



DIVISION 00

BIDDING AND **CONTRACT** **REQUIREMENTS** **BUT25111JM**

CITY OF CAPE CORAL
US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN – BUT25111JM
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LEGAL NOTICE

The City of Cape Coral, Florida will receive Sealed Bids for **Invitation to Bid # [BUT25111JM, US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN](#)** in accordance with the specifications on file. A copy of the Invitation to Bid (ITB) documents and specifications may be obtained online at <https://capecoral.ionwave.net>. Log in or create a User Login to access the documents.

Sealed Bids will be publicly opened at **Cape Coral City Hall, 1015 Cultural Park Blvd, Cape Coral, FL 33990**. The name of bidders responding to this bid and total bid dollar amount will be read at the bid opening.

BIDS ARE DUE BY: 1:30 PM (local), September 3, 2025 - via electronic bid platform (IONWAVE)
BIDS WILL OPEN: 2:00 PM (local), September 3, 2025 - City Hall, 2nd Floor, Room 220A

NON-MANDATORY PRE-BID MEETING: 10:00 AM (local), August 6, 2025 – 16470 Tamiami Trail, Punta Gorda, FL 33955

NOTE: No questions will be accepted after 2:00 PM (Eastern), August 15, 2025, and all questions must be submitted through Ion Wave at <https://capecoral.ionwave.net>.

BIDS MUST BE RECEIVED ELECTRONICALLY ON THE BIDDING PLATFORM IONWAVE NO LATER THAN 1:30 PM, SEPTEMBER 3, 2025, BIDS SUBMITTED AFTER THAT TIME WILL NOT BE ACCEPTED.

Pursuant to Florida State Statute 119.071 (2), sealed bids, proposals or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution until the agency provides notice of intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

THIS PROJECT CONSISTS OF CONSTRUCTING A 36" RAW IRRIGATION WATER TRANSMISSION MAIN, RESTORATION, ROAD/DRIVEWAY RECONSTRUCTION, SITE AND DRAINAGE WORK, PUMP STATION AND OTHER WORK DISPLAYED OR DESCRIBED IN THE CONTRACT DOCUMENTS FROM THE SOUTHWEST AGGREGATE MINE TO GATOR SLOUGH ALONG WITH ALL ASSOCIATED VALVES, FITTINGS, AIR RELEASE VALVES, CASINGS, AND ALL NECESSARY RESTORATION AND SITE WORK.

Bids will be received for a single prime Contract. Bids shall be on a unit price basis as indicated in the Bid Form.

ONLY THE PRE-QUALIFIED BIDDERS WILL BE ABLE TO DOWNLOAD AN ELECTRONIC COPY OF THE BID DOCUMENTS. EACH BIDDER WILL BE RESPONSIBLE FOR DISTRIBUTION OF DOCUMENTS TO SUBCONTRACTORS AND MATERIAL/EQUIPMENT SUPPLIERS.

SEALED ENVELOPES CONTAINING BID SECURITY DOCUMENTS MUST BE MARKED ON OUTERMOST ENVELOPE AS FOLLOWS: "BID # [BUT25111JM](#)" AND "[US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN](#)" along with the Submitting Firm's: "[Company Name and Address](#)" and must be received prior to the bid submittal time of 1:30 PM – September 3, 2025 – City Hall – 2nd Floor, Finance Parks Entrance – Procurement.

The City reserves the right to reject any or all bids in whole or in part and to waive any irregularities or informalities when in the best interest of the citizens of the City of Cape Coral.

By Order of the City Manager
Kimberly Bruns, CMC, City Clerk

Issue – July 30, 2025

SECTION 00100

INSTRUCTIONS TO BIDDERS

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ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office* – The office from which the Bidding Documents (Bid Documents and Contract Drawings) are issued is the Procurement Division.
 - B. *Days* – are calendar days unless otherwise specified.
 - C. *Owner* – City of Cape Coral

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 A complete set of the Bidding Documents will be provided from the Issuing Office via the electronic bidding platform – Euna Procurement (Ion Wave) -<https://capecoral.ionwave.net/Login.appx>.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.
- 3.02 The Bidder must provide evidence that firm is licensed to provide services in the State of Florida and the evidence should include verifiable proof that BIDDER is an ACTIVE legal entity that is registered under the Florida Division of Corporations-<https://dos.myflorida.com/sunbiz/> at the time of bid submittal. The same ACTIVE legal entity name should be provided on all forms, including Division 00 - Specification Section 00300, Bid Form and Specification Section 4 of the Bidder's Information Statement and Questionnaire form (Specification Section 00301). A Bidder officially changing their legal name any time during the three (3) year period prior to the Bid submittal date should provide verifiable documentation of the name change. Bidders not meeting this requirement may be deemed as being non-responsive and their bid rejected.

The Bidder will be required to identify the Contractor's license number, expiration date and name of the primary qualifying agent of the Bidder. The contractor must include verifiable proof as a **State of Florida Licensed General Contractor**. If the primary qualifying agent is not the owner, an officer, partner, a member, a joint venture managing partner, etc., the Bidder will be required to describe the relationship to the company and provide verifiable evidence of such relationship and/or license use agreement. A Bidder responding to this Invitation to Bid (ITB) as a joint venture is required to obtain bid authority under Rule 61G4-15.0022, Florida Administrative Code and include evidence of such bid authority in its response to this ITB. This information and the required submittal requirements are to be included as a part of Specification Section 00301, Bidder's Information Statement and Questionnaire and submitted as a part of the Bid package. EACH member of a partnership or qualifying joint venture must complete and submit, as a part of the Bid package, a completed Bidder's Information Statement and Questionnaire (Specification Section 00301).

ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER’S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 *Site and Other Areas*

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.02 *Existing Site Conditions*

- A. Subsurface and Physical Conditions; Hazardous Environmental Conditions
 - 1. The Supplementary Conditions identify:
 - a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.
 - b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
 - c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
 - d. Technical Data contained in such reports and drawings.
 - 2. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
 - 3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.
- B. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.
- C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 *Site Visit and Testing by Bidders*

- A. Bidder shall conduct any desired Site visits during normal working hours and shall not disturb any ongoing operations at the Site.
- B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Bidder shall give the Owner a minimum 24-hr notice of any desired site visits. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.
- D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs. Payment for furnishing all the required local government permits and or fees, including, but not limited to, license fees, permit fees, recording fees, impact fees, and inspection fees are made at the actual verified cost (invoice) for furnishing all the local government permits and or fees. There will be no mark-ups for profit, acquisition, or other such costs whatsoever.
- E. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 *Contractor's Safety Program*

- A. Site visits and work at the Site will be governed by a Contractor safety program.

4.05 *Other Work at the Site*

- A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 – BIDDER'S REPRESENTATIONS

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

- A. Examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
- B. Visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. Become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. Carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface

structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings;

- E. Consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;
- F. Agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. Promptly give Owner written notice within timeframe indicated in the bid documents of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents;
- I. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and
- J. Agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 – A NON-MANDATORY PRE-BID MEETING WILL BE HELD FOR THIS INVITATION TO BID

- 6.01 A Non-Mandatory Pre-Bid meeting will be held at the time and location stated in the invitation and/or advertisement to bid. Representatives of Owner and Engineer shall be present to discuss the Project. Bidders are encouraged to participate in the pre-bid meeting. Owner will transmit to all prospective Bidders of record such Addenda in response to discussion arising at the pre-bid meeting and addenda will be uploaded to Cape Coral Ion Wave for all plan holders. Oral statements may not be relied upon and will not be binding or legally effective. Subsequent written questions must be submitted, via Cape Coral Ion Wave, <https://capecoral.ionwave.net>. Project questions must be in writing and submitted through Cape Coral Ion Wave and verbal messages will not receive responses. Site visits may be arranged through Procurement by calling 239-242-3675. Any questions arising at site visits must be submitted in writing to Procurement, via Cape Coral Ion Wave, <https://capecoral.ionwave.net> for them to be officially answered and to become a part of the project record.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Owner Representative, Procurement Division via Ion Wave. Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda delivered to all parties

recorded as having received the Bidding Documents. Questions received less than five (5) business days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. The last day for questions will be as shown in the Legal Notice (Section 00020).

7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent (5%) of Bidder's maximum Bid price in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions, and as modified by Supplemental Conditions. The bid security must be physically received at City of Cape Coral – City Hall at 1015 Cultural Park Blvd, Procurement Division – 2nd Floor ; Cape Coral, FL 33990 by not later than the time indicated in the electronic bidding documents as shown on IONWAVE - <https://capecoral.ionwave.net/Login.appx>.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the award, Owner may consider Bidder to be in default, annul the award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the effective date of the Contract or 120 days after the bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released once an award has been issued.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of calendar days within which the Work is to be substantially completed and ready for final payment are set forth in the Agreement (Section 00500).

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment as set forth in Article 4 of the Agreement (Section 00500).

ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or "or-equal" items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or "or-equal" item of material or equipment, application for such acceptance may not be made to and will not be considered by Owner and/or Engineer until after the Effective Date of the Contract.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.
- 12.03 The apparent Successful Bidder, and any other Bidder so requested, shall within **five days** after Bid opening, submit to Owner a verified list of the Subcontractors and/or Suppliers proposed for the portions of the Work.
- If requested by Owner, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.
- 12.04 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

ARTICLE 13 – PREPARATION OF BID

- 13.01 Pricing will be submitted electronically for this bid. The Line Items listed under the Line Items tab in Euna Procurement (Ion Wave) is the method for bidders to provide pricing. The Bid Schedule included as a part of the Bidding Documents in the Bid Form Section 00300 is for reference only.
- A. All Line items listed under the Line Items tab shall be completed. A Bid price shall be indicated for each section, bid item, alternate, adjustment unit price item, and unit price item listed therein.
 - B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may select "No Bid" listed under the price response box for the Line Item.
 - C. Each bidder shall submit all documents which have been completed, signed, dated and uploaded into the electronic bidding platform, ION WAVE.
- 13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.

- 13.03 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.04 A Bid by an individual shall show the Bidder's name and official address.
- 13.05 A Bid by a joint venture shall be executed by an authorized representative of each joint venture party in the manner indicated on the Bid Form. The official address of the joint venture shall be shown. A copy of the bid authority under Rule 61G4-15.0022, Florida Administrative Code should be included in the response to this Invitation to Bid or Request for Proposal.
- 13.06 All names shall be printed in ink below the signatures.
- 13.07 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.08 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.09 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing that they have obtained such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form. The legal entity name of the prime bidder is to be provided on all documents and bidder must be an **active legal entity** currently registered with the Division of Corporations, <https://dos.myflorida.com/sunbiz/>.
- 13.10 SAM.gov (System for Award Management) is the official U.S. government platform that all businesses must register with to be eligible for federal contracts, grants, loans, and payments. This applies to all businesses nationwide, including those in Florida. Projects receiving federal funding require all awarded bidders to have an "Active" registration with SAM.gov.

