, but no work shall be done at the site prior to the date on which the Contract Time commences to run.

2.5 **BEFORE STARTING CONSTRUCTION**

Before undertaking each part of the work, the Contractor shall carefully study and compare the Contract Documents, check and verify pertinent figures shown thereon and all applicable field measurements. The Contractor shall promptly report in writing to FKAA any conflict, error, ambiguity or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from FKAA before proceeding with any work affected thereby; however, the Contractor shall not be liable to the FKAA for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless Contractor knew or reasonably should have known thereof.

Prior to and at the Preconstruction Conference, the CONTRACTOR shall submit to FKAA for review:

2.5.1 At least 7 days prior to the preconstruction conference a proposed progress schedule indicating the starting and completion dates of the various stages of the work; and,

2.5.2 At the preconstruction conference a preliminary schedule of Shop Drawing submissions and those shop drawings necessary to begin the work; and, a preliminary schedule of values for all of the work which will include quantities and prices of items aggregating the Contract Price and will subdivide the work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of work which will be confirmed in writing by Contractor at the time of submission.

2.5.3 Preconstruction video tapes as required by the technical specifications.

2.5.4 The Contractor shall not commence construction operations until the construction progress schedule, schedule of values and the shop drawing submission schedule described above have been reviewed by the FKAA for general conformance with the Contract Documents. After review of the schedules, no deviation shall be made without prior written acceptance by the FKAA for general conformance with the Contract Documents.

2.6 **PRECONSTRUCTION CONFERENCE**

After the Effective Date of the Agreement, but before the Contractor starts work at the site, a conference attended by the Contractor and others as deemed appropriate by the FKAA, will be held to discuss the schedules referred to in paragraph 2.5, to discuss procedures for handling Shop

Drawings and other submittals and for procedure for submitting Applications for Payment, and to establish a working understanding among the parties as to the work. Nothing herein shall relieve the Contractor from the responsibility of contacting local utilities and any other necessary agencies.

2.7 FINALIZING SCHEDULES

At least ten days before submission of the first Application for Payment a conference attended by the Contractor, FKAA, and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.5. The finalized progress schedule will be acceptable to the FKAA as providing an orderly progression of the work to completion within the Contract Time, but such acceptance will neither impose on the FKAA responsibility for the progress or scheduling of the work nor relieve the Contractor from full responsibility therefor. The finalized schedule of Shop Drawings submissions will be acceptable to the FKAA as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the FKAA as to form and substance.

ARTICLE III - CONTRACT DOCUMENTS

3.1 INTENT OF CONTRACT DOCUMENTS

The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Documents is to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning.

Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect on the first published date of the Invitation to Bid, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the FKAA, the Contractor, or any of their consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to FKAA, or any of FKAA's consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of Article 4.3 LIMITATIONS OF FKAA'S RESPONSIBILITIES.

3.2 DISCREPANCIES AND OMISSIONS

Any discrepancies or omissions found in the Contract Documents shall be reported to the FKAA immediately. The FKAA will clarify discrepancies or omissions, in writing, within a reasonable time. In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:

- A. CONTRACT
- B. PROPOSAL
- C. SUPPLEMENTARY CONDITIONS

- D. INVITATION TO BID
- E. INSTRUCTIONS TO BIDDERS
- F. GENERAL CONDITIONS
- G. SPECIFICATIONS AND DRAWINGS

Addenda shall take precedence over all sections referenced therein. Figure dimensions on Drawings shall take precedence over scale dimensions. Detailed Drawings shall take precedence over General Drawings.

3.3 CHANGES IN WORK

The FKAA, without notice to the Sureties and without invalidating the Contract, may order changes in the work within the general scope of the Contract by altering, adding to, or deducting from the work, the Contract being adjusted accordingly. All such work shall be executed under the conditions of the original Contract, except as specifically adjusted at the time of ordering such change.

In giving instructions, the FKAA may order minor changes in the work not involving extra cost and not inconsistent with the purposes of the project, but otherwise, except in an emergency endangering life or property, additions or deductions from the work shall be performed only in pursuance of an approved Change Order signed by the FKAA.

If the work is reduced by alterations, such actions shall not constitute a claim for damages of any kind including any claim based on loss of anticipated profits, and the Contractor's sole and exclusive remedy shall be to seek an adjustment of unit prices to the extent permitted by Article 8.2, UNIT PRICES of these General Conditions.

3.4 EXAMINATION AND VERIFICATION OF CONTRACT DOCUMENTS

The Contractor shall thoroughly examine and become familiar with all of the various parts of these Contract Documents and determine the nature and location of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract. Failure to make an examination necessary for this determination shall not release the Contractor from the obligations of this Contract. No verbal agreement or conversation with any officer, agent, or employee of the FKAA, or with the FKAA either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

3.5 DOCUMENTS TO BE KEPT ON THE JOBSITE

The Contractor shall keep one copy of the Contract Documents on the jobsite, in good order, available to the FKAA and to his representatives.

The Contractor shall maintain on a daily basis at the jobsite, and make available to the FKAA on request, one current record set of the Drawings which have been accurately marked up to indicate all modifications in the completed work that differ from the design information shown on the Drawings. Upon Substantial Completion of the work and prior to final payment, the Contractor shall give the FKAA one complete set of marked up record Drawings.

The Contractor shall maintain a current copy of the approved Maintenance of Traffic plan for the project at the site at all times.

3.6 ADDITIONAL CONTRACT DOCUMENTS

The FKAA will furnish to the Contractor on request and free of charge, two copies of the Contract Documents and two sets of full-size Drawings. Additional copies of Contract

Documents or Drawings may be obtained on request by paying the actual cost of reproducing the Contract Documents or Drawings.

3.7 **OWNERSHIP OF CONTRACT DOCUMENTS**

All Drawings, Plans, Specifications, and copies thereof furnished by the FKAA and the FKAA are their property. They are not to be used on other work and, with the exception of the signed Contract set, are to be returned to them on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the FKAA will be at the risk of the user and without liability or legal expense to the FKAA. Such user shall hold the FKAA harmless from any and all damages, including reasonable attorneys' fees, up to the amount of the Contract price herein, from any and all claims arising from any such reuse. All models are the property of the FKAA.

3.8 **MISCELLANEOUS PROVISIONS**

3.8.1 This Contract shall be governed by and interpreted in accordance with the laws of the State of Florida. Venue shall be in the Circuit Court in and for Monroe County, Florida. In the event of any breach or default under the terms of this Contract or if any legal proceeding is instituted in connection with this Contract, the prevailing party shall be entitled to recover from the other all reasonable attorney's fees and costs incurred whether for negotiation, settlement, trial or appellate services.

3.8.2 This Contract shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Contract without the prior written consent of the other party. Consent shall not be unreasonably withheld. Contractor shall not enter into any contractual agreement with a third party for performance of any conditions under this Contract without the express written approval of the FKAA. Contract and any permits required for performance of the Contract may not be assigned, conveyed or otherwise disposed of without permission of the FKAA Board of Directors.

3.8.3 All notices shall be in writing and transmitted to the party's address stated within. All notices shall be deemed effectively given when delivered, if delivered personally or by courier overnight mail service; three days after such notice has been deposited in the United States mail postage prepaid; if mailed certified or registered US Mail, return receipt requested; or when received by the party of which notice is intended if given in any other manner.

3.8.4 This Contract may be modified only by written agreement signed by both parties. Wherever used, the terms "Contractor" and "FKAA" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors.

3.8.5 If any term, provision, covenant or condition of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

3.8.6 It is understood that the relationship of Contractor to FKAA is that of independent contractor. The services provided under this Contract are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract

operators similarly situated. However, such services should not be confused with engineering services and nothing herein is intended to imply that Contractor is to supply professional engineering services to FKAA unless specifically stated in this Contract to the contrary.

ARTICLE IV - THE FKAA AND/OR CONSULTING ENGINEER

4.1 AUTHORITY OF THE ENGINEER

The Engineer shall be the FKAA's representative during the construction period. His authority and responsibility shall be limited to the provisions set forth in these Contract Documents. The Engineer shall have the authority to reject work and materials which does not conform to the Contract Documents. However, neither the Engineer's authority to act under this provision, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, their respective sureties, any of their agents or employees, or any other person performing any of the work.

4.2 DUTIES AND RESPONSIBILITIES OF THE ENGINEER

The Engineer will make periodic visits to the site of the project to observe the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the intent of the Contract Documents. Visits and observations made by the Engineer shall not relieve the Contractor of his obligation to conduct comprehensive inspections of the work and furnish materials and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.

One or more project representatives may be assigned to observe the work for compliance with the Contract Documents and to act in matters of construction under this Contract. It is understood that such representatives shall have the power to issue instructions and make decisions within the limitation of the authority given to them by the Engineer. The Contractor shall furnish all reasonable assistance required by the Engineer for proper inspection of the work. The FKAA Field Inspector shall not have the power or authority to delete, increase, modify or otherwise change the requirements of the Contract Documents. The above-mentioned Field Inspector shall not relieve the Contractor of his obligations to conduct comprehensive inspections of the work and to furnish materials and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.

4.3 LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

The Engineer will not be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, and the Engineer will not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

The Engineer will not be responsible for the acts or omissions of the Contractor or of any

Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable",

“suitable”, “acceptable”, “proper”, or “satisfactory”, adjectives of like effect or import are used to describe a requirement, direction, review or judgment of the Engineer as to the work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to the FKAA any duty or authority to supervise or direct the furnishing or performance of the work of or any duty or authority to undertake responsibility contrary to the provisions of this Article.

4.4 **REJECTED WORK**

Any defective work or nonconforming materials or equipment that may be discovered at any time prior to expiration of the warranty period shall be removed and promptly replaced by work which shall conform to the provisions of the Contract Documents. Any material condemned or rejected shall be removed at once from the project site.

Failure on the part of the Engineer to condemn or reject bad or inferior work or to note nonconforming materials or equipment on Contractor submittals shall not be construed to imply acceptance of such work. The Engineer shall reserve and retain all of its rights and remedies at law against the Contractor and its Surety for correction of any and all latent defects discovered after the guarantee period.

4.5 **SUBMITTALS**

After checking and verifying all field measurements and after complying with applicable procedures specified the Contractor shall submit to the Engineer, in accordance with the schedule for submittals for review, shop drawings, electrical diagrams, and catalog cuts for fabricated items and manufactured items (including mechanical and electrical equipment), which shall bear a stamp or specific written indication that Contractor has satisfied Contractor’s responsibilities under the Contract Documents with respect to the review of the submittal. All submittals shall be identified as the Engineer may require. The data shown shall be complete with respect to quantities, dimensions specified performance and design criteria, materials, and similar data to enable the Engineer to review the information.

The Contractor shall also submit to the Engineer for review with such promptness as to cause no delay in work, all samples required by the Contract Documents. All samples shall have been checked by and accompanied by a specific written indication that Contractor has satisfied Contractor’s responsibilities under the Contract Documents with respect to the review of the submission and shall be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended. Before submission of each submittal, Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each submittal with other submittals and with the requirements of the work and the Contract Documents.

At the time of each submission, the Contractor shall give the Engineer specific written notice of each variation that the submittal may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each shop drawing submitted to the Engineer for review and approval of each such variation.

The Engineer will review submittals with reasonable promptness, but the Engineer’s review will be only for conformance with the design concept of the project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques,

sequences, or procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. Contractor shall make corrections required by the Engineer, and shall return the required number of corrected copies of shop drawings and submit as required new samples for review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Engineer on previous submittals.

The Engineer's review of submittals shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has in writing called to the Engineer's attention to each such variation at the time of submission and the Engineer has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the shop drawing or sample approval; nor will any approval by the Engineer relieve the Contractor from responsibility for errors or omissions in the shop drawings or from responsibility for having complied with the provisions herein.

Where a shop drawing or sample is required by the specifications, any related work performed prior to the Engineer's review and approval of the pertinent submission shall be the sole risk, expense and responsibility of the Contractor.

4.6 **DETAIL DRAWINGS AND INSTRUCTIONS**

The Engineer will furnish, with reasonable promptness, additional instructions by means of Drawings or otherwise, if, in the Engineer's opinion, such are required for the proper execution of the work. All such Drawings and instructions will be consistent with the Contract Documents, true developments thereof, or reasonably inferable therefrom.

ARTICLE V - THE CONTRACTOR AND HIS EMPLOYEES

5.1 **CONTRACTOR, AN INDEPENDENT AGENT**

The Contractor shall perform all work under this Contract as an Independent Contractor and shall not be considered as an agent of the FKAA, nor shall the Contractor's subcontractors or employees be subagents of the FKAA.

5.2 **SUBCONTRACTING**

Unless modified in the Supplementary Conditions the Contractor shall submit to the FKAA the names of all subcontractors proposed for the work, to be submitted with the proposal. The Contractor shall not employ any subcontractors that the FKAA may object to as lacking capability to properly perform work of the type and scope anticipated. No changes will be allowed from the approved subcontractor list without written approval of the FKAA.

The Contractor shall strictly comply with the requirements of, PERFORMANCE OF WORK BY CONTRACTOR, in the Instructions to Bidders.

The Contractor is as fully responsible to the FKAA for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the FKAA.

5.3 TAXES AND CHARGES

The Contractor shall withhold and pay any and all sales and use taxes, including any and all change of taxes thereof, and all withholding taxes, whether State or Federal, and pay all Social Security charges and also all State Unemployment Compensation charges, and pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees or sums whatsoever, which are now or may hereafter be required to be paid or withheld under any laws.

5.4 REQUIREMENTS OF STATE LAW FOR PUBLIC WORKS PROJECTS

When the Contract Documents concern public works of the state or any county, municipality, or political subdivision created by its laws, the applicable statutes shall apply. The Contractor shall determine the contents of all applicable statutes and comply with their provisions throughout the performance of the Contract.

5.5 CODES, ORDINANCES, PERMITS, AND LICENSES

The Contractor shall keep himself fully informed of all local codes and ordinances, as well as State and Federal laws, which in any manner affect the work herein specified. The Contractor shall at all times comply with said codes and ordinances, laws, and regulations, and protect and indemnify the FKAA and their respective employees, officers, and agents against any claim or liability arising from or based on the violation of any such laws, codes and ordinances, or regulations. All permits, licenses, and inspection fees necessary for prosecution and completion of the work shall be secured and paid for by the Contractor, unless otherwise specified.

5.6 PERMITS FOR WORK WITHIN THE FEDERAL, STATE AND/OR COUNTY RIGHTS OF WAY

The FKAA has obtained a permit for the necessary water system improvements from the Florida Department of Environmental Protection and where applicable, the Florida Department of Transportation. A copy of the permit will be provided to the Contractor at the Preconstruction Conference.

The Contractor shall abide by all regulations and conditions stipulated in the permit(s), and such conditions and requirements are hereby made a part of these Contract Documents. The Contractor shall examine the permit(s) granted to the FKAA by the Federal, State and/or County agency. Failure to do so will not relieve the Contractor from compliance with the requirements stated therein.

5.7 MAINTENANCE OF TRAFFIC

The Contractor shall submit to the FKAA, a Maintenance of Traffic Plan that shows the scheme(s) that is intended for use on the project.

This Plan shall include appropriate signage, barricades and/or temporary striping in accordance with the Florida Department of Transportation, Roadway and Traffic Design Standards, (Topic #625-010-003-6) and/or the Manual on Uniform Traffic Control Devices (MUTCD), Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations.

It shall be the Contractor's responsibility, as Bidder, prior to submitting his Bid, to determine the traffic control requirements of the public agencies having jurisdiction of the project area, so that his Proposal reflects all costs to be incurred. No claims for additional payment will be considered for costs incurred in the proper maintenance, control, detour, and protection of traffic.

5.8 **SUPERINTENDENCE**

The Contractor shall have a supervisor present on the job at all times who shall be capable of reasonable job site communications (speaking, writing, and reading) in the English language. The Contractor shall designate, in writing, before starting work, an authorized representative who shall have complete authority to represent and to act for the Contractor. The FKAA shall be notified in writing prior to any change in superintendent assignment. The Contractor shall give efficient supervision to the work, using his best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, and procedures, and for providing adequate safety precautions and coordinating all portions of the work under the Contract. It is specifically understood and agreed that the FKAA, its employees and agents, shall not have control or charge of and shall not be responsible for the construction means, methods, techniques, procedures, or for providing adequate safety precautions in connection with the work under the Contract.