ARTICLE 14 – BASIS OF BID

14.01 *Unit Price*

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" (which Owner or its representative has set forth in the Bid Form) for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.02 *Allowances*

- A. For cash allowances the Bid price shall include such amounts as actually incurred by the Bidder on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

14.03 *Direct Purchases*

- A. Bidders are advised that the City may opt to direct purchase certain items or materials for use on this project. The bid should be submitted as though the City is not going to direct purchase any materials. Upon delivery of the items, the City requires a minimum of 24-hour notice prior to delivery of the goods. The City must verify the items upon delivery, count and inspect the delivered goods with a proper signed off receipt by authorized City personnel.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 The copy of the Bid Form (00300) is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 6 of the Bid Form.
- 15.02 A Bid shall be submitted no later than the date and time prescribed on the electronic bidding platform <https://capecoral.ionwave.net/Login.appx> and as indicated in the legal notice shown in the Invitation to Bid documents. The electronic bid submittal shall include all the required attachments, completed and signed forms. The bid security must be submitted in a sealed envelope and delivered by the time indicated in the electronic bidding documents to the City of Cape Coral. The bid security submittal time should not be any later than the electronic bidding deadline indicated in the legal notice and shown on IONWAVE, bidding platform. The bid security should be placed in a sealed envelope, markings on the outside with the notation “BID SECURITY ENCLOSED – Bid # and Title of Bid.” A mailed Bid Security shall be addressed to City of Cape Coral; Attn: Procurement Division, P.O. Box 150027; Cape Coral, FL 33915-0027. A delivered bid security to City of Cape Coral; Procurement Division – 2nd Floor; 1015 Cultural Park Blvd, Cape Coral, FL 33990, not later than electronic bid due date and time shown on electronic bidding platform (IONWAVE): <https://capecoral.ionwave.net/Login.appx>.
- 15.03 Bids received after the date and time prescribed for the submittal of bids, or not submitted via the electronic bidding platform (ION WAVE): <https://capecoral.ionwave.net/Login.appx>, will not be accepted.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be withdrawn by an appropriate document withdrawal in the same manner that a Bid must be submitted via the electronic bidding platform, where Bids are to be submitted prior to the date and time for the submittal of Bids.
- 16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.03 After bids are opened, corrections or modifications to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by City Council, if the following is established:
 - (a) That the bidder acted in good faith in submitting the bid;
 - (b) That in preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;
 - (c) That the error was not the result of gross negligence or willful inattention on the part of the bidder;
 - (d) That the error was discovered and communicated to the City within twenty-four (24) hours of bid opening, along with a request for permission to withdraw the bid; and

- (e) The bidder submits documentation and an explanation of how the bidding error was made.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the advertisement or Invitation to bid. The Contractor Name and Total Bid Amount will be read aloud publicly.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, mathematically unbalanced, materially unbalanced, “front loaded” or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. A mathematically unbalanced bid is one containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder’s anticipated profit, overhead costs, and other indirect costs, which the bidder anticipates for the performance of the items in question. A materially unbalanced bid is a bid where there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the City. A “front loaded” bid is considered one in which prices offered for performance and/or acquisition activities to occur early in the project schedule do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder’s anticipated profit, overhead costs, and other indirect costs, which the bidder anticipates for the performance of the items in question. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

- 19.02 If Owner awards the contract for the Work, such award shall be to the Responsible Bidder submitting

19.03 Evaluation of Bids - Price

- A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Line Items and Bid Form or prior to the Notice of Intent to Award.
- B. For the determination of the apparent low Bidder when unit price bids are submitted, Bids may be compared on the basis of the total sum of the products, utilizing quantity of each item and unit price, total cost extension for each item, subtotal of items, grouping of items, together with any lump sum items.
- C. Owner may choose to award one and/or multiple sections of the bid schedule/bid form for any bid solicitation, as may be deemed in the best interest of the City.

19.04 Evaluation of Bids – Responsible

In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

In addition, to price the following may be considered in determining a responsible bidder:

- A. The ability, capacity, skill, and sufficiency of resources of the bidder to perform the contract.
- B. Whether bidder can perform the contract by providing the service promptly, or within time specified, without delay or interference.
- C. The character, integrity, reputation, judgement, experience and efficiency of the bidder.
- D. The quality of performance of the bidder in previous city contracts.
- E. The previous and existing compliance by the bidder with laws and ordinance relating to the contract.
- F. The quality, availability and adaptability of the supplies or professional or contractual services to the particular use required; and,
- G. The ability of the bidder to provide future maintenance, service or warranty work, if applicable.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers. The Owner may waive any irregularities or requirements requested and may request any additional information deemed necessary to satisfy its evaluation of bidders. The request for additional information or clarification may be performed anytime up to and including post bid submittals, as may be deemed necessary.

ARTICLE 20 – BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation. The bidder will return an Acknowledgement of Insurance Requirements form and provided in the bid documents.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 When Owner issues a Notice of Intent to Award to the Successful Bidder, the Owner will request the successful bidder to provide a signed agreement (using blue/black ink), which has been partially signed by Owner staff. Once the intent to award has been approved by City Council, authorized Owner staff will complete the signing of the contract documents. The contract will then become fully executed. Owner will deliver one fully executed agreement to the Successful Bidder. Within fifteen (15) calendar days thereafter, the awarded Bidder shall deliver the Certificate of Insurance providing coverage as outlined in the bid documents or adjusted values, if required, with the Owner being named as additional insured, original payment and performance bonds (when applicable) that have been recorded in Lee County Clerk of Courts, and any additional documentation required to be delivered by the Contract Documents to Owner. No work is to begin on the project, prior to issuance of the Notice to Proceed and issuance of a fully executed Purchase Order.

ARTICLE 22 – SALES AND USE TAXES

22.01 Owner is exempt from Florida state sales and use taxes on materials and equipment to be incorporated in the Work. (Exemption No. 85-8012589883C-5). Said taxes shall be included in the Bid. Refer to Paragraph SC-7.03. D of the Supplementary Conditions for additional information.

ARTICLE 23 – BID PROTEST PROCEDURES

23.01 **Right to Protest.** Any person or firm who is affected adversely by the City's decision or intended decision may protest as outlined in City of Cape Coral Ordinance Article VII, Section 2-150.

23.02 **Time Limits and Form of Protest.** A protest with respect to an Invitation for Bid or Request for Proposal shall be submitted in writing to the Procurement Manager prior to the opening of the bids or the closing date of proposals.

A written notice of intent to protest an intended bid award with the City Procurement Manager within five (5) business days (excluding Saturdays, Sundays, and Legal Holidays) after the date of mailing **or** via an electronic notification on Ion Wave **or** an electronic notification via e-mail (all are approved methods of notification per City Ordinance) of the notice of intent to award the contract.

A written notice of intent to protest the ranking of proposals submitted in response to a request for proposal shall be filed with the Procurement Manager within five business days (excluding Saturdays, Sundays and legal holidays) after the date of mailing of the notice of ranking by the SAC or by the City Manager or designee. Only those persons or firms who have submitted a bid/proposal or who have been interviewed and ranked shall be permitted to file a protest.

A formal written protest shall be filed within ten (10) calendar days after the filing of the initial written notice of intent to protest and shall be delivered in a manner that requires a signature by a representative of the City. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest within the time limits prescribed herein shall constitute a waiver of the right to protest. Upon the filing of a formal written protest the contractor or vendor shall post a bond, payable to the City of Cape Coral, in an amount equal to five percent of the total bid or estimated contract amount, or five thousand dollars (\$5,000.00), whichever is less. The bond shall be conditioned upon the payment of all costs which may be adjudged against the protesting contractor or vendor in the event the protest is resolved adversely to the protester. An Irrevocable Letter of Credit or other form of approved security, payable to the CITY, will be accepted. Failure to submit a bond simultaneously with the formal written protest shall invalidate the protest and the CITY may proceed to award the contract as if the protest had never been filed.

23.03 **Hearing.** If the subject of a protest is not resolved by mutual agreement within seven (7) calendar days after receipt of a formal written protest, the matter may, at the option of the City Council, be referred to a hearing officer or administrative law judge who shall conduct a hearing within 15 calendar days of receipt of the formal written protest. The hearing officer or administrative law judge shall render a recommended order within 30 calendar days after the hearing. The recommended order shall be scheduled on the next Council agenda for final action. If Council so elects; the protest may be heard directly by the City Council.

23.04 **Stay of Action.** Upon receipt of a formal written protest which has been timely filed, the CITY shall stop the bid solicitation, RFP process or the contract award process until the subject of the protest is resolved either informally or by formal City Council action, unless the City manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation or RFP process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

23.05 **Decision; Entitlement to Costs.** If a protest is sustained and it is determined that the protesting bidder should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to recover from the City the reasonable costs incurred in connection with preparing its bid but shall not be entitled to recover lost profits or attorney's fees. The decision shall

be final and conclusive as to the City unless an appeal is filed, or an action is filed in court within ten days of the date of the decision of Council.

ARTICLE 24 - LOCAL VENDOR PREFERENCE OR LOCAL PROFESSIONAL PREFERENCE

Local Vendor Preference Will Not be Utilized with this Solicitation.

ARTICLE 25 - PUBLIC RECORDS

25.01 Pursuant to Florida Statute §287.058 (1) (c), the contract may be unilaterally cancelled by the City if the Contractor, refuses to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with the contract, unless the records are exempt from disclosure.

ARTICLE 26 - APPROPRIATIONS AND FUNDING

26.01 Pursuant to FL Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City, if the City Council reduces or eliminates appropriations.

26.02 Funding for this project is partially provided by grants which are shown as separate attachments to the bid documents. The compliance to all terms and conditions, federal, state and local laws and regulations, completion of the deliverables, providing reporting and compliance with audits related to the grants are required by the awarded vendor and their sub-contractors as recipients of funds from the grants. All grants are subject to annual appropriation by Legislature.

ARTICLE 27 - IMMIGRATION AFFIDAVIT CERTIFICATION AND E-VERIFY

As a condition precedent to entering into any subsequent AGREEMENT, and in compliance with The Immigration and Nationality Act (INA), 8 U.S.C. Section 1324a(e) Section 274A(e) and Florida Statute State Section §448.095, Contractor or Consultant and their subcontractors shall register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

The Employment Eligibility Verification System (E-Verify) is operated by the Department of Homeland Security in partnership with the Social Security Administration. The Department of Homeland Security website URL is <https://www.e-verify.gov/>

An immigration affidavit certification and E-Verify form that has been signed by an authorized signer of the submitting company, which has been notarized and provides evidence of enrollment in E-Verify is required. The City has included the Immigration Affidavit Certification and E-Verify form to be utilized with all bids, proposals, and formal quotations submittals.

A public agency must require in any contract that the contractor, and any subcontractor thereof, register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

PUBLIC AGENCY CONTRACTING

(a) A public agency must require in any contract that the contractor, and any subcontractor thereof, register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

- (b) If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract.
- (c)
 - 1. A public agency, contractor, or subcontractor who has a good faith belief that a person or an entity with which it is contracting has knowingly violated s. 448.09(1) shall terminate the contract with the person or entity.
 - 2. A public agency that has a good faith belief that a subcontractor knowingly violated this subsection, but the contractor otherwise complied with this subsection, shall promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.
 - 3. A contract terminated under this paragraph is not a breach of contract and may not be considered as such. If a public agency terminates a contract with a contractor under this paragraph, the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated. A contractor is liable for any additional costs incurred by a public agency as a result of the termination of a contract.
- (d) A public agency, contractor, or subcontractor may file a cause of action with a circuit or county court to challenge a termination under paragraph (c) no later than 20 calendar days after the date on which the contract was terminated.

ARTICLE 28 – HUMAN TRAFFICKING AFFIDAVIT

Pursuant to Florida Statute 787.06, when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in F.S. 787.06.

ARTICLE 29 – PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL, or IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING:

In accordance with Florida Statute 287.05701 the City may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor. An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

END OF SECTION

SECTION 00300
BID FORM
CITY OF CAPE CORAL
US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN
BID # BCP25111JM

ARTICLE 1 – BID RECIPIENT

- 1.01 This Bid is submitted electronically via the electronic bid platform – IONWAVE <https://capecoral.ionwave.net/Login.appx>. The Bid Schedule on this Bid Form is for reference only and pricing is NOT to be entered on this form. All pricing should be entered in Ion Wave, on the Line Items located under the Line Items tab.
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.
- 1.03 EXECUTION OF BID: The Official Bid Form must contain a manual signature of an authorized representative. Bid must be typed or printed in ink. Use of erasable ink is not permitted. All corrections made by bidder to his/her bid price must be initialed.
- 1.04 AWARD: The City Council reserves the right to waive minor variations to specifications, informalities, irregularities and technicalities in any bids; to reject any and all bids in whole or in part with or without cause, and/or to accept bids that in its judgment will be in the best interest of the City. Following complete investigation of each bid received by the City, the City Council reserves the right to make awards on a multiple, lump sum, or individual item basis or in combination as shall best serve the interest of the City. The City reserves the right to negotiate additional related services.
- 1.05 PRICES: Bidder warrants by virtue of bidding that any orders placed within the bid period shall be honored at the prices, items and conditions quoted in his/her Official Bid Form. When a yearly quote is being obtained, bidder must contractually commit that bid amount on bid form is firm with no escalation in unit price or otherwise for 365 days from award date. Prices must be stated in units of quantity specified in the bid specifications. In case of discrepancy in computing the amount of the bid, the unit price will prevail.
- 1.06 LIABILITY INSURANCE: Where bidders are required to enter City property to deliver materials or perform work or service as a result of bid award, the bidder assumes full duty obligation and expense of obtaining all necessary insurance and associated licenses and/or permits. Insurance requirements are identified in SC-Article 6 of the Supplementary Conditions (Section 00800) and Acknowledgement of Insurance Requirements Form (provided as an attachment in the bid documents).