5.9 **RECEPTION OF FKAA'S COMMUNICATIONS**

The Superintendent shall receive for the Contractor all communications from the FKAA. Communications of major importance will be confirmed in writing upon request from the Contractor. The FKAA may schedule project meetings for the purposes of discussing and resolving matters concerning the various elements of the work. Time and place for these meetings and the names of persons required to be present shall be as determined by the FKAA. The Contractor shall comply with these attendance requirements and shall also require his Subcontractors to comply.

5.10 **LINES AND GRADES**

The Contractor shall retain a Registered Land Surveyor licensed in the State of Florida to establish the center lines or base lines of principal structures, roads, pipelines, and facilities, and set bench marks as necessary to establish the basic layout. It will be the Contractor's responsibility to lay out the work from the lines and to transfer elevations from bench marks. Where new construction connects to existing facilities, the Contractor shall check and establish the exact location prior to construction of the facilities.

General dimensions for lines and elevations for grades of the structures, appurtenances, and utilities are indicated on the Drawings, together with other pertinent information required for laying out the work. If site conditions vary from those indicated, the Contractor shall notify the FKAA immediately, who will make any adjustments as required.

Where the location and elevation of the bench marks are shown, the Contractor shall furnish the necessary labor and materials to verify such locations and elevations and to accurately lay out the work and set the required elevations from the information indicated.

The Contractor shall provide a competent employee during normal working hours to assist the FKAA, when required, in checking lines and elevations in the Contractor's lay out and for measuring quantities for payment purposes as the work proceeds. The Contractor shall cooperate with the FKAA so that the checking and measuring may be accomplished with the least

interference to the Contractor's operations.

5.11 **SAFETY**

The Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), the State Occupational Safety and Health Act, and all other applicable Federal, State, County, and local laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed in other parts of these documents. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth herein.

The Contractor shall develop and maintain for the duration of this Contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

The duty of the FKAA to conduct construction review of the Contractor's performance is not intended to include a review or approval of the adequacy of the Contractor's safety supervisor, the safety program, or any safety measures taken in, on, or near the construction site.

The Contractor, as a part of his safety program, shall maintain at his office or other well-known place at the jobsite, safety equipment applicable to the work as prescribed by the aforementioned authorities, all articles necessary for giving first aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the jobsite.

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the FKAA. In addition, the Contractor must promptly report in writing to the FKAA all accidents whatsoever arising out of, or in connection with, the performance of the work whether on, or adjacent to, the site, giving full details and statements of witnesses.

If a claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the FKAA, giving full details of the claim.

The Contractor shall comply with all aspects of the Florida Trench Safety Act (90-96, Laws of Florida).

5.12 **PROTECTION OF WORK AND PROPERTY**

The Contractor shall at all times safely guard the FKAA's property from injury or loss in connection with this Contract. The Contractor shall at all times safely guard and protect from damage his own work, and that of adjacent property (as provided by law and the Contract Documents). All passageways, guard fences, lights, and other facilities required for protection by Federal, State or municipal laws and regulations and local conditions, must be provided and maintained.

The Contractor shall protect his work and materials from damage due to the nature of the work, the elements, carelessness of other Contractors, or from any cause whatever until the completion and acceptance of the work. All loss or damages arising out of the nature of the work to be done under these Contract Documents, or from any unforeseen obstruction or defects which may be encountered in the prosecution of the work, or from the action of the elements, shall be sustained by the Contractor.

The Contractor shall comply with the Federal Archaeological Resources Act of 1979 (Public Law 95-96), Florida's Historical Resources Act (Florida Statutes, Chapter 267) and the regulations of the local historic preservation board as applicable and protect against the potential loss or destruction of significant historical or archaeological data, sites, and properties in connection with the project.

5.13 RESPONSIBILITY OF CONTRACTOR TO ACT IN EMERGENCY

In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor shall act, without previous instructions from the FKAA as the situation may warrant. The Contractor shall notify the FKAA thereof immediately thereafter. Any claim for compensation by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the FKAA and the amount of compensation shall be determined by agreement.

5.14 MATERIALS AND APPLIANCES

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for the execution and completion of the work.

Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

In selecting and/or approving equipment for installation in the project, the FKAA assumes no responsibility for injury or claims resulting from failure of the equipment to comply with applicable national, State, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

To ensure standardization and uniformity in all parts of the work under this Contract, like items of equipment shall be the products of one manufacturer. Unless the FKAA exempts a specific material upon the request of the Contractor, like items of materials shall be the products of one manufacturer. Uniformity in like equipment items is required in order to provide the FKAA with interchangeability capabilities, simplified spare parts inventory, and standardized maintenance programs and manufacturers' services.

Examples of material items the FKAA may consider exempting from standardization include structural steel, reinforcing steel, building insulation, roofing materials, sheet metal, materials specified only be reference to a recognized standards, and items hidden from view where interchangeability, color, and texture are not a significant factor for standardization.

The Contractor shall inform his suppliers and subcontractors of these requirements, and shall provide the necessary coordination to accomplish the standardization specified.

5.15 CONTRACTOR'S COMPLIANCE OSHA

The complete work shall include all necessary permanent safety devices required by the State and Federal (OSHA) industrial authorities and applicable local and national codes. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein.

Contractors shall notify all equipment suppliers and subcontractors of the provision of this Article.

The Contractor shall observe and comply with all applicable local, State and Federal Occupational Safety and Health Regulations during the prosecution of work under this Contract. In addition, full compliance by the Contractor with the U.S. Department of Labor's Occupational Safety and Health Standards as established in Public Law 91-96, will be required under the terms of this Contract.

5.16 SUBSTITUTION OF MATERIALS

Except for FKAA-selected equipment items, and items where substitution is clearly not permitted, whenever any materials, article, device, product, fixture, form, type of construction, or process is indicated or specified by patent or proprietary name, by name of manufacturer, or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and facilitating the description of the material or process desired. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design, and shall be deemed to be followed by the words or "or equal". The Contractor may, in such cases, submit complete data to the FKAA for consideration of another material, type, or process which shall be substantially equal in every respect to that so indicated or specified. Substitute materials shall not be used unless approved in writing. The FKAA will be the sole judge of the equality of any substituted article or material.

5.17 TESTS, SAMPLES, AND INSPECTIONS

The Contractor shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining the same, as requested by the FKAA. When required, the Contractor shall furnish certificates of tests of materials and equipment made at the point of manufacture by a recognized testing laboratory.

The FKAA, and authorized government agents, and their representatives shall at all times be provided safe access to the work wherever it is in preparation or progress, and the Contractor shall provide facilities for such access and for inspection, including maintenance of temporary and permanent access.

If the Specifications, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give timely notice of its readiness for examination. If any work should be covered up without approval or consent of the FKAA, it shall, if required by the FKAA, be uncovered for examination at the Contractor's expense. Re-examination of questioned work may be ordered by the FKAA, and, if so ordered, the work shall be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the FKAA will pay the cost of re-examination and replacement. If such work is found to be not in accordance with the Contract Documents, the Contractor shall correct the defective work, and the

cost of re-examination and correction of the defective work shall be paid by the Contractor.

5.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalty and license fees, unless otherwise specified. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the FKAA harmless from any and all loss, including reasonable attorney's fees, on account thereof.

5.19 CONTRACTOR'S RIGHT TO TERMINATE CONTRACT

If the work should be stopped under an order of any court or other public authority for a period of more than 3 months, through no act or fault of the Contractor, its Subcontractors, or respective employees or if the FKAA should fail to issue any estimate for payment within 30 days after it is due, or if the FKAA should fail to pay the Contractor within 30 days after time specified in Article IX, PARTIAL PAYMENTS, any sum recommended by the FKAA, then the Contractor may, upon 15 days' written notice to the FKAA, stop work or terminate this Contract and recover from the FKAA payment for all acceptable work performed and any loss sustained plus reasonable termination expenses, unless said default has been remedied.

5.20 CORRECTION OF DEFECTIVE WORK

The Contractor hereby agrees to make, at his own expense, all repairs or replacements necessitated by defects in materials or workmanship, supplies under the terms of this Contract, and pay for any damage to other works resulting from such defects, which become evident within 1 year after the date of final acceptance of the work or within 1 year after the date of substantial completion established by the FKAA for specified items of equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. Unremedied defects identified for correction during the warranty period but remaining after its expiration shall be considered as part of the obligations of the warranty. The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors or manufacturers of packaged equipment components.