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

- 2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for **120 days** after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner. All bids will be publicly opened at the designated time and location specified within the Legal Notice.

SECTION 00300
BID FORM

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

- B. Bidder meets the minimum qualifications as set forth in Specification Section 00100, Article 3 – Qualifications of Bidders and all required verifiable documentation and/or information is contained in Specification Section 00301, Bidder’s Information Statement and Questionnaire submitted herewith as a part of this bid package. EACH member of a partnership or qualifying joint venture has completed and submitted as a part of the Bid package, a completed Bidder’s Information Statement and Questionnaire (Specification Section 00301).
- C. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- D. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- E. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- F. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder’s safety precautions and programs.
- G. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid

SECTION 00300

BID FORM

and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

- H. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- I. Bidder has given CITY written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents and confirms that the written resolution thereof by CITY is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- K. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.
- L. Bidder acknowledges that this bid is utilizing federal funding which requires an "Active" registration through the SAM.gov (System for Award Management) website. SAM.gov is the official U.S. government platform that all businesses must register with to be eligible for federal contracts, grants, loans, and payments. This applies to all businesses nationwide, including those in Florida.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

SECTION 00300

BID FORM

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

BID SCHEDULE – REFERENCE ONLY – SEE ARTICLE 1.01**US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN****BID # BUT25111JM**

BID FORM					
US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN					
BUT25111JM					
ITEM NO.	DESCRIPTION	QUANT.	UNIT	UNIT AMOUNT	TOTAL AMOUNT
1	GENERAL REQUIREMENTS (Maximum of 10% of Bid Total)				
1.1	Bond (1.5%) and Insurance (1%)	1	LS		
1.2	Preconstruction Video	1	LS		
1.3	Erosion and Sedimentation Controls	1	LS		
2	Maintenance of Traffic	1	LS		
3	Clear and Grub Site	1	LS		
4	Building	1	LS		
5	Electrical	1	LS		
6	Concrete Structure	1	LS		
7	Concrete Flat Work	1	LS		
8	Aboveground Piping	1	LS		
9	Submersible Pumps	3	EA		
10	SP-12.5 Asphalt Concrete (2")	170	TN		
11	Optional Base Course – Base Group 6	1,645	SY		
12	Type B Stabilization (LBR 70 - 12")	1,740	SY		
13	12"x18" RCP	72	LF		
14	36" RCP	40	LF		
15	12"X18" MES	2	EA		
16	Double 36" MES	2	EA		

00300-4

SECTION 00300

BID FORM

BID FORM					
US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN					
BUT25111JM					
ITEM NO.	DESCRIPTION	QUANT.	UNIT	UNIT AMOUNT	TOTAL AMOUNT
17	6' Chain Link Fence	375	LF		
18	Fence Gate	2	EA		
19	Performance Turf Sod (Bahia)- PUMP SITE	1,820	SY		
20	RIP-RAP RUBBLE				
20.1	RIP-RAP Rubble (1.5" DIAx13.5" Thick) – Pump	3,000	TN		
20.2	RIP RAP Rubble (1.5" DIAx13.5" Thick) – Discharge Site	1,500	TN		
21	Direct Bury 36" Ductile Iron Water Pipe	17,625	LF		
22	Direct Bury 42" Ductile Iron Water Pipe	65	LF		
23	54" Steel Casing – Jack and Bore	1,500	LF		
24	MJ 153 Ductile Iron Compact Fitting	24,000	LBS		
25	Discharge Assembly	1	LS		
26	Pipe Bedding Material	11,380	TN		
27	2" Automatic Air Release Valve – Complete Assembly, CCCU Detail	15	EA		
28	Marker Balls and Marker Tape	150	EA		
29	Performance Turf Sod (Bahia)- US 41 Right-of-way	58,750	SY		
30	Surveying and As-Builts	1	LS		
31	MOBILIZATION/DEMOBILIZATION				
31.1	Mobilization – Maximum of 5% of base bid (Lines 1 through 30)	1	LS		
31.2	Demobilization – Maximum of 25% of Mobilization	1	LS		
TOTAL BID COST					

 BID AMOUNT (IN WORDS)

00300-5

SECTION 00300
BID FORM

Time of Completion

- 5.02 Bidder agrees that the Work will be substantially completed within **515 calendar days** after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions (Section 00700) and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **545 calendar days** of Notice to Proceed. No work is to begin prior to the issuance of a fully executed Purchase Order (PO) and a Notice to Proceed (NTP). NOTE: The contract times may be adjusted based upon the actual work awarded for this bid solicitation.
- 5.03 Bidder accepts the provisions of the Agreement (Section 00500) as to liquidated damages at **\$500/day**.

ARTICLE 6 – ATTACHMENTS TO THIS BID

- 6.01 The City of Cape Coral **requires** the following signed documents to be returned with all bids for a bid to be considered “Responsive”:

Please provide the documents for ease of verification and completeness of your bid package.

- A. Section 00300 – Bid Form
Subcontractor Listing
Sworn Statement on Public Entity Crimes
Form 3A – Interest In Competitive Bid for Public Business
Drug Free Workplace Certification
Acknowledgement of Insurance Requirements
Trench Safety Form
Contractor’s Self-Performed Work Evaluation Form
Scrutinized Companies Certification
Immigration Affidavit
E-Verify (Memorandum of Understanding) – **VENDOR SUPPLIED ITEM**
Debarment, Suspension, Voluntary Exclusion
Human Trafficking Affidavit
Certification for Disclosure of Lobbying Activities
Certification for Domestic Materials Preference
Certification on DBE’s
Acknowledgement of Federal Funding Clauses
- B. Section 00301 Bidders information Questionnaire with attachments as follows:
- Attachment 4 – Labor Force Staff
 - Attachment 6 – Resumes – Key Individuals
 - Attachment 8– Qualifications & Licensing – include licenses, certificates, etc.
 - Attachment 9 – Certifications -as applicable
 - Attachment 10– **Current Bonding – Available-Aggregate - Letter from Surety**
 - Attachment 13 – Schedule A
 - Attachment 13 – Schedule B
 - Attachment 14–Record of Performance
 - Attachment 15– Legal Proceedings–15-A-Arbitration (as applicable)
 - Attachment 15 – Legal Proceedings-15-B–Lawsuit (as applicable)
 - Attachment 15 – Legal Proceedings-15-C1-Other (as applicable)
 - Attachment 15- Legal Proceedings-15-C2-Other (as applicable)
 - Attachment 15 – Legal Proceedings-15-C3-Other (as applicable)
 - Attachment 15 – Legal Proceedings-15-C4-Other (as applicable)

SECTION 00300

BID FORM

- Attachment 16– General Safety–place on cd/flash drive.
- Attachment 16 – Electrical Safety–place on cd/flash drive.
- Attachment 18 – Comments (IF APPLICABLE)
- Attachment 19 – References with required contact information FOR FIRM

- C. Section 00410 Bid Bond
- D. Section 00420 Corporate Resolution
- E. Section 00480 Non-Collusion Affidavit
- F. Section 00481 Business Ethics Requirements

Bid submittal documents are uploaded electronically via IONWAVE (link as follows):

<https://capecoral.ionwave.net/Login.aspx>

FAILURE TO RETURN ALL OF THE ABOVE REQUIRED ITEMS WITH A BID MAY RESULT IN YOUR BID BEING CONSIDERED NON-RESPONSIVE AND WILL NOT BE CONSIDERED FOR AWARD.

ARTICLE 7 – DEFINED TERMS

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

(Remainder of page left blank intentionally)

**SECTION 00300
BID FORM**

ARTICLE 8 – BID SUBMITTAL

BIDDER: *[Indicate correct legal entity name of bidding entity – FULL LEGAL NAME]*

By: _____
[Signature] _____

[Printed name] _____

Title: _____
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices: _____

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

Bidder's / Contractor's
License No.: _____
(where applicable)

NOTE TO USER: *Use in those states or other jurisdictions where applicable or required.*

SUBCONTRACTOR LISTING

List all proposed subcontractors to be used for this project regardless of special grouping or dollar value of work to be performed.

Please see Article 12 of Section 00100 – Instructions to Bidders for further information regarding subcontractors.

Firm Name, Address, and Telephone Number	Description of Work to be Performed (Be Specific)	Estimated Dollar Value of Work	MBE/WBE
_____ _____ _____		\$	
_____ _____ _____		\$	
_____ _____ _____		\$	
_____ _____ _____		\$	
_____ _____ _____		\$	

Use additional sheets if necessary.

END OF SECTION

SC Listing-1

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

This form must be signed and sworn to in the presence of a notary public or other officer authorized to administer oaths.

1. This sworn statement is submitted

to _____
(Print name of the public entity)

by _____
(Print individual's name and title)

for _____
(Print name of entity submitting sworn statement)

whose business address is _____

(If applicable) its Federal Employer Identification Number (FEIN) is _____

If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement on an attached sheet (required as per IRS Form W-9). Social Security Number required for one or more of the following purposes: identification and verification; credit worthiness; billing and payment; data collection, reconciliation, tracking, benefit processing and tax reporting. Social Security Numbers are also used as a unique numeric identifier and may be used for such purposes.

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, and bid or contract for goods or services to be provided to any public entity or agency or political subdivision or any other state or of the United States, and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

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

4. I understand that "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

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

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

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of the entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting those sworn statements. *(Please indicate which statement applies.)*

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

_____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and **convicted** of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent **proceeding** before a Hearing Officer of the State of Florida, Division of Administrative Hearing and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OR ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

STATE: _____

(Signature)

COUNTY: _____

(Date)

PERSONALLY APPEARED BEFORE ME, AND PRODUCED IDENTIFICATION, to the undersigned authority,

(Printed Name of individual signing above)

who, after first being sworn by me, affixed his/her signature in the space provided above on this _____ day of _____, in the year 20____.

(NOTARY PUBLIC NAME)

MY COMMISSION EXPIRATION DATE

PRINT, TYPE OR STAMP OF NOTARY PUBLIC

FORM 3A - INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS

LAST NAME - FIRST NAME - MIDDLE INITIAL	OFFICE POSITION HELD
MAILING ADDRESS	AGENCY
CITY ZIP COUNTY	ADDRESS OF AGENCY

WHO MUST FILE THIS STATEMENT

Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, Florida Statutes and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates and Employees" for more details on these prohibitions. However, Section 112.313(12), Florida Statutes, provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; and where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. This form has been promulgated by the Commission on Ethics for such disclosure, *if and when applicable* to a public officer or employee.

INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS (Required by 112.313(12)(b), Fla. Stat.)

1. The competitive bid to which this statement applies has been/will be (strike one) submitted to the following government agency:		
2. The person submitting the bid is:	NAME ▼	POSITION ▼
3. The business entity with which the person submitting the bid is associated is:		
4. My relationship to the person or business entity submitting the bid is as follows:		
5. The nature of the business intended to be transacted in the event that this bid is awarded is as follows:		
a. The realty, goods and/or services to be supplied specifically include: _____		
b. The realty, goods and/or services will be supplied for the following period of time: _____		
c. Will the contract be subject to renewal without further competitive bidding? ____ Yes ____ No. If so, how often? _____		
6. Additional comments:		
7. SIGNATURE	DATE SIGNED	DATE FILED

FILING INSTRUCTIONS

If you are a state officer or employee required to disclose the information above, please file this form with the Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317-5709; physical address: 3600 Maclay Blvd. South, Suite 201, Tallahassee, FL 32312. If you are an officer or employee of a political subdivision of this state and are subject to this disclosure, please file the statement with the Supervisor of Elections of the county in which the agency in which you are serving has its principal office.

NOTICE: UNDER THE PROVISIONS OF FLORIDA STATUTES #112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.00

DRUG FREE WORKPLACE CERTIFICATION

In order for the City of Cape Coral to continue as a drug-free workplace, a business shall:

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

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

Company Name (please print)

Authorized Signature

Date

ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS

Insurance: The following insurance will be required by the CITY OF CAPE CORAL

The Contractor shall secure, pay for, and file with the Owner prior to commencing any work under the Contract certificates for the types of insurance set forth herein. All such certificates shall provide for minimum coverage in the amounts set forth herein, unless a greater minimum amount is specified elsewhere in the Contract Documents. Contractor shall, at all times during the performance of this Agreement, provide and maintain the following types of insurance. All certificates of insurance must be accompanied by all endorsements being required, including additional insured endorsements, cancellation/material change endorsements, and waivers of subrogation, USL&H Act and Jones Act endorsements.

6.01 Comprehensive General Liability Insurance. Comprehensive General Liability Insurance which shall include coverage on an "occurrence" basis for:

- 6.01.1 Personal injury liability with employee exclusion deleted;
- 6.01.2 Completed operations liability;
- 6.01.3 Blanket contractual liability insuring the Contractor's obligations under this Agreement;
- 6.01.4 Contractor's protective liability to cover the Contractor's liability arising out of the Work performed by its subcontractors;
- 6.01.5 Mold coverage;
- 6.01.6 Explosion, collapse, and underground property damage;
- 6.01.7 Advertising injury;
- 6.01.8 Premises medical payments;
- 6.01.9 Property damage liability;
- 6.01.10 Independent contractor liability; and
- 6.01.11 Property damage extended to apply to completed operations.

Notwithstanding anything contained herein to the contrary, the coverages under the Comprehensive General Liability Policy to be furnished by the Contractor must be afforded on a policy form no more restrictive than the last edition of the Comprehensive General Liability Policy filed by the Insurance Service Office, Inc.

The limits of liability associated with the Contractor's Comprehensive General Liability Policy shall not be less than the following: \$1,000,000.00 each occurrence \$2,000,000.00 aggregate and shall remain in force and effect until contract has been completed and fully accepted by the City.

6.02 **Excess Liability Insurance is required for this project.** The Contractor shall maintain an Excess Liability Insurance Policy in amount not less than two (2) Million and No/100 Dollars (\$2,000,000) combined single limit bodily injury/property damage, in excess of the Commercial General Liability Insurance. Such insurance shall remain in force and effect until time of completion and delivery by Contractor of the work and has been fully accepted by the City under the Contract Documents.

6.03 Business Automobile Insurance. The Contractor shall maintain Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used by the

Contractor in connection with the Project with a combined minimum limit of One Million and No/100 Dollars (\$1,000,000.00), single limit for bodily injury and property damage liability for each person/each occurrence.

- 6.04 Worker's Compensation Insurance. The Contractor shall maintain Worker's Compensation Insurance insuring its liability under the Worker's Compensation and Occupational Disease Laws of the State of Florida, with limits of liability not less than shown below. Requirements are based Upon FS440 encompassing all operations included by the contract or agreement. Workers Compensation exemptions may be accepted with written proof by the State of Florida approval showing such exemption. The requirements for Contractor Liability minimum limits:
- 6.04.1. One Million and No/100 Dollars (\$1,000,000.00) each accident for bodily injury by accident;
 - 6.04.2 One Million and No/100 Dollars (\$1,000,000.00) each employee for bodily injury by disease; and
 - 6.04.3 One Million and No/100 Dollars (\$1,000,000.00) policy limit for disease.
 - 6.04.4 The Worker's Compensation Policy to be provided by the Contractor must be endorsed with a waiver of subrogation endorsement waiving the Contractor's right of subrogation against the City.
 - 6.04.5 Notwithstanding any other provision of the Contract, the Contractor shall maintain complete worker's compensation coverage for each and every employee, principal, officer, representative, or agent of the Contractor who is performing any labor, service or material under the Contract.
 - 6.04.6 If the work is being done on or near a navigable waterway, Contractor's workers compensation policy should be endorsed to provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage as specified by Owner.
- 6.05 Property Insurance. It is the Contractor's responsibility to carry its own Property Insurance on all property, including equipment that will not become an integral part of the completed Project.
- 6.06 Builder's Risk Insurance. The Contractor is required to purchase Builder's Risk Insurance for the Project. If requested by the City, the Contractor shall purchase such insurance for the City's benefit and shall be reimbursed by the City for such expense. If the Contractor assists the City in this regard, the cost of such coverage shall not be considered a part of the cost of the Work and the Contractor shall not be entitled to any fee in connection with such expenditure.
- 6.07 Extent of Coverages. The insurance coverages referred to above are set forth in full in their respective policy forms, and the foregoing descriptions of such policies are not intended to be complete or to limit any provisions of the actual policies and should said descriptions be narrower than the coverages afforded under the actual policies of insurance, the provisions of the actual policies of insurance shall govern.
- 6.08 Pollution Liability: The insurance coverage is covering property loss and liability arising from pollution-related damages, for sites that have been inspected and found to be uncontaminated. Transporter moving hazardous products or waste as cargo aboard the transporter's truck:

\$1,000,000 bodily injury/property damage/clean-up, including wrongful delivery.
\$2,000,000 General Aggregate.

- 6.09 Longshore and Harbor Workers' Compensation & Employers' Liability: *(TO BE SWAPPED OUT WITH THE STANDARD WORKERS' COMPENSATION FOR THOSE CONTRACTORS WORKING IN AND AROUND THE NAVIGABLE WATERS)* - Statutory benefits as defined by federal law for job injuries that occur on the navigable waters of the United States as described in the United States Longshore and Harbor Workers' Compensation Act ("LHWCA" or "USL&H") to include all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Employers' Liability will have minimum limits of:

\$1,000,000 per accident/disease limit/disease – policy limit

- 6.10 Waiver of Subrogation. The Contractor's insurance policies shall be endorsed to provide that the insurers waive their rights of subrogation against the City to provide that the policies afford primary coverage over any other applicable insurance coverages.
- 6.11 Insurance Certificate. Prior to performing any services hereunder, the Contractor shall file with the City a Certificate of Insurance in a form acceptable to the City. The Certificate of Insurance shall reflect the City as an additional insured on the Contractor's Commercial General Liability, Business Automobile Liability, Property Insurance, and Excess Liability Policies. The Certificate of Insurance furnished by the Contractor shall contain a provision that the coverages afforded under the policies thereon will not be cancelled until at least thirty (30) days prior written notice has been given to the City. In addition to the foregoing Certificate of Insurance, the Contractor shall procure and furnish to the City endorsements to its Commercial General, Excess Liability and Automobile Liability Insurance Policies reflecting the City as an additional insured under said policies.

Additional Insured:

Owner: City of Cape Coral
1015 Cultural Park Blvd., 2nd Floor
Cape Coral, FL 33990

Deductibles: The City is exempt from, and is no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the firm providing such insurance.

Notification Clause: In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy. Unless otherwise specified, it shall be the responsibility of the Consultant's and Sub-Consultant's to ensure that all subcontractors comply with the same insurance requirements spelled out above.

All certificates of insurance must be on file with and approved by the City of Cape Coral before the commencement of any work activities.

- 6.12 Rating of Insurance Companies. All companies issuing the policies provided for hereunder shall be licensed or approved by the Department of Insurance, State of Florida and shall have financial rating no lower than II and a policyholders surplus rating no lower than (A) as listed in AMBest TK Rating Guide, current edition, or interim report. Companies with ratings lower than those specified herein shall be acceptable only upon the written consent of the City.

6.13 Subcontractor Insurance Coverage. The Contractor shall require its subcontractors to maintain minimum insurance coverages for the Project:

- 6.13.1 Worker's Compensation shall be per Florida Statute 440 – Statutory Limit
- 6.13.2 Employer's Liability insurance with minimum limits of liability not less than:
 - 6.13.2.1 One (1) Million Dollars (\$1,000,000) each accident for bodily injury by accident;
 - 6.13.2.2 One (1) Million Dollars (\$1,000,000) each employee for bodily injury by disease; and
 - 6.13.2.3 One (1) Million Dollars (\$1,000,000) policy limit for disease.
- 6.13.3 The Worker's Compensation Policy to be provided by the Contractor must be endorsed with a waiver of subrogation endorsement waiving the Contractor's right of subrogation against the City.
- 6.13.4 Notwithstanding any other provision of the Contract, the Contractor shall maintain complete worker's compensation coverage for each and every employee, principal, officer, representative, or agent of the Contractor who is performing any labor, service or material under the Contract.
- 6.13.5 If the work is being done on or near a navigable waterway, Contractor's workers compensation policy should be endorsed to provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage as specified by Owner.

6.14 **Subcontractor Commercial General Liability:**

Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

- 6.14.1 One (1) Million Dollars (\$1,000,000) per each occurrence
- 6.14.2 Two (2) Million Dollars (\$2,000,000) general aggregate
- 6.14.3 One (1) Million Dollars (\$1,000,000) products and completed operations
- 6.14.4 One (1) Million Dollars (\$1,000,000) personal and advertising injury

A policy of Comprehensive General Liability Insurance containing the coverages as required by the Contractor with a combined single limit for liability injury, personal injury and property damage of at least One (1) Million \$1,000,000.00 per occurrence and Two (2) Million Dollars (\$2,000,000.00) aggregate. The general aggregate limit shall apply on a per project basis. The limit may be provided through a combination of primary and umbrella/excess liability policies.

6.15 **Subcontractor Business Automobile Liability:**

Insurance Policy covering all owned, non-owned, and hired vehicles used by the subcontractor in connection with the Project with minimum limits of:

- 6.15.1 One (1) Million Dollars (\$1,000,000) combined single limit (CSL); or

- 6.15.2 Five (5) Hundred Thousand Dollars (\$500,000) bodily injury per person;
- 6.15.3 One (1) Million Dollars (\$1,000,000) bodily injury per accident
- 6.15.4 Five (5) Hundred Thousand Dollars (\$500,000) property damage per accident

6.16 **Subcontractor Excess Liability Policies** may be used to comply with the Comprehensive General Liability, Business and Automobile Liability Insurance limits referred to above. All of subcontractors' policies shall be endorsed to provide that the insurers waive their right of subrogation against the City.

Statement of Offeror:

We understand the requirements requested and agree to fully comply.

Bidder/Company Legal Name

AUTHORIZED REPRESENTATIVE NAME/TITLE

AUTHORIZED SIGNATURE

DATE

TRENCH SAFETY ACT COMPLIANCE FORM

Bidder acknowledges that included in the various items of the proposal and in the Total Bid Price are costs for complying with Florida Trench Safety Act, Chapter 553 – Building Construction Standards, Part III, Florida State Statute, Section 553.60 through 553.64 (herein called the “Act”) and all requirements to meet the Florida State standards applicable to this construction project in regards to trench safety standards, during all phases of the work, if awarded the bid/contract, and will ensure that all subcontractors will also comply with the Act.