The effective date for the start of the guarantee or warranty period for equipment qualifying as substantially complete is defined in Article 1.16, SUBSTANTIAL COMPLETION, and Article 7.12, SUBSTANTIAL COMPLETION DATE, in these General Conditions.

The Contractor also agrees to hold the FKAA harmless up to the amount of the Contract price from liability of any kind arising from damage due to said defects. The Contractor also agrees to hold the FKAA harmless from liability of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written order for same from the FKAA. If the Contractor fails to make the repairs and replacements promptly, the FKAA may do the work, and the Contractor and his Surety shall be liable for the cost thereof.

ARTICLE VI - INSURANCE AND LIABILITY

6.1 GENERAL INSURANCE REQUIREMENTS

Prior to the commencement of work governed by this contract (including the pre-staging of personnel and material), the Contractor shall obtain, at his/her own expense, insurance as specified below, which are made part of this contract. The Contractor will ensure that the insurance obtained will extend protection to all Subcontractors engaged by the Contractor. As an alternative the Contractor may require all Subcontractors to obtain insurance consistent with the

attached schedules.

The Contractor will not be permitted to commence work governed by this contract (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to FKAA as specified below. Delays in the commencement of work, resulting from the failure of the Contractor to provide satisfactory evidence of the required insurance, shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work commenced on the specified date and time, except for the Contractor's failure to provide satisfactory evidence.

The Contractor shall maintain the required insurance throughout the entire term of this contract and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of all work until the required insurance has been reinstated or replaced. Delays in the completion of work resulting from the failure of the Contractor to maintain the required insurance shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for the Contractor's failure to maintain the required insurance:

- Certificates of Insurance
- A Certified copy of the actual insurance policy.

FKAA, at its sole option, has the right to request a certified copy of any or all insurance policies required by this contract. All insurance policies must be provided by companies authorized to conduct business in the State of Florida and have A.M. Best Company rating of above (A-).

All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to FKAA by the insurer.

The acceptance and/or approval of the Contractor's insurance shall not be construed as relieving the Contractor from any liability or obligation assumed under this contract or imposed by law.

The Florida Keys Aqueduct Authority, its employees and officials will be included as "Additional Insured" on all policies, except for Workers' Compensation and Vehicle Liability.

In addition, FKAA will be named as an Additional Insured and Loss Payee on all policies covering Authority-owned property.

The United States Government shall be included as an Additional Insured with respect to the Contractor's general liability policy, business or auto and umbrella policies but solely with respect to claims arising out of the negligence of the Contractor.

6.2 **WORKERS COMPENSATION AND EMPLOYER'S LIABILITY**

Prior to the commencement of work governed by this contract, the Contractor shall obtain Workers' Compensation Insurance with limits sufficient to respond to Florida Statute 440.

In addition, the Contractor shall obtain Employers' Liability Insurance with limits of not less than:

- \$1,000,000 Bodily Injury by Accident
- \$1,000,000 Bodily Injury by Disease, policy limits
- \$1,000,000 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of the contract.

6.3 **COMMERCIAL GENERAL LIABILITY REQUIREMENTS**

Prior to the commencement of work governed by this contract, the Contractor shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- Premises Operations
- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability
- Expanded Definition of Property Damage

The minimum limits acceptable shall be \$2,000,000 Combined Single Limit (CSL)

Any Occurrence Form policy is preferred.

If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by FCAA.

The policy shall include coverage for the XCU (explosion, collapse, and underground) exposures with full policy limits available for this exposure.

6.4 **VEHICLE LIABILITY REQUIREMENTS**

Recognizing that the work governed by this contract requires the use of vehicles, the Contractor, prior to the commencement of work, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum, liability coverage for:

- Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be \$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

- \$ 500,000 per Person
- \$1,000,000 per Occurrence
- \$ 100,000 Property Damage

6.5 **UMBRELLA/EXCESS INSURANCE**

The Contractor shall be required to purchase and maintain throughout the life of the contract, and until the project is accepted by FCAA, a policy or policies of umbrella or excess liability

insurance with liability limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.

6.6 INSTALLATION FLOATER INSURANCE

The Contractor shall be required to purchase and maintain throughout the life of the contract, and until the project is accepted by FKAA, Installation Insurance providing coverage for machinery and equipment, governed by this contract while being transported, installed and tested.

As a minimum, coverage shall include:

Fire	Lightning	Windstorm	Hail
Explosion	Collapse	Strikes	Riots
Civil Commotion	Vehicles	Vandalism	Malicious
Mischief	Aircraft	Flood	

The policy limits shall be no less than the amount of the machinery or equipment being installed.

The Florida Keys Aqueduct Authority shall be named as Additional Insured and Loss Payee on all policies issued to satisfy the above requirements.

6.7 POLLUTION LIABILITY INSURANCE

The Contractor shall be required to purchase and maintain through the life of the contract, and until the project is accepted by FKAA, Pollution Liability Insurance providing environmental liability insurance with liability limits of \$5,000,000 per claim and \$5,000,000 aggregate.

6.8 CONTRACTORS AND SUBCONTRACTOR INSURANCE

The Contractor shall not commence work under this Contract until he has obtained all the insurance required hereunder and such insurance has been reviewed by the FKAA, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until insurance specified below has been obtained. Review of the insurance by the FKAA shall not relieve or decrease the liability of the Contractor hereunder.

6.9 NO PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions hereof in exercising any authority granted by the Contract, there will be no personal liability upon any public official.

6.10 INDEMNIFICATION AND HOLD HARMLESS

The Contractor covenants and agrees to indemnify and hold harmless the Florida Keys Aqueduct Authority (FKAA) from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by FKAA) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of services provided by the Contractor or any of its Subcontractor(s) in any tier, occasioned by the negligence, errors, or other wrongful act or omission of the Contractor or its Subcontractor(s) in any tier, their employees, or agents.

In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the Contractor's failure to purchase or maintain the required insurance, the Contractor shall indemnify the FKAA from any and all increased expenses resulting from such

delay.

The first ten dollars (\$10.00) of remuneration paid to the Contractor is for the indemnification provided for above.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

ARTICLE VII - PROGRESS OF THE WORK

7.1 BEGINNING OF THE WORK

Before work shall be started and materials ordered, the Contractor shall meet and consult with the FKAA relative to materials, equipment, and all arrangements for prosecuting the work.

7.2 SCHEDULES AND PROGRESS REPORTS

At least seven (7) calendar days prior to the pre-construction meeting, the Contractor shall prepare and submit to the FKAA for review and approval, a project schedule showing approximately the dates on which each part or division of the work is expected to be started and finished. The schedule shall be brought up to date and submitted to the FKAA at the end of each month or at such other times the FKAA may request.

The Contractor shall also forward to the FKAA, at the end of each month, an itemized report of the delivery status of major and critical items of purchased equipment and material, including shop drawings and the status of shop and field fabricated work. These progress reports shall indicate the date of the purchase order, the current percentage of completion, estimated delivery, and cause of delay, if any.

If the completion of any part of the work or the delivery of materials is behind the approved schedule, the Contractor shall submit in writing a plan acceptable to the FKAA for bringing the work up to schedule.

The FKAA shall have the right to withhold progress payments for the work if the Contractor fails to update and submit the progress schedule and reports as specified.

7.3 PROSECUTION OF THE WORK

It is expressly understood and agreed that the time of beginning, rate or progress, and time of completion of the work are the essence of this Contract. The work shall be prosecuted at such time, and in or on such part or parts of the project as may be required, to complete the project as contemplated in the Contract Documents and the construction schedule.

The work shall be performed Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., excluding all FKAA legal holidays. The FKAA legal holidays currently are New Years Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day (4th of July), Labor Day, Veteran's Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day. The FKAA may change such legal holidays at any time without formal notice to the Contractor and it shall be the Contractor's responsibility to determine and observe all FKAA legal holidays.

If the Contractor desires to carry on work at night or outside the regular hours, he shall give timely notice to the FKAA to allow satisfactory arrangements to be made for observing the work

in progress. Unless the Contract Documents unambiguously require work to be performed at night or outside regular hours, the Contractor shall be responsible for all resulting FKAA inspection or other increased costs to the FKAA.