The bidder will consider the geotechnical information available for the City, from its own sources and all other relevant information in its design of the trench safety system that it will employ on this project. The bidder acknowledges that the City is not obligated to provide such information, that bidder is not to rely solely on such information, if provided, and that bidder is solely responsible for the selection of the data on which they rely upon in designing said safety system, as well as for the system itself.

The Bidder must complete and submit the Trench Safety Act Compliance form. The bidder acknowledges that included in the Total Price in the Bid Form are costs for complying with the Florida Trench Safety Act. The cost will be as shown below.

The bidder must comply with the trenching and excavation requirements of OSHA for Safety and Health Regulations for Construction.

Acceptance of the bid to which this certification and disclosure applies in no way represents that the City or representatives have evaluated or determined that the costs, shown below are adequate to comply with the applicable trench safety requirements, nor does it in anyway relieve the undersigned of their sole responsibility for complying with all applicable safety requirements.

	Trench Safety Measure	Units of Measure (LF)	Unit (Quantity)	Unit Cost	Extended Cost
A.	_____	_____	_____	\$ _____	\$ _____
B.	_____	_____	_____	\$ _____	\$ _____
C.	_____	_____	_____	\$ _____	\$ _____
D.	_____	_____	_____	\$ _____	\$ _____
				TOTAL:	\$ _____

PRINTED COMPANY NAME

SIGNATURE OF AUTHORIZED REPRESENTATIVE

TYPED NAME OF AUTHORIZED REPRESENTATIVE

DATE

CONTRACTOR'S SELF-PERFORMED WORK EVALUATION FORM

1.	TOTAL ESTIMATED CONSTRUCTION COST INCLUDING ALLOWANCES (IF ALLOWANCES ARE APPLICABLE): (From Line Items in Ion Wave – Total Construction Cost – Summation of ALL LINES – 1.1 through 31.2)			\$
2.	LESS: Mobilization/Demobilization (TOTAL ITEM COST LINE ITEM – 31.1 & 31.2)		→	
	LESS: Allowances: (TOTAL ITEM COST LINE ITEMS – N/A)	N/A		
	TOTAL DEDUCTIONS: (Summation of Mobilization/Demobilization, General Requirements and Allowances)	\$		
				\$
3.	ADJUSTED “WORK TO BE PERFORMED” TOTAL: (Line No. 1-0 minus Line No. 2-0)			\$
4.	TOTAL OF WORK PROPOSED TO BE PERFORMED BY SUBCONTRACTORS LISTED ON “SUBCONTRACTOR LISTING” FORM:			\$
5.	VALUE OF WORK PROPOSED TO BE SELF-PERFORMED BY CONTRACTOR: (Line No. 3-0 minus Line No. 4-0)			\$
6.	PERCENTAGE OF ADJUSTED “WORK TO BE PERFORMED” (Line No. 3) PROPOSED TO BE SELF-PERFORMED BY CONTRACTOR: (Line No. 5-0 divided by Line No. 3-0 expressed as a percentage (%))			%

Scrutinized Companies

CERTIFICATION FORM

Pursuant to 287.135 Florida Statute, 215.4725 and 215.473, companies contracting with public agencies are prohibited from contracting for good or services that appear on the Scrutinized Companies List. This form is to certify that the "Vendor/Company Name" below hereby swears or affirms that as of the signature date below that "Vendor/Company Name" is not listed on a Scrutinized Companies list. By authorized signature (authorized to enter into binding agreements), representative from this company, further affirms the following:

1. This "Vendor/Company Name" is not participating in a boycott of Israel such that company is not refusing to deal, is not terminating business activities, or taking any other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israel controlled territories, in a discriminatory manner.
2. This "Vendor/Company Name" does not appear on the Scrutinized Companies with Activities on Sudan List or the Scrutinized Companies with Activities in Iran Terrorism List, where the State Board of Administration (<http://www.sbafla.com/>) has established and maintains the following criteria:
 - a. Have a material business relationship with the government of Sudan or a government-created project involving oil related, mineral extraction, or power general activities, or
 - b. Have a material business relationship involving the supply of military equipment, or
 - c. Impart mineral benefit to disadvantaged citizens that are typically located in the geographic Periphery of Sudan, or
 - d. Have been complicit in the genocidal campaign in Darfur.
3. This "Vendor/Company Name" does not appear on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List where the State Board of Administration (<http://www.sbafla.com/>) has established the following criteria:
 - a. Have a material business relationship with the government of Iran or a governmental-created project involving oil related or mineral extraction activities, or
 - b. Have made material investments with the effect of significantly enhancing Iran's petroleum sector.
4. The "Vendor/Company Name" is not engaged in business operations in Cuba or Syria.
5. The company identified below in the section entitled "Vendor/Company Name" understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. "Vendor/Company Name" further understands that any contract with an agency for goods or services may be terminated at the option of the agency if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and/or with business operations in Cuba or Syria.

Project: BUT25111JM – US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN
Vendor/Company Name:
Street Address:
City / State / Zip Code:
Vendor/Company Telephone Number:
Email Address:
Vendor FEIN:
Authorized Signature:
Printed Name/Title:
Date of Signature:



Immigration Affidavit Certification

The City of Cape Coral Invitation to Bid; Request for Proposal or Quotation # **BUT25111JM**

Project Name: **US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN**

This Affidavit is required and should be signed, notarized by an authorized principal of the firm, and submitted with formal Invitations to Bid (ITB's) and Request for Proposals (RFP) submittals, Request for Quotation submittals.

Consultant's or Bidder's or Contractors are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, at the time of the submission of the solicitation Consultant's/bidder's proposal shown above.

Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company. Failure to include this Affidavit and acceptable evidence of enrollment in the E-Verify program may deem the Consultant / Bidder/Contractor's proposal as nonresponsive. The City of Cape Coral will not intentionally award City contracts to any Consultant who knowingly employs unauthorized alien workers, constituting a violation of the employment provision contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act ("INA"). The City of Cape Coral may consider the employment by any Consultant/Bidder/Contractor of unauthorized aliens a violation of Section 274A (e) of the INA. Such Violation by the recipient of the Employment Provisions contained in Section 274A (e) of the INA shall be grounds for unilateral termination of the contract by The City of Cape Coral. Consultant/Bidder/Contractor attests that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent Amendment(s)) and agrees to comply with the provisions of the Memorandum of Understanding with E-Verify and to provide proof of enrollment in The Employment Eligibility Verification System (E-Verify), operated by the Department of Homeland Security in partnership with the Social Security Administration at the time of submission of the Consultant's or Bidder's or Contractor's submitted proposal.

Company Name _____

Authorized Printed Name _____ Title _____

Signature Date _____

State of _____ County of _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20____, by

_____ who has produced _____ as identification.
(Print or Type Name) (Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of this affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made.

DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION FORM

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this bid, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this bid is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "bid," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this bid is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated

6. The prospective lower tier participant further agrees by submitting this bid that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the No procurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. 9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. **Must be registered in System Awards Management System (SAMS) and provide your Unique Entity ID number - <https://sam.gov/content/duns-uei>**
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to the bid submittal.

LEGAL NAME OF FIRM/CONSULTANT:

System Award Management (SAM's) - Entity ID Number (<https://sam.gov/content/duns-uei>):

SOLICITATION/CONTRACT: BUT25111JM – US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE:

SIGNATURE:

DATE:

HUMAN TRAFFICKING AFFIDAVIT

In compliance with Section 787.06(13), Florida Statutes, this affidavit must be completed by an officer or representative of a nongovernmental entity that is executing, renewing, or extending a contract with the City of _____ (the "Governmental Entity").

The undersigned, on behalf of the entity listed below (the "Nongovernmental Entity"), hereby attests under penalty of perjury as follows:

1. I am over the age of 18 and I have personal knowledge of the matters set forth herein.
2. I am an officer or representative of _____, a non-governmental entity and I am authorized to provide this affidavit on behalf of Nongovernmental Entity)
3. Nongovernmental Entity, and any of its subsidiaries or affiliates, do not use coercion for labor or services, as those terms are defined in Section 787.06, Florida Statutes, as may be amended from time to time.
4. If, at any time in the future, Nongovernmental Entity does use coercion for labor or services, Nongovernmental Entity will immediately notify Governmental Entity and no contracts may be executed, renewed, or extended between the parties.
5. I have read the foregoing affidavit and confirm that the facts stated in it are true, and are made for the benefit of, and reliance by Governmental Entity.

Company: _____

Authorized Signature: _____ **Date:** _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____, as _____ on behalf of the company/corporation. They ☐ are personally known to me or ☐ have produced _____ as identification.

(Affix Notary Stamp or Seal)

Notary Public Signature

Print, Type or Stamp Name of Notary: _____

My commission expires: _____

CERTIFICATION REGARDING LOBBYING

The prospective participant certifies, by signing this certification that to the best of his or her knowledge and belief:

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

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

"The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

PROJECT FOR CITY of CAPE Coral, FL – **Invitation to Bid #BUT25111JM**
– US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN

FIRM NAME OF CONSULTANT: _____

By Authorized Representative: _____ DATE: _____
(PRINTED NAME)

Authorized Signature: _____

TITLE: _____

00300-12 – CERTIFICATION LOBBYING ACTIVITIES FORM

Certificate of Compliance for Domestic Material Preference
Procurement (Steel, Iron or Manufactured Products) -Buy American

FEMA financial assistance programs/projects subject to BABAA Build America, Buy America Act (BABAA), contractors and subcontractors must sign and submit the following certification to the next tier (e.g., subcontractors submit to the contractor; contractors submit to the non-federal entity) each bid, proposal or offer for an infrastructure project that has not been waived by a BABAA waiver:

The undersigned certifies, to the best of their knowledge and belief, that: The Build America, Buy America Act (BABAA) requires that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Section 70914 of Public Law No. 117-58, §§ 70901-52.

The undersigned certifies that for the **US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN - BUT25111JM** that the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufactured products purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. “The Consultant, Subconsultant, Contractor or Subcontractor (firm shown below), certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.”

FIRM LEGAL NAME: _____

AUTHORIZED OFFICIAL NAME: _____

TITLE of AUTHORIZED OFFICIAL: _____

SIGNATURE OF AUTHORIZED OFFICIAL: _____

DATE: _____

PLEASE CIRCLE ONE:

PRIME

SUBCONSULTANT

**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS FOR THE
PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE's)**

The Consultant/Contractor hereby certifies that it will comply with the requirements

AUTHORIZED SIGNATURE

TITLE

FIRM NAME

ADDRESS

STATE – ZIP CODE

ACKNOWLEDGEMENT FEDERAL & STATE GRANT REQUIREMENTS FOR 2 C.F.R. SUPPLEMENTAL TERMS AND CONDITIONS

FEDERALLY FUNDED CONTRACTS REQUIREMENTS:

PURPOSE: The US 41 NE Reservoir Pump Station & Transmission Main – Invitation to Bid #BUT25111JM is funded in whole or in part with federal funds and as such, is subject to federal requirements, policies, procedures and directives, including, but not limited to those set forth in 2 C.F.R. Part 200, Appendix II and as otherwise may be listed below.

All firms/contractors/consultants submitting a bid in conjunction with this ITB must submit documentation with its ITB response as outlined below or requested as an Exhibit to be signed by an authorized representative of the submitting firm.

The successful firm will be required to execute a contract in a form provided by the City of Cape Coral certifying its compliance with all federal requirements associated with the project.

When property or services are procured using funds derived from a Federal grant or Agreement whether direct to the City of Cape Coral (City) or "pass-through" from another entity, the City is required to and will follow the Federal procurement standards in the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", 2 C.F.R. Sections 200.213 and 200.317 through 200.327. Contract Cost and Price: For every procurement in excess of the Simplified Acquisition Threshold, including contract modifications, the City shall perform a cost or price analysis in connection with every procurement subject to Federal procurement guidelines, which shall include an independent estimate of cost prior to issuing bids or proposals. For proposals where price is not considered in the award, profit shall be negotiated as a separate element of the price. In determining whether profit is fair and reasonable, the City shall consider the complexity of work, the risk to be carried by the consultant, the consultant's investment, the amount of subcontracting necessary, the quality of the consultant's record and past performance, and industry profit rates for the surrounding geographical area. "Cost Plus Percentage" methods for determining profit may not be used.

This project may be funded in whole or in part with Federal Funding (FEMA, EPA, other Federal Entity, or FDEP) Financial assistance under the Hazard Mitigation Grant Program, or other Federal Grant Program, and as such FEMA, EPA, other Federal Entity, or FDEP must be provided access to any documents or records that may be required during the term of this agreement and any time after completion of work that may be necessary to review, audit or required to meet the needs of the agency's requirements.

The Consultant/Contractor must comply with all applicable Federal law, regulations, executive orders and FEMA, EPA, other Federal Entity, or FDEP policies, procedures and directives.

1. REMEDIES:

In the event the Consultant/Contractor fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the City may, upon fifteen (15) calendar days provide written notice to the Consultant/Contractor and upon the Consultant's/Contractor's failure to cure within those fifteen (15) calendars days, exercise any one or more of the following remedies, either concurrently or consecutively:

- Withhold or suspend payment of all or any part of a request for payment.

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- Require that the Consultant/Contractor to refund to the City any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- Exercise any corrective or remedial actions, to include but not be limited to:
- Requesting additional information from the Consultant to determine the reasons for or the extent of noncompliance or lack of performance;
- Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;
- Advising the Consultant/Contractor to suspend, discontinue or refrain from incurring costs for any activities in question; or
- Requiring the Consultant to reimburse the City for costs incurred for any items determined to be ineligible.
- Remedies. Unless otherwise provided by the contract, all claims, counterclaims, disputes and other matters in question between the City and the selected firm arising out of or relating to the contract between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Court in Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

OTHER REMEDIES AND RIGHTS:

Pursuing any of the above remedies will not keep the City from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the City waives any right or remedy in this solicitation and/or subsequent agreement or fails to insist on strict performance by the Consultant/Contractor, it will not affect, extend, or waive any other right or remedy of the City, or affect the later exercise of the same right or remedy by the City for any other default by the Consultant/Contractor.

APPLICABLE FEDERAL REQUIREMENTS - 2 C.F.R Part 200, APPENDIX II:

Remedies: Unless otherwise provided by the Contract, all claims, counterclaims, disputes, and other matters in question between the City and the Consultant/Contractor arising out of or relating to the Contract Agreement between the parties, or the breach of it, which cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

2. TERMINATION FOR CAUSE AND CONVENIENCE:

The City may determine by written notice to the Consultant/Contractor, to terminate this Project/Agreement with or without cause, in whole or in part, when the City determines in its sole discretion that it is in the City's best interest to do so.

In the event of termination, the Consultant/Contractor will not incur any new obligations for the terminated portion of the Agreement after the Consultant/Contractor has received notification of termination.

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Pursuant to the above, when federal funds are expended by City of Cape Coral (City), City reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions.

City reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days' notice in writing to the awarded vendor.

The vendor would be compensated for work, which is satisfactorily performed, inspected and for goods procured as of the termination date, if for convenience of the City, providing the price/payment is agreed upon. Such payment, for work, however, may not exceed the amount allotted to the portion of completed work as outlined in the Agreement price. All work in progress shall become the property of the City and shall be turned over promptly by the Consultant/Contractor to City Staff, along with any records, documents or files that may be required. Any award under this procurement process is not exclusive and the City reserves the right to purchase goods and services from other vendors when it is in the best interest of the City.

3. EQUAL OPPORTUNITY EMPLOYMENT:

The regulation at 41 C.F.R. § 60-1.4(b) requires, except as otherwise provided or exempted in 41 C.F.R. Part 60, the insertion of the following contract clause:

During the performance of this project, the consultant agrees as follows:

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

(2) The Consultant/Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the consultant/contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Consultant/Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by

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the employer, or is consistent with the consultant/contractor's legal duty to furnish information.

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

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

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

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

(8) The Consultant/Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant/subcontractor or vendor. The Consultant/Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a consultant/contractor becomes involved in, or is threatened with, litigation with a subconsultant/subcontractor or vendor as a result of such direction by the administering agency, the Consultant/Contractor may request the United States to enter such litigation to protect the interests of the United States.

The Applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of consultants/contractors and subconsultants/subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor

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such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a consultant/contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon consultant/contractors and subconsultant/subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. DAVIS BACON ACT: NOT APPLICABLE – STATE FUNDED GRANT

This statute requires that contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the Secretary of Labor's wage determination. Additionally, contractors are required to pay wages at least once per week. Additional requirements are listed below, and relevant definitions are at 29 C.F.R. § 5.2. Recipients and subrecipients should refer to the applicable NOFO or other program guidance or contact their applicable FEMA, EPA, other Federal Entity, or FDEP grant representative for additional information on how to implement this requirement.

When required by the federal program legislation, all prime construction contracts over \$2,000 awarded by recipients or subrecipients must include a provision for compliance with the Davis-Bacon Act.

The Davis-Bacon Act does not apply to all FEMA, EPA, other Federal Entity, or FDEP financial assistance programs. Recipients and subrecipients should refer to applicable NOFO or other program guidance or contact their applicable FEMA, EPA, other Federal Entity, or FDEP grant representative to determine if this provision is required for the procurement. However, the Davis-Bacon Act clause is not federally required for procurements under FEMA's Public Assistance (PA) or Hazard Mitigation Assistance (HMA) Programs, EPA, other Federal Entity, or FDEP.

If applicable, in addition to the requirements mentioned in the beginning of this section, the recipient or subrecipient must do the following:

- The recipient or subrecipient must place a copy of the Department of Labor's current prevailing wage determination in each solicitation. Contracts or subcontracts must be awarded on the condition that the prevailing wage determination is accepted. The recipient or subrecipient must report all suspected or reported violations to the federal agency.
- Contracts subject to the Davis-Bacon Act, must also include a provision for compliance with the Copeland "Anti-Kickback" Act. See Required Contract Provisions, Section 5. Copeland Anti-Kickback Act in this document for additional information. According to 29 C.F.R. § 5.5(a)(5), the regulatory requirements for the Copeland "Anti-Kickback" Act are incorporated by reference into

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the required contract provision, so a separate contract provision is not necessary. However, the recipient or subrecipient may include a separate contract provision specific to the Copeland “Anti-Kickback” Act.

- Per Department of Labor’s implementing regulations for the Davis-Bacon Act, the recipient’s or subrecipient’s contractor and any subcontractors are required to insert, or incorporate by reference, the clauses contained at 29 C.F.R. § 5.5(a)(1)-(11) into any subcontracts.
- Follow the other requirements of the Davis-Bacon Act and implementing regulations.

If applicable per the standard described above, the recipient or subrecipient must include the provisions at 29 C.F.R. § 5.5(a)(1)-(11) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.

5. COPELAND “ANTI-KICKBACK” ACT:

The Copeland “Anti-Kickback” Act prohibits workers on construction contracts from giving up wages that they are owed. Additional requirements are listed below, and relevant definitions are at 29 C.F.R. § 3.2. The applicable implementing regulations are intended to assist with enforcement of the Davis-Bacon Act’s minimum wage provisions as well as various statutes with similar minimum wage provisions for federally assisted construction.

For all prime construction contracts above \$2,000, when the Davis-Bacon Act also applies, recipients or subrecipients must include a provision in contracts and subcontracts for compliance with the Copeland “Anti-Kickback” Act. The Copeland “Anti-Kickback” Act does not apply to all FEMA, EPA, other Federal Entity, or FDEP financial assistance programs. Recipients or subrecipients should refer to applicable NOFO or other program guidance or contact their applicable FEMA, EPA, other Federal Entity, or FDEP grant representative to determine if this provision is required for the procurement. However, the Copeland “Anti-Kickback” Act clause is not federally required for procurements under FEMA’s PA or HMA Programs, or other Federal Programs, EPA, other Federal Entity, or FDEP.

If applicable, the recipient or subrecipient must do the following:

- Include a provision for compliance with the Copeland “Anti-Kickback” Act. According to the implementing regulations for the Davis-Bacon Act, the regulatory requirements for the Copeland “Anti-Kickback” Act are incorporated by reference into the required contract provision for the Davis-Bacon Act. Therefore, a separate contract provision is not necessary. However, the recipient or subrecipient may include a separate contract provision specific to the Copeland “Anti-Kickback” Act with language suggested below.
- The Copeland “Anti-Kickback Act” prohibits each consultant/contractor or subconsultant/subcontractor from any form of persuading a person employed in construction, completion, or repair of public work to give up any part of their rightful compensation. The recipient or subrecipient must report all suspected or reported violations of the Copeland “Anti-Kickback Act” to FEMA, EPA, other Federal Entity, or FDEP.
- Each consultant/contractor and subconsultant/subcontractor must provide weekly reports of the wages paid during the prior week’s payroll period to each employee covered by the “Copeland Anti-

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Kickback” Act and the Davis- Bacon Act. The reports must be delivered to a representative of a federal or state agency in charge at the building or work site by the consultant/contractor or subconsultant/subcontractor within seven days of the payroll period’s payment date.

- Follow the other requirements of the Copeland “Anti-Kickback” Act and implementing regulations.

Compliance with Copeland “Anti-Kickback Act” and Davis-Bacon Act (if required).

Consultant/Contractor. The Consultant/Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Consultant/Contractor or Subconsultant/Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA, EPA, other Federal Entity, or FDEP may by appropriate instructions require, and a clause requiring the subconsultant/subcontractors to include these clauses in any lower tier subcontracts. The Prime Consultant/Contractor shall be responsible for the compliance by any subconsultant/subcontractor or lower tier subconsultant/subcontractor with all these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a consultant/contractor and subconsultant/subcontractor as provided in 29 C.F.R. § 5.12.

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:

Compliance with the Contract Work Hours and Safety Standards Act.

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

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the consultant/contractor and any subconsultant/subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such consultant/contractor and subconsultant/subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

(3) *Withholding for unpaid wages and liquidated damages—*

- (i) *Withholding Process.* The City of Cape Coral may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to

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be withheld from the consultant/contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime consultant/contractor or any subconsultant/contractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other federal contract with the same prime consultant/contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime consultant/contractor (as defined in § 5.2). The necessary funds may be withheld from the consultant/contractor under this contract, any other federal contract with the same prime consultant/contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime consultant/contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the consultant/contractor liability for which the funds were withheld.

(ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- (A) A consultant's/contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a consultant/contractor, or a consultant's/contractor's bankruptcy estate;
- (D) A consultant's/contractor's assignee(s);
- (E) A consultant's/contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(4) *Subcontracts.* The consultant/contractor or subconsultant/subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subconsultants/subcontractors to include these clauses in any lower tier subcontracts. The prime consultant/contractor is responsible for compliance by any subconsultant/subcontractor or lower tier subconsultant/subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime consultant/contractor, and any subconsultant/subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower tier subconsultants/subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

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- (i) Notifying any consultant/contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- (ii) Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- (iii) Cooperating in any investigation or other compliance action or testifying in any proceeding under CWHSSA or this part; or (iv) Informing any other person about their rights under CWHSSA or this part.

Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The consultant/contractor or subconsultant/subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of three years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid.

(2) Records to be maintained under this provision must be made available by the consultant/contractor or subconsultant/subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the consultant/contractor or subconsultant/subcontractor will permit such representatives to interview workers during working hours on the job.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:

This contract provision outlines the rules governing the ownership of inventions created using federal funds. If the FEMA, EPA, other Federal Entity, or FDEP award meets the definition of funding agreement and the recipient or subrecipient enters any contract involving substitution of parties, assignment, or performance of experimental, developmental, or research work under that funding agreement, then the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by FEMA, EPA, other Federal Entity, or FDEP.