- Failure of the Contractor to Maintain Satisfactory Progress: Time is an essential element of the Contract and, as delay in prosecution of the work will inconvenience the public, obstruct traffic and interfere with business, it is important that the work be pressed vigorously to completion. Moreover, the cost to the Florida Keys Aqueduct Authority for the administration of the Contract, including engineering, inspection and supervision, will be increased as the construction period is lengthened.

The Contractor is delinquent when unsatisfactory progress is being made under these conditions:

- The allowed Contract time for performing the work has expired and the Contract work is not complete; or
- The specified time or date for performing a special milestone stage of the work has expired and the work for that milestone stage is not complete; or
- The allowed Contract time has not expired and the percentage of dollar value of completed work is fifteen (15) percentage points or more below the dollar value of work which should have been completed according to the approved working schedule for the Project. After falling fifteen (15) percent behind, the delinquency continues until the percentage of dollar value of completed work is within five (5) percent points of the dollar value of work which should have been completed according to the approved working schedule for the Project.

If the Contractor fails to begin the work under the Contract within the time specified in the "Notice To Proceed", or fails to perform the work with sufficient workmen and equipment or with sufficient materials to maintain satisfactory progress to assure the prompt completion of the Contract, or performs the work unsuitably or neglects or refuses to remove materials or to perform a new such work as may be rejected as unacceptable and unsuitable, or discontinues the prosecution of the work, or fails to resume work which has been discontinued within a reasonable time after notice to do so, or becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily, or allows any final judgment to stand against him unsatisfied for a period of ten (10) calendar days, or makes an assignment for the benefits of creditors, or fails to comply with Contract requirements regarding minimum wage payments or EEO requirements, or for any other cause whatsoever, fails to carry on the work in an acceptable manner, or if the Surety executing the bond, for any reasonable cause becomes unsatisfactory in the opinion of the FKAA, the Engineer will give notice in writing to the Contractor and his Surety of such delay, neglect or default.

If the Contractor, within a period of ten (10) calendar days after the notice described above, shall not proceed to correct the conditions of which complaint is made, the FKAA, shall upon written certificate from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to correct such conditions, have full power and authority, without violating the Contract, to take prosecution of the work out of the hands of the Contractor and declare the Contract in default and terminated.

The FKAA shall have no liability for anticipated profits for unfinished work on a Contract which has been determined to be in default.

7.4 FKAA'S RIGHT TO RETAIN DEFECTIVE WORK

If any part or portion of the work completed under this Contract shall prove defective and not in accordance with the Drawings and Specifications, and if the imperfection in the same shall not be of sufficient magnitude or importance as to make the work dangerous or unsuitable, or if the removal of such work will create conditions which are dangerous or undesirable, the FKAA shall have the right and authority to retain such work but will make such deductions in the final payment therefor as may be just and reasonable.

7.5 FKAA'S RIGHT TO DO WORK

If the Contractor should, in the opinion of the FKAA, neglect to prosecute the work properly or should neglect or refuse at his own cost to take up and replace work as shall have been rejected by the FKAA, then the FKAA may notify the Surety of the condition, and after 10 days' written notice to the Contractor and the Surety, or without notice if an emergency or danger to the work or public exists, and without prejudice to any other right which the FKAA may have under the Contract, take over that portion of the work which has been improperly executed, and make good the deficiencies and deduct the cost thereof from the payments then or thereafter due the Contractor.

7.6 FKAA'S RIGHT TO TRANSFER EMPLOYMENT

If the Contractor should abandon the work or if he should fail or refuse to make prompt payment to Subcontractors for material or labor, or should persistently disregard laws, ordinances, or fail or refuse to prosecute the work in conformance with the Contract Documents, or otherwise be guilty of a substantial violation of any provision of the Contract or any laws or ordinance, then the FKAA may, without prejudice to any other right or remedy, and after giving the Contractor and Surety 10 days' written notice, transfer the employment for said work from the Contractor to the Surety. Upon receipt of such notice, such Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the work included under this Contract and employ, by Contract or otherwise, any qualified person or persons to finish the work and provide the materials therefore, in accordance with the Contract Documents, without termination of the continuing full force and effect of this Contract. In case of such transfer of employment to such Surety, the Surety shall be paid in its own name on estimates according to the terms hereof without any right of the Contractor to make any claim for the same or any part thereof.

If after the furnishing of said written notice to the Surety, the Contractor and the Surety still fail to make reasonable progress on the performance of the work, the FKAA may terminate the employment of the Contractor and the Surety, and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient and charge the cost thereof to the Contractor and Surety. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the expense of completing the Contract, including compensation for additional managerial and administrative services, shall exceed such unpaid balance, the Contractor and the Surety shall pay the difference to the FKAA.

7.7 DELAYS AND EXTENSION OF TIME

7.7.1 If the Contractor is delayed in the progress of the work by any act or neglect of the FKAA or by any separate Contractor employed by the FKAA, or by strikes, lockouts,

fire, adverse weather conditions not reasonably anticipated, or acts of nature, the Contractor shall, within 48 hours of the start of the occurrence, give written notice to the FKAA of the cause of the potential delay and estimate the possible time extension involved, and within 7 days after the cause of delay has been remedied, the Contractor shall give written notice to the FKAA of any actual time extension requested as a result of the aforementioned occurrence, then the Contract time may be extended by change order for such reasonable time as the FKAA determines.

It is expressly agreed that the Contractor's right to seek an extension of time as provided in this Article is the Contractor's sole and exclusive remedy in the event of delay and that in no event shall the Contractor be entitled to recover damages for any delay, regardless of the cause or causes of such delay.

No extension of time will be granted to the Contractor for delays occurring to parts of the work that have no measurable impact on the completion of the total work under this Contract. No extension of time will be considered for weather conditions reasonably anticipated for the area in which the work is being performed.

Reasonably anticipated weather conditions should be based on official records of monthly precipitation and other historical data. Adverse weather conditions, if determined to be of a severity that would impact progress of the work, may be considered as cause for an extension of Contract completion time.

Delays in delivery of equipment or material purchased by the Contractor or his Subcontractors, including FKAA-Furnished Equipment, shall not be considered as a just cause for delay, unless the FKAA determines that for good cause the delay is beyond the control of the Contractor. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

Within a reasonable period after the Contractor submits to the FKAA a written request for an extension of time, the FKAA will present his written opinion to the Contractor as to whether an extension of time is justified, and, if so, his recommendation as to the number of days for time extension. The FKAA will make the final decision on all requests for extension of time.

7.7.2. Work under this contract is scheduled through Hurricane Seasons. A non-compensable time extension will be granted by the Owner if, in their opinion, the Contractor is entitled to a time extension due to work stoppages during Hurricane and/or Tropical Storm Warnings. The procedures for work shutdown in the event of Hurricane and/or Tropical Storms are as follows:

- The Owner and the Contractor shall monitor weather reports during the Hurricane Season for Hurricanes and/or Tropical Storm Watches and identify storms that might hit the work area.
- Upon notification that a Storm Watch has been declared (48 to 72 hours in advance of projected landfall) the Contractor shall take all necessary precautions and make preparations to protect their work area.
- Upon notification that a Storm Warning has been declared (24 to 36 hours in advance

of projected landfall) the Contractor shall complete all preparations, secure all material and equipment and close down all operations at the work area.

- Upon notification that an All Clear has been issued and re-entry into the area is permitted, the Contractor will remobilize in an expedient manner and return the work area to its pre-storm condition.

Since demobilization and remobilization is difficult to predict, the Contractor shall assume a maximum of two (2) calendar days to demobilize, a maximum of three (3) calendar days for the storm event and re-entry and a maximum of two (2) calendar days to remobilize the work activities. Actual time of work stoppages will be granted.

The above does not include the normal rainy season or high seas delays. The Contractor shall factor normal wet weather season related work interruptions into its Base Contract Price. No authorization from the contingency Bid Items or Allowance Accounts will be made for normal wet weather related delays.

7.8 **DIFFERING SITE CONDITIONS**

The Contractor shall within 24-hours of discovery, and before the conditions are disturbed, give a written notice to the FKAA of:

- Subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or
- 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 provided for in the Contract.

The FKAA 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 under this Contract, whether or not the character or amount of work is changed as a result of the conditions, an equitable adjustment shall be made under this Article and the Contract modified in writing accordingly. The amount of any equitable adjustment allowed by this Article shall be determined in accordance with the procedures set forth in Article 8.1, PAYMENT FOR CHANGE ORDERS in these General Conditions.