- (a) **Applicability.** This requirement applies to “funding agreements,” but it **DOES NOT apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program**, as FEMA, EPA, other Federal Entity, or FDEP awards under these programs do not meet the definition of “funding agreement.”
- (b) **Funding Agreements.** The regulation at 37 C.F.R. § 401.2(a) defines funding agreement as “any contract, grant, or cooperative agreement entered into between any federal agency, other than the Tennessee Valley Authority, and any consultant/contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal

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Government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8. CLEAR AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:

Clean Air Act.

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

The consultant/contractor agrees to report each violation to the City of Cape Coral and understands and agrees that the City of Cape Coral will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and/or the appropriate Environmental Protection Agency Regional Office.

The consultant/contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA, EPA, other Federal Entity, or FDEP.

Federal Water Pollution Control Act

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

The consultant/contractor agrees to report each violation to the City of Cape Coral and understands and agrees that the City of Cape Coral will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and/or the appropriate Environmental Protection Agency Regional Office.

The consultant/contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA, EPA, other Federal Entity, or FDEP.

9. SUSPENSION AND DEBARMENT: [SEPARATE CERTIFICATION IS REQUIRED – INCLUDED IN ATTACHMENTS](#)

Suspension and Debarment

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

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

This certification is a material representation of fact relied upon by City of Cape Coral. If it is later determined that the consultant/contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R.

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Part 3000, subpart C, in addition to remedies available to the City of Cape Coral, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

10. BYRD ANTI-LOBBYING AMENDMENT – SEPARATE CERTIFICATION REQUIRED - INCLUDED IN ATTACHMENTS:

Byrd Anti-Lobbying Amendment, as amended, 31 U.S.C. § 1352.

Consultants/Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal agency.

11. PROCUREMENT OF RECOVERED MATERIALS:

In the performance of this contract, the Consultant/Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—Competitively within a timeframe providing for compliance with the contract performance schedule;

- a) Meeting contract performance requirements; or
- b) At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at Comprehensive Procurement Guideline (CPG) Program | US EPA. The Consultant/Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

The Consultant/Contractor should, to the greatest extent practicable and consistent with the law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

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12. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES:

Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA, EPA, other Federal Entity, or FDEP Award Funds for Covered Telecommunications Equipment or Services, as used in this clause—

(b) *Prohibitions.*

- 1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- 2) Unless an exception in paragraph (c) of this clause applies, the consultant/contractor and its subconsultant/subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - ii. Enter, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - iii. Enter, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

- 1) This clause does not prohibit consultants/contractors from providing—
 - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 2) By necessary implication and regulation, the prohibitions also do not apply to:
 - i. Covered telecommunications equipment or services that:

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- a. Are not used as a substantial or essential component of any system; and
 - b. Are not used as critical technology of any system.
 - ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- 3) *Reporting requirement.*
- 1) In the event the consultant/contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the consultant/contractor is notified of such by a subconsultant/subcontractor at any tier or by any other source, the consultant/contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
 - 2) The Consultant/Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the consultant/contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Consultant/Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

13. DOMESTIC PREFERENCE FOR PROCUREMENTS:

Domestic Preference for Procurements.

The Consultant/Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.

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For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

14. BUILD AMERICA, BUY AMERICA ACT – SEPARATE CERTIFICATION REQUIRED -INCLUDED IN ATTACHMENTS: NOT APPLICABLE – STATE FUNDED GRANT

Build America, Buy America Act (BABAA).

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act shall file the required certification to the City of Cape Coral with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA, EPA, other Federal Entity, or FDEP. Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirements. Such disclosures shall be forwarded to the recipient who, in turn, will forward the disclosures to FEMA, EPA, other Federal Entity, or FDEP; subrecipients will forward disclosures to the passthrough entity, who will, in turn, forward the disclosures to FEMA, EPA, other Federal Entity, or FDEP.

ADDITIONAL PROVISIONS

1. ACCESS TO RECORDS:

The following access to records requirements applies to this contract:

The Consultant/Contractor agrees to provide the City of Cape Coral, the FEMA, EPA, other Federal Entity, or FDEP Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant/Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

The Consultant/Contractor agrees to provide the FEMA, EPA, other Federal Entity, or FDEP Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the City of Cape Coral and the Consultant/Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA, EPA, other Federal Entity, or FDEP Administrator or the Comptroller General of the United States.

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2. CHANGES:

To be allowable under a FEMA, EPA, other Federal Entity, or FDEP grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. FEMA, EPA, other Federal Entity, or FDEP recommends that all contracts include a changes clause that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may depend on the nature of the contract and the procured item(s) or service(s). The recipient or subrecipient should also consult their servicing legal counsel to determine whether and how contract changes are permissible under applicable state, local, or tribal laws or regulations.

3. DHS SEAL, LOGO, AND FLAGS:

The City of Cape Coral, Consultant or Contractor must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, EPA, FDEP, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.

4. COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS AND ACKNOWLEDGEMENT OF FEDERAL FUNDING:

This is an acknowledgement that FEMA, EPA, other Federal Entity or FDEP financial assistance will be used to fund all or a portion of the contract. The consultant/contractor will comply with all applicable federal law, regulations, executive orders, FEMA, EPA, other Federal Entity, or FDEP policies, procedures, and directives.

5. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the recipient or subrecipient, consultant/contractor, or any other party pertaining to any matter resulting from the contract.

6. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Consultant/Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the consultant's/contractor's actions pertaining to this contract.

7. SOCIOECONOMIC CONTRACTING

The Consultant/Contractor is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)(5) to ensure small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered when possible.

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8. COPYRIGHT:

License and Delivery of Works Subject to Copyright.

The Consultant/Contractor grants to the City of Cape Coral, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Consultant/Contractor will identify such data and grant to the City of Cape Coral or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Consultant/Contractor will deliver to the City of Cape Coral data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City of Cape Coral.

9. BUILD AMERICA, BUY AMERICA ACT (BABAA) FOR ARCHITECTURAL AND/OR ENGINEERING CONTRACTS - NOT APPLICABLE - STATE FUNDED GRANT

Build America, Buy America Act Preference.

Consultants/Contractors and subconsultants/subcontractors agree to incorporate the Buy America Preference into planning and design when providing architectural and/or engineering professional services for infrastructure projects. Consistent with the Build America, Buy America Act (BABAA) Pub. L. 11758 §§ 70901-52, no federal financial assistance funding for infrastructure projects will be used unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States.

10. PROVIDING GOOD, SAFE JOBS TO WORKERS

Creating Good Jobs.

Pursuant to FEMA Information Bulletin No. 520, the consultant/contractor will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, the consultant/contractor commits to strong labor standards and protections for the project workforce by creating an effective plan for ensuring high- quality jobs and complying with federal labor and employment laws. The consultant/contractor acknowledges applicable minimum wage, overtime, prevailing wage, and health and safety requirements, and will incorporate Good Jobs Principles wherever appropriate and to the greatest extent practicable.

11. BUY CLEAN

The City of Cape Coral encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, the City of Cape Coral encourages that the performance of this agreement includes considering the use of low-carbon materials which have substantially lower

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levels of embodied greenhouse-gas emissions associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration.

12. CONFLICTS OF INTEREST (2 CFR 200.318) – GENERAL PROCUREMENTS STANDARDS:

- (1) The recipient or subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from consultants/contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.
- (2) If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian Tribe, the recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

13. CONTRACTING WITH SMALL BUSINESSES, MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, VETERAN-OWNED BUSINESSES AND LABOR SURPLUS AREA FIRMS - (2 CFR PART 200.321):

- (a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.
- (b) Such consideration means:
 - (1) These business types are included on solicitation lists;
 - (2) These business types are solicited whenever they are deemed eligible as potential sources;
 - (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
 - (4) Establishing delivery schedules (for example, the percentage of an order to be

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delivered by a given date of each month) that encourage participation by these business types;

- (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring a consultant/contractor under a Federal award to apply this section to subcontracts.

14. ENERGY POLICY AND CONSERVATION ACT (42 U.S.C. 6201):

Consultant/Contractor must follow any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

15. DRUG-FREE WORKPLACE:

Vendor agrees to comply with the drug-free workplace requirements for Federal Vendors pursuant to 41 U.S.C.A. § 8102.

16. MAINTENANCE OF RECORDS:

- a. The Bidder/Consultant/Contractor will keep and maintain adequate records and supporting documentation applicable to all the services, work, information, expense, costs, invoices, and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant/Contractor for a minimum of ten (10) years from the date of completion or termination of the Agreement, **or for such period as required by law.**
- b. Consultant/Contractor shall provide, when requested, access by the City, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant/contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- c. Consultant/Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- d. Consultant/Contractor agrees to provide the federal agency or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the resulting contract.
- e. Consultant/Contractor shall retain all records associated with this solicitation and any Agreements that are created in response to the solicitation for a period of no less than ten (10) years after final payments and all other pending matters are closed.
- f. The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of the Agreement, and during the period as set forth in the paragraphs above; provided, however, such activities shall be conducted only during normal business hours of the Consultant/Contractor and at the expense of the City.

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ACRONYMS

AFG: Assistance to Firefighter Grants
BABAA: Build America Buy America Act
BRIC: Building Resilient Infrastructure and Communities
CAGE: Commercial and Government Entity
CCP: Crisis Counseling Assistance & Training Program
CFR: Code of Federal Regulations
DCM: Disaster Case Management
DHS: U.S. Department of Homeland Security
DRRA: Disaster Recovery and Reform Act of 2018
EMPG: Emergency Management Performance Grant
EPA: U.S. Environmental Protection Agency
FAR: Federal Acquisition Regulation
FEMA: Federal Emergency Management Agency
FMAG: Fire Management Assistance Grant Program
HHPD: High Hazard Potential Dam Grant Program
HMA: Hazard Mitigation Assistance
HMGP: Hazard Mitigation Grant Program
HSGP: Homeland Security Grant Program
IHE: Institution of Higher Education
IHP-ONA: Individuals and Households Program – Other Needs Assistance
IPR: Intercity Passenger Rail Program
IRA: Inflation Reduction Act
JFO: Joint Field Office
NDAA: National Defense Authorization Act
NOFO: Notice of Funding Opportunity
NSGP: Nonprofit Security Grant Program
OMB: Office of Management and Budget
PA: Public Assistance Program
PSGP: Port Security Grant Program
RLF: Revolving Loan Fund
SAM: System for Award Management
SAT: Simplified Acquisition Threshold
THSGP: Tribal Homeland Security Grant Program
TSGP: Transit Security Grant Program
USC: United States Code

DEFINITIONS

- **Contract:** A legal instrument by which a FEMA, EPA, other Federal Entity, or FDEP award recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award. A contract, for the purposes of this Guide, does not mean a federal award or subaward.
- **Consultant/Contractor:** An entity that receives a contract.

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- **Cooperative agreement:** A legal instrument of financial assistance between a federal agency and a recipient or between a pass-through entity and subrecipient, consistent with 31 U.S.C. 63026305:
 - Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the federal government or pass-through entity's direct benefit or use;
 - Is distinguished from a grant in that it provides for substantial involvement of the federal agency or pass-through entity in carrying out the activity contemplated by the federal award.

The term does not include:

- A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

An agreement that provides only:

- Direct United States Government cash assistance to an individual;
 - A subsidy;
 - A loan;
 - A loan guarantee; or Insurance.
- **Environmental Protection Agency (EPA):** the mission of EPA is to protect human health and the environment. Among other things the EPA works to ensure that:
 - Americans have clean air, land and water;
 - National efforts to reduce environmental risks are based on the best available scientific information;
 - Federal laws protecting human health and the environment are administered and enforced fairly, effectively and as Congress intended;
 - Environmental stewardship is integral to U.S. policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade, and these factors are similarly considered in establishing environmental policy;
 - All parts of society--communities, individuals, businesses, and state, local and Tribal governments--have access to accurate information sufficient to effectively participate in managing human health and environmental risks;
 - Contaminated lands and toxic sites are cleaned up by potentially responsible parties and revitalized; and
 - Chemicals in the marketplace are reviewed for safety.
 - **Federal agency:** An "agency" as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f). The term generally refers to the agency that provides a federal award directly to a recipient unless the context indicates otherwise. See also definitions of federal award and recipient. The federal agency discussed in this Guide is FEMA, EPA, other Federal Entity.
 - **State agency:** A "State agency" as defined at 42 U.S.C. 4601(3). The term generally refers to the agency that provides a grant award to a recipient unless the context indicates otherwise. See also definitions of federal award, federal financial assistance and recipient. The state agency discussed in this Guide is FDEP, FDOT or other State entity.

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- **Federal award:** In this Guide, the term is used interchangeably with “FEMA, EPA, or other Federal Entity Award” and means the federal financial assistance that a recipient receives directly from a federal agency or indirectly from a pass-through entity, as described in 2 C.F.R. § 200.101. The financial assistance that a recipient or subrecipient receives either directly from a federal agency or indirectly from a pass-through entity.
- **Federal Emergency Management Agency (FEMA):** FEMA’s statutory mission is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation. Among other things:
 - FEMA administers its programs and carries out its activities through its headquarters offices in Washington, D.C.; 10 Regional Offices; Area Offices for the Pacific, Caribbean, and Alaska; various Recovery Offices; and temporary Joint Field Offices (JFO).
 - FEMA administers numerous assistance programs annually on a regular basis to increase the Nation’s preparedness, readiness, and resilience to all hazards. These assistance programs are typically available to recipients or subrecipients, including, but not limited to, states, local governments, Indian Tribes, universities, hospitals, and certain private nonprofit organizations.
 - Each program is governed by the applicable federal law, regulations, executive orders, and FEMA program-specific policies. As the federal agency for these programs, FEMA is responsible for the proper management and administration of these programs as otherwise required by law and enforcing the terms of the agreements it enters with recipients or subrecipients that receive FEMA financial assistance, consistent with the requirements at 2 C.F.R. Part 200.
- **Florida Department of Environmental Protection:** The Florida Department of Environmental Protection protects, conserves and manages the state's natural resources and enforces its environmental laws. The Vision is to advance Florida's position as a world leader in protecting natural resources while growing the state's economy. Among other things
 - Leadership - Serve as an example of how to protect natural resources and economic vitality while adhering to the integrity of our shared vision.
 - Integrity - Operate ethically, honorably and respectfully.
 - Accountability - Accept personal ownership of our actions and responsibilities.
 - Communication - operate Transparently, sharing information frequently and honestly.
 - Innovation - Seek innovative ways to improve operations and scientific achievements.
 - Service - Serve Florida, its environment, the public, stakeholders and each other.
- **Grant agreement or grant:** A legal instrument of financial assistance between a federal agency and a recipient or between a pass-through entity and a subrecipient, consistent with 31 U.S.C. § § 6302, 6304: Is used to transfer anything of value from the federal agency or pass-through entity to the recipient or subrecipient to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. § 6101(3)); and does not include an agreement that provides only:
 - Direct United States government cash assistance to an individual;
 - A subsidy;
 - A loan;

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- A loan guarantee; or
 - Insurance.
- **Indian Tribe (or “federally recognized Indian tribe”):** Any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See 25 U.S.C. 5304(e). This includes any Indian Tribe identified in the annually published Bureau of Indian Affairs list of “Indian Entities Recognized and Eligible to Receive Services” and other entities that qualify as an Alaska Native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.
- **Local government:** Any unit of government within a state, including a:
 - County
 - Borough
 - Municipality
 - City
 - Town
 - Township
 - Parish
 - Special district
 - School District
 - Intrastate district
 - Council of governments, whether incorporated or not as a nonprofit corporation under state law
 - Local public authority, including any public housing agency under the United States Housing Act of 1937
 - Any other agency or instrumentality of a multi-regional, or intra-state or local government.
- **Nonprofit organization:** Any organization that:
 - Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - Is not organized primarily for profit;
 - Uses net proceeds to maintain, improve, or expand the organization's operations; and
 - Is not an IHE.
- **Pass-through entity:** A recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a federal program. The authority of the pass-through entity under this part flows through the subaward agreement between the passthrough entity and subrecipient. Pass-through entities are responsible for processing subawards to subrecipients and ensuring subrecipient compliance with the terms and conditions of the FEMA, EPA, other Federal Entity, or FDEP award agreement.
- **Political Subdivision:** The unit of government that the State determines to have met the State’s legislative definition of a political subdivision.

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- **Recipient:** An entity that receives a federal award directly from a federal agency to carry out an activity under a federal program. The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award. A recipient is responsible for administering the federal award in accordance with applicable federal laws. Examples of recipients include state, local, Indian tribal, and territorial governments.
- **Simplified Acquisition Threshold (SAT):** The dollar amount below which a recipient or subrecipient may purchase property or services using small purchase methods (see 2 C.F.R. § 200.320). Recipients and subrecipients adopt small purchase procedures to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold set in the FAR at 48 C.F.R. part 2, subpart 2.1 is used in this part as the simplified acquisition threshold for secondary procurement activities administered under Federal awards. The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold, which is less than or equal to the dollar value established in the FAR, based on internal controls, an evaluation of risk, and its documented procurement procedures. Recipients and subrecipients should also determine if local government purchasing laws apply. This threshold must never exceed the dollar value established in the FAR. Presently and as of June 2018, the federal SAT is \$250,000, but is periodically adjusted for inflation.
- **State:** Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments. In this Guide, state is used interchangeably with “state entity”.
- **Subaward:** An award provided by a pass-through entity to a subrecipient for the subrecipient to contribute to the goals and objectives of the project by carrying out part of a federal award received by the pass-through entity. It does not include payments to a consultant/contractor, beneficiary, or participant. A subaward may be provided through any legal agreement consistent with criteria in 2 C.F.R. § 200.331, including an agreement the pass-through entity considers a contract. In this Guide, the term is used interchangeably with “subgrant.”
- **Subrecipient:** An entity that receives a subaward from a pass-through entity to carry out part of a federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other federal awards directly from a federal agency.

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Acknowledgment

By signing its submission, Offeror acknowledges that they have read and understand the above requirements. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into these transactions imposed by the outlined rules, regulations, terms and conditions and therefore accepting funds provided by state or federally funded projects.

Project / Contract #/Description: **ITB # BUT25111JM – US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN**

IDENTIFY BIDDER (CIRCLE ONE): PRIME SUBCONSULTANT

Name of (FIRM) Proposer/Bidder/Consultant/Contractor:

Signature of Authorized Representative:

Title of Authorized Representative:

Date: _____

SECTION 00301
INFORMATION STATEMENT AND QUESTIONNAIRE

**THE INFORMATION SUPPLIED IN THIS DOCUMENT IS CONFIDENTIAL TO THE EXTENT
PERMITTED BY LAWS AND REGULATIONS**

1. **SUBMITTED TO:** Procurement Division
2. **SUBMITTED FOR:** US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN - BUT25111JM
Owner: City of Cape Coral, Florida

3. **TYPE OF WORK:**

The Work is comprised of the construction of a 36" raw irrigation water transmission main, restoration, road/driveway reconstruction, site and drainage work, Pump Station and other Work displayed or described in the Contract Documents from the Southwest Aggregate Mine to Gator Slough along with all associated valves, fittings, air release valves, casings, and all necessary restoration and site work.

4. **SUBMITTED BY:** (EACH member of a partnership or qualifying joint venture must complete and submit a completed Bidder's Information Statement and Questionnaire.)

Official Name of Firm: _____

Address: _____

City/State/Zip: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

Number of years your organization has been in business under its present business name: _____

Under what other or former names has your organization operated, if any and for how long? _____

Current president and/or chief executive officer: _____

Years in that position: _____

Number of Permanent Employees: _____

Include as an Attachment to this form, labeled "4 – Labor", a detailed description/list of the Bidder's local labor force.

5. BIDDER'S CONTACT INFORMATION:

Contact Person(s): _____

Title(s): _____

Phone Number(s): _____

Email Address (es): _____

6. AFFILIATED COMPANIES (Parent, Subsidiary, Divisions):

Name(s): _____

Address(es): _____

7. TYPE OF ORGANIZATION:

☐

CORPORATION

Executive Officers:

- President: _____

- Vice President(s): _____

- Treasurer: _____

- Secretary: _____

Date of Incorporation: _____

State of Incorporation: _____

☐

SOLE PROPRIETORSHIP

Name of Owner: _____

Doing Business As: _____

Date of Organization: _____

☐

PARTNERSHIP

Date of Organization:

Type of Partnership:

Name of General Partner(s):

☐

LIMITED LIABILITY COMPANY

State of Organization:

Date of Organization:

Members:

☐

JOINT VENTURE

State of Organization:

Date of Organization:

Form of Organization:

Joint Venture Managing Partner

- Name:

- Address:

Joint Venture Managing Partner

- Name:

- Address:

Joint Venture Managing Partner

- Name: _____

- Address: _____

8. QUALIFICATIONS AND LICENSING (Include additional sheets as necessary):

Provide evidence that the Bidder has at least three (3) years of demonstrated successful experience as described per the construction plans and/or Work description. This evidence should include verifiable **proof as an Active Licensed State of Florida General Contractor** for the business under the same name as listed in Division 00, Specification Section 00300, Bid Form and as listed in Section 4 of this Bidder's Information Statement and Questionnaire form. A Bidder officially changing their name any time during the three (3) year period prior to the Bid submittal date should provide verifiable documentation of the name change and verifiable evidence as a State of Florida Licensed Contractor and/or evidence as a **State of Florida Licensed General Contractor**. Bidder's not meeting this requirement may be deemed as being non-responsive and their bid rejected.

The Bidder should identify the license number for **State of Florida General Contractor's** license number, expiration date and name of the primary qualifying agent of the Bidder. If the primary qualifying agent is not the owner, an officer, a member, a joint venture managing partner, etc., describe the relationship to the company and provide proof of such relationship and/or license use agreement. Bidder's not meeting this requirement may be deemed as being non-responsive and their bid rejected. A Bidder responding to this Invitation to Bid (ITB) as a joint venture is required to obtain bid authority under Rule 61G4-15.0022, Florida Administrative Code, and include evidence of such bid authority in its response to this ITB. Bidder's not meeting this requirement may be deemed as being non-responsive and their bid rejected.

Include as an Attachment to this form, labeled **"8 – Qualifications & Licenses"**, verifiable documentation of the requirements as listed above to include, but not limited to, photocopies of all applicable State of Florida licenses as listed below. Also, include a letter from the State of Florida Department of Licensing that includes approval of Joint Venture of firms (names of firms) and approval for those firms that entered into a legal Joint Venture to bid on the specific project. The following licenses or certificates are to be included as attachments for section **"8- Qualifications & Licenses"**:

1. **Legal Entity (Bidder, Division 00, Bid Form, page 00300-10) currently has an active registration filed with Division of Corporation in the State of Florida (Sunbiz registration).**
2. **State of Florida (Active) Licensed General Contractor.**

CITY OF CAPE CORAL:

Type of License(s): _____

License Number(s): _____

and

Date of Expiration: _____

Division of Corporations (State of Florida):

Registered Business Name: _____

and

Date of Expiration: _____

FEI Number: _____

State of Florida:

Contractor's License Type: _____

License Number(s): _____

and

Date of Expiration: _____

Primary Qualifying Agent: _____

Jurisdiction: _____

Type of License(s): _____

License Number(s): _____

9. CERTIFICATIONS:

CERTIFIED BY:

Disadvantage Business Enterprise: _____

Minority Business Enterprise: _____

Woman Owned Enterprise: _____

Small Business Enterprise: _____

Other (_____): _____

Include as an Attachment to this form labeled “9 – Certifications”, photocopies of all applicable certifications as listed above.

10. BONDING INFORMATION:

Surety Company: _____

Address: _____

Surety Agent or Underwriting