No request by the Contractor for an equitable adjustment to the Contract under this Article will be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed above for giving written notice may be extended by the FKAA.

No request by the Contractor for an equitable adjustment to the Contract for differing site conditions will be allowed if made after final payment under this Contract.

7.9 **LIQUIDATED DAMAGES**

Should the Contractor fail to complete the work, or any part thereof, in the time agreed upon in the Contract or within such extra time as may have been allowed for delays by extensions granted as provided in the Contract, the Contractor shall reimburse the FKAA for the additional expense and damage for each calendar day, Sundays and legal holidays included, that the Contract

remains uncompleted after the Substantial and Final Completion dates. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work is the per-diem rate, as stipulated in the Proposal. The said amount is hereby agreed upon as a reasonable estimate of the costs which may be accrued by the FKAA after the expiration of the time of completion. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the Contractor. The FKAA shall have the right to deduct such damages from any amount due, or that may become due the Contractor, or the amount of such damages shall be due and collectible from the Contractor or Surety.

7.10 OTHER CONTRACTS

The FKAA reserves the right to let other Contracts in connection with the work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the work under this Contract depends on the proper execution or results of the work of any other Contractor, utility service company or FKAA, the Contractor shall inspect and promptly report to the FKAA in writing any latent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. The Contractor's failure to report shall constitute an acceptance of the work by others as being fit and proper for integration with work under this Contract, except for latent or non-apparent defects and deficiencies in the work.

7.11 USE OF PREMISES

The Contractor shall confine his equipment, the storage of materials, and the operation of his workers to limits shown on the Drawings or indicated by law, ordinances, permits, or directions of the FKAA, and shall not unreasonably encumber the premises with his materials. The Contractor shall provide, at his own expense, the necessary rights-of-way and access to the work which may be required outside the limits of the FKAA's property and shall furnish the FKAA copies of permits and agreements for use of property outside that provided by the FKAA. Contractor shall not load nor permit any part of the 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.

7.12 SUBSTANTIAL COMPLETION DATE

The FKAA may issue a written notice of substantial completion for the purpose of establishing the starting date for specific equipment guarantees, and to establish the date that the FKAA will assume the responsibility for the cost of operating such equipment. Said notice shall not be considered as final acceptance of any portion of the work or relieve the Contractor from completing the remaining work within the specified time and in full compliance with the Contract Documents. See Article 1.16, "SUBSTANTIAL COMPLETION" under the heading DEFINITIONS of these General Conditions.

7.13 PERFORMANCE TESTING

Operating equipment and systems shall be performance tested in the presence of the FKAA to demonstrate compliance with the specified requirements. Performance testing shall be conducted under the specified design operating conditions or under such simulated operating conditions as

recommended or approved by the FKAA.

The Contractor should schedule such testing with the FKAA at least 1 week in advance of the planned date for testing.

7.14 FKAA'S USE OF PORTIONS OF THE WORK

Following issuance of the written notice of Substantial Completion, the FKAA may initiate operation of the facility. Such use shall not be considered as final acceptance of any portion of the work, nor shall such use be considered as cause for an extension of the Contract completion time, unless authorized by a Change Order issued by the FKAA.

7.15 CUTTING AND PATCHING

The Contractor shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other Contractors shown upon or reasonably implied by the Drawings.

7.16 CLEANING UP

The Contractor shall, at all times, at his own expense, keep property on which work is in progress and the adjacent property free from accumulations of waste material or rubbish caused by employees or by the work. Upon completion of the construction, the Contractor shall, at his own expense, remove all temporary structures, rubbish, and waste materials resulting from his operations.

7.17 FKAA MAY STOP THE WORK:

If the work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the work in such a way that the completed work will conform to the Contract Documents, the FKAA may order Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the FKAA to stop the work shall not give rise to any duty on the part of the FKAA to exercise this right for the benefit of Contractor or any other party.

ARTICLE VIII - PAYMENT

8.1 PAYMENT FOR CHANGE ORDERS

The FKAA's request for quotations on alterations to the work shall not be considered authorization to proceed with the work prior to the issuance of a formal Change Order, nor shall such request justify any delay in existing work. Quotations for alterations to the work shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs, including labor, material, rentals, approved services, overhead and profit.

FKAA may require detailed cost data in order to substantiate the reasonableness of the proposed costs.

Any compensation paid in conjunction with the terms of a Change Order shall comprise total compensation due the Contractor for the work or alteration defined in the Change Order. By signing the Change Order, the Contractor acknowledges that the stipulated compensation includes payment for the interruption of schedules, extended overhead, delay, disruption, inefficiency, or

any other impact claim or ripple effect, and by such signing specifically waives any reservation or claim for additional compensation in respect to the subject Change Order.

At the FKAA's option, payment or credit for any alterations covered by a Change Order shall be determined by one or a combination of the methods set forth in 8.2, 8.3, or 8.4 below, as applicable:

8.2 **UNIT PRICES - METHOD I**

The FKAA reserves the right to increase or decrease the amount of any services, materials or any other work shown in the Proposal. In the event an increase or decrease in a quantity is in excess of 25 percent of the original bid quantity, and if there is no corresponding adjustment with respect to any other item of work, the FKAA or the Contractor may be entitled to an equitable adjustment of such unit price. Any request for an equitable adjustment of a unit price must be made in writing before the increased or decreased work is commenced. Compensation for such changed quantities will be determined by mutual agreement of the FKAA and the Contractor or by application of the cost reimbursement procedures set forth in Paragraph 8.4 of this Article.

Those Unit Prices stipulated in the Proposal shall be utilized where they are applicable. In the event the Change Order results in a change in the original quantity in excess of 15 percent of the original bid quantity, and the total dollar value of that bid item is significant, the FKAA will review the Unit Price to determine if a new unit price shall be negotiated. Unit Prices for new items included in the Change Order shall be negotiated and mutually agreed upon.

8.3 **LUMP SUM - METHOD II**

A total lump sum for the work negotiated and mutually acceptable to the Contractor and FKAA. Lump sum quotations for modifications to the work shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs, including labor, material, rentals, approved services, overhead, and profit, all calculated as specified under Method III below.

8.4 **COST REIMBURSEMENT WORK - METHOD III**

The term "cost reimbursement" shall be understood to mean that payment for the work will be made on a time and expense basis, that is, on an accounting of the Contractor's forces, materials, equipment, and other items of cost as required and used to do the work.

If the method of payment cannot be agreed upon prior to the beginning of the work, and the FKAA directs by written Change Order that the work be done on a cost reimbursement basis, then the Contractor shall furnish labor, and furnish and install equipment and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost of the following:

- A. Labor, including foremen, for those hours they are assigned and participating in the cost reimbursement work (actual payroll, cost, including wages, fringe benefits as established by negotiated labor agreements, labor insurance, and labor taxes as established by law). No other fixed labor burdens will be considered, unless approved in writing by the FKAA.
- B. Material delivered and used on the designated work, including sales tax, if paid for by the Contractor or his Subcontractor.

- C. Rental, or equivalent rental cost of equipment, including necessary transportation for items having a value in excess of \$100.

Rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality.

The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances will be made for those items, unless specific agreement to the effect is made.

- D. Additional bond, as required and approved by the FKAA.
- E. Additional insurance (other than labor insurance) as required and approved the FKAA.

In addition to the actual costs in items A through E above, there shall be added the following fixed fees for the Contractor or Subcontractor actually performing the work:

- A fixed fee of 10 percent of the cost of Item A above,
- A fixed fee of 5 percent added to the cost of Items B and C, above and
- No fee will be added to the cost of Items D and E above.

An additional fixed fee of 5 percent shall be allowed the Contractor for the administrative handling of portions of the work that are performed by an approved Subcontractor. No additional fixed fee will be allowed for the administrative handling of work performed by a Subcontractor, unless by written permission from the FKAA.

The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, and any other expense.

The Contractor's records shall make clear distinction between the direct costs of work paid for on a cost reimbursement basis and the costs of other work. The Contractor shall furnish the FKAA report sheets in duplicate of each day's cost reimbursement work no later than the working day following the performance of said work. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the changes for equipment rental, whether furnished by the Contractor, Subcontractor, or other forces. The daily report sheets shall provide names, social security numbers, and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated.

Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets. Said daily report sheets shall be signed by the Contractor or his authorized agent.

The FKAA reserves the right to furnish such materials and equipment as the FKAA deems expedient, and the Contractor shall have no claim for profit or added fees on the cost of such materials and equipment.

To receive partial payments and final payment for cost reimbursement work, the Contractor shall submit to the FKAA, in a manner approved by the FKAA, detailed and complete documented verification of the Contractor's and any of his Subcontractors' actual costs involved in the cost

reimbursement work. Such costs shall be submitted within 30 days after said work has been performed.

ARTICLE IX - PARTIAL PAYMENTS

9.1 GENERAL

Nothing contained in this Article shall be construed to affect the right, hereby reserved to reject the whole or any part of the aforesaid work, should such work be later found not to comply with the provisions of the Contract Documents. All estimated quantities of work for which partial payments have been made are subject to review and correction on the final estimate. Payment by the FKAA and acceptance by the Contractor of partial payments based on periodic estimates of quantities of work performed shall not, in any way, constitute acceptance of the estimate quantities used as the basis for computing the amounts of the partial payments.

9.2 ESTIMATE

At least 30 days excluding Saturdays, Sundays or Legal Holidays, before each progress payment falls due, the Contractor shall submit to the FKAA a detailed estimate of the amount earned during the preceding month for the separate portions of the work, and request payment. As used in this Article, the words "amount earned" means the value, on the date of the estimate for partial payment, of the work completed in accordance with the Contract Documents, and the value of approved materials delivered to the project site suitably stored and protected prior to incorporation into the work.

The FKAA will, within 3 days excluding Saturdays, Sundays, or Legal Holidays, after receipt of each request for payment, either indicate in writing a recommendation of payment and present the request to the FKAA, or return the request to the Contractor indicating in writing the FKAA's reasons for refusing to recommend payment. In the latter case, the Contractor may, within 7 days, make the necessary corrections and resubmit the request.

The FKAA may refuse to recommend the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations to the FKAA. The FKAA may also refuse to recommend any such payment, or, nullify any such payment previously recommended to such extent as may be necessary in the FKAA's opinion to protect the FKAA from loss because:

- The work is defective, or completed work has been damaged requiring correction or replacement;
- Written claims have been made against FKAA or Liens have been filed in connection with the work;
- The Contract Price has been reduced because of Change Orders;
- FKAA has been required to correct defective work or complete the work in accordance with Article 7.5, FKAA'S RIGHT TO DO WORK;
- Of Contractor's unsatisfactory prosecution of the work in accordance with the Contract Documents; or
- Contractor's failure to make payment to Subcontractors or for labor, materials, or equipment.

9.3 **DEDUCTION FROM ESTIMATE**

Unless modified in the Supplementary Conditions, deductions from the estimate will be as described below.

The FKAA will deduct from the estimate, and retain as part security, 10 percent of the amount earned to work satisfactorily completed. A deduction and retainage of 10 percent will be made on the estimate amount earned for approved items of material delivered to and properly stored at the jobsite but not incorporated into the work. When the work is 50 percent complete, and at the written request of the Contractor, the FKAA may reduce the retainage to 5 percent of the dollar value of all work satisfactorily completed to date provided that the Contractor is making satisfactory progress and there is no specific cause for a greater retainage. Such reduction shall not apply to the rate of retainage to be held with respect to work completed thereafter. The FKAA may reinstate the retainage up to 10 percent if the FKAA determines, at his discretion, that the Contractor is not making satisfactory progress of where there is other specific cause for such withholding.

9.4 **QUALIFICATION FOR PARTIAL PAYMENT FOR MATERIALS DELIVERED**

Unless modified in the Supplementary Conditions, qualification for partial payment for materials delivered but not yet incorporated into the work shall be as described below.

Materials, as used herein, shall be considered to be those items which are fabricated and manufactured materials and equipment. No partial payment shall be considered for individual purchases of less than \$200 for any one item.

To receive partial payment for materials delivered to the site, but not incorporated in the work, it shall be necessary for the Contractor to include a list of such material on the Partial Payment Request. At his sole discretion, the FKAA may approve items for which partial payment is to be made. Partial payment shall be based on the Contractor's actual cost for the materials as evidenced by invoices from the supplier. Proper storage and protection shall be provided by the Contractor, and as approved by the FKAA.

Final payment shall be made only for materials actually incorporated in the work and, upon acceptance of the work, all materials remaining for which advance payments had been made shall revert to the Contractor, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the work.

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 FKAA at the time of payment free and clear of all liens, claims, security interests, and encumbrances.

If requested by the FKAA, the Contractor shall provide, with subsequent pay requests, invoices receipted by the supplier showing payment in full has been made.

9.5 **PAYMENT**

After deducting the retainage and the amount of all previous partial payments made to the Contractor from the amount earned, the amount due will be made payable to the Contractor. Recommendations for payment received by the FKAA less than 9 days prior to the scheduled day for payment will not be processed or paid until the following month.

9.6 CLAIMS FOR EXTRA WORK

In any case where the Contractor deems additional compensation will or may become due him, the Contractor shall notify the FKAA, in writing, of his intention to make claim for such compensation before he begins the work on which he bases the claim, in order that such matters may be settled, if possible, or other appropriate action promptly taken. If such notification is not given or the FKAA is not afforded proper facilities by the Contractor for keeping strict account of actual cost, then the Contractor hereby agrees to waive the claim for such additional compensation. Such notice by the Contractor, and the fact that the FKAA has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim. Claims for additional compensation shall be made in itemized detail stating all reasons justifying each claim item and the full amount of compensation claimed for each item, and submitted, in writing, to the FKAA within 10 days following completion of that portion of the work for which the Contractor bases his claim. In case the claim is found to be just, it shall be allowed and paid for as provided in Article 8.1, PAYMENT FOR CHANGE ORDERS.

9.7 DISQUALIFICATION FOR FUTURE WORK

The Contractor is notified that failure to perform satisfactorily on this project or any other project for the State of Florida shall be cause to declare the Contractor delinquent and to disqualify the Contractor from performing future projects for the FKAA.

9.8 RELEASE OF LIENS OR CLAIMS

The Contractor shall indemnify and hold harmless the FKAA from all claims for labor and materials furnished under this Contract. Prior to the final payment, the Contractor shall furnish to the FKAA, as part of his final payment request, an affidavit that all of the Contractor's obligations on the project have been satisfied and that all monetary claims and indebtedness have been paid. The Contractor shall furnish complete and legal effective releases or waivers, satisfactory to the FKAA, of all liens arising out of or filed in connection with the work.

9.9 FINAL PAYMENT

Upon completion of all of the work under this Contract, the Contractor shall notify the FKAA, in writing, that he has completed his part of the Contract and shall request final inspection. Upon receipt of the Contractor's written notice that the work is ready for final inspection, the FKAA shall make such inspection and shall submit his recommendations as to acceptance of the completed work and as to the final estimate of the amount due the Contractor under this Contract. Upon approval of this final estimate by the FKAA and compliance with provisions in Article 9.8, RELEASE OF LIENS OR CLAIMS, and other provisions as may be applicable, the FKAA shall pay to the Contractor all monies due him under the provisions of these Contract Documents. Approval of the final estimate by the FKAA shall mean approval by the FKAA's Board of Directors. Final payment will generally be made approximately 30 to 45 days after submittal of the final pay request and other documentation as required by these Contract Documents.

9.10 NO WAIVER OF RIGHTS

Neither the inspection by the FKAA or any of their employees, nor any order by the FKAA for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the FKAA, nor any extension of time, nor any possession taken by the FKAA or its employees, shall operate as a waiver of any provision of this Contract, or any power herein reserved to the FKAA, or any right to damages herein provided, nor shall any waiver by the FKAA of any breach

in this Contract be held to be a waiver of any other or subsequent breach. Acceptance of final payment by the Contractor shall not be final and conclusive or release the Contractor from any liability with regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the FKAA's rights under the warranty.

9.11 ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by the Contractor of the final payment shall release the FKAA from all claims and all liability to the Contractor for all things done or furnished in connection with the work, and every act of the FKAA and others relating to or arising out of the work. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from obligations under this Contract and the Performance and Payment Bond, and other bonds and warranties, as herein provided.

Approval of the final estimate by the FKAA shall mean approval by the FKAA's Board of Directors. Final payment will generally be made approximately 30 to 45 days after submittal of the final pay request and other documentation as required by these Contract Documents.

ARTICLE X - TERMINATION OR SUSPENSION OF THE CONTRACT

10.1 TERMINATION BY THE CONTRACTOR

10.1.1 The Contractor may terminate the Contract if the Work is stopped by the Owner for a period of ninety (90) days through no act or fault of the Contractor or Subcontractor, Sub-subcontractor, material supplier, or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- A. Issuance of an order of a court or other governmental authority having jurisdiction; or
- B. An act of government, such as a declaration of national emergency making materials required to be incorporated in the Work and approved substitutions thereof unavailable.

10.1.2 If one of the above reasons exists, the Contractor may, after thirty (30) additional days' written notice to the Owner and Project Engineer, terminate the Contract and recover from the Owner such payment for Work actually installed and incorporated into the Project.

10.2 TERMINATION BY THE OWNER FOR CAUSE

10.2.1 The Owner may terminate the Contract if the Contractor after seventy-two (72) hours of receiving notice from the Owner:

- A. Refuses or fails to supply enough properly skilled workers or proper materials;
- B. Fails to make prompt payment to Subcontractors or suppliers for materials or labor in accordance with respective agreements between the Contractor and the Subcontractors;
- C. Disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction;

- D. Otherwise is guilty of material breach of a provisions of the Contract Documents;
- E. Breaches in any warranty by the Contractor under or pursuant to the Contract Documents;
- F. Fails to furnish the Owner with assurances satisfactory to the Owner evidencing Contractor's ability to complete the Work in compliance with the Contract Documents;
- G. Fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents;
- H. If the Contract institutes proceedings or consents to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency;
- I. The Contractor abandons the Work; or
- J. The Contractor submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is falsified.

10.2.2 When any of the above reasons exists, the Owner, shall, without prejudice to any other rights or remedies of the Owner and, after giving the Contractor and the Contractor's Surety, if any, an additional seven (7) days' written notice, may terminate employment of the Contractor and may direct the Surety to:

- A. Take possession of the site and all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; and/or
- B. Honor its bond obligations and cure the Contractor's default.

If the Contractor's Surety is directed to complete the Work, then all payments made after termination of the Contractor shall be pursuant to the terms of the Performance Bond.

If the Surety fails within seven (7) days to initiate and to continue to proceed with a diligent and full faith assuring the manning of the job, the payment of obligations, the resolution of disputes, and honoring its obligations, then the Owner may, at his option stop the Surety from proceeding, declare the Surety in default or in breach of the Contract and undertake the completion of the Work by other means. In such event, the Surety shall be liable for all costs, damages, expenses and losses as set forth in the Contract Documents, including but not limited to liquidated damages, delay damages, administrative costs, completion costs, additional services of the Project Engineer, the Owner, attorney fees, legal services, court cost and interest upon such additional costs from the time demanded until the time paid.

10.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 10.2.1, the Contractor shall not receive further payment until the Work is finished and the Owner has determined all damages, costs and expenses.

10.2.4 If the unpaid balance of the Contract Sum exceeds all costs, damages, expenses and claims for finishing the Work, including compensation for the Project Engineer's and the Owner's services and expenses made necessary thereby, such excess shall be paid to the Contractor, pursuant to 10.2.3 herein. If such costs, damages, expenses and claims exceed the unpaid balance, the Contractor and Surety are jointly and severally liable and shall pay the difference to the Owner immediately upon the Owner's demand.

10.3 **SUSPENSION BY THE OWNER FOR CONVENIENCE**

10.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

10.3.2 No adjustments shall be made in the Contract Sum to the extent:

- A. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- B. That an equitable adjustment is made or denied under another provision of this Contract.

10.4 **OWNER'S TERMINATION FOR CONVENIENCE**

10.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this Paragraph 10.4 shall be by a Notice of Termination delivered to the Contractor specifying the extent of termination and the effective date.

10.4.2 Upon receipt of a Notice of Termination for Convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph: (1) cease operation as specified in the Notice; (2) place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract; (3) terminate all subcontracts and orders to the extent they relate to the Work terminated; (4) proceed to complete the performance of the Work not terminated; and (5) take actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work.

10.4.2 Upon such termination, the Contractor shall recover as its sole remedy: payment for the Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for out-of-pocket costs items properly and timely furnished to the Project or fabricated off the Project Site, delivered and stored in accordance with the Owner's instructions. Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits on the work and materials not performed for the Project.

10.4.3 The Owner shall be credited for payments previously made to the Contractor for the terminated portion of the Work, claims which the Owner has against the Contractor under the Contract and the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

ARTICLE XI – DISPUTE RESOLUTION

11.1 UNINTERRUPTED WORK

CONTRACTOR recognizes that it is imperative that the Work on the Project proceed uninterrupted and without delay. CONTRACTOR shall carry on the Work during the resolution of all claims, disputes, and disagreements with FKAA. No Work shall be delayed or postponed pending resolution of any such claim, dispute, or disagreement except as FKAA and CONTRACTOR may otherwise agree in writing.

11.2 ISSUANCE OF A WRITTEN DETERMINATION ON ANY CLAIM, DISPUTE, OR DISAGREEMENT

FKAA shall issue a written determination of any claim, dispute, or disagreement that may arise during the course of this Contract, which shall be final and binding upon the parties unless CONTRACTOR requests, in writing, negotiate the claim, dispute, or disagreement pursuant to Section 11.3 within ten (10) calendar days of the written determination of FKAA.

11.3 WRITTEN REQUEST TO INITIATE MEDIATION

Within thirty (30) calendar days of receipt of a written request to negotiate a claim, dispute, or disagreement, executives of both FKAA and CONTRACTOR, at levels at least one step above the Project personnel who were involved in the claim, dispute, or disagreement, shall meet at a mutually acceptable time and place. The meeting of the executives is intended to afford the parties the opportunity to exchange relevant information and to attempt to negotiate a resolution of the claim, dispute, or disagreement. At the conclusion of the negotiation process, or the expiration of the thirty (30) calendar days from the date of CONTRACTOR's written request to negotiate, whichever is sooner, the participating FKAA executive will issue a written summary of the negotiations, together with FKAA's decision on the claim, dispute, or disagreement. That written decision shall be final and binding upon the parties unless CONTRACTOR requests mediation in accordance with Section 11.4 within ten (10) calendar days of the written decision. The implementation of the executive negotiation procedure under this Section shall be a condition precedent to CONTRACTOR's commencement of litigation under this Contract.

11.4 APPOINT AN INDEPENDENT MEDIATOR

Upon receipt of a written request from CONTRACTOR to initiate mediation, FKAA shall appoint an independent mediator who shall be qualified by education and/or experience on the subject matter of the claim, dispute, or disagreement at issue. Within twenty (20) calendar days of the appointment of the independent mediator shall conduct mediation, or within such other times as the parties may mutually agree in writing, the independent mediator shall conduct a mediation session in an attempt to reach an amicable resolution of the claim, dispute, or disagreement. In the event that the parties are unable reach an amicable resolution within thirty (30) calendar days of the appointment of the independent mediator, the written decision of FKAA under Article 11.3 shall become final and binding upon parties. CONTRACTOR may, however, challenge that decision by filing and serving a complaint in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, sitting in Key West, Florida.

11.4.1 Each party shall be responsible for the prompt payment of one-half of the fees and expenses of the independent mediator incurred pursuant to the Section.

11.4.2 To the extent permitted by law, all negotiations, statements, and positions made or taken during mediation shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Florida Rules of Evidence.

11.5 UNRESOLVED LITIGATION BEFORE SUBSTANTIAL COMPLETION

The parties mutually agree that no litigation may be commenced before the Project has attained substantial completion or this Contract has been terminated pursuant to the Contract Documents. Any litigation that, in any manner whatsoever, relates to this Contract, or performance of any party hereunder, shall be commenced in the Circuit of the Sixteenth Judicial Circuit in and for Monroe County, Florida sitting in Key West, Florida. The prevailing party in any litigation shall be entitled to its attorneys' fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County.

11.6 GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the parties agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

11.7 REQUIREMENT TO PROMPTLY COMPLY

The dispute resolution procedures provided under this Article shall not relieve CONTRACTOR of the requirement to promptly comply with the initial determination of FKAA and to perform any all associated work.
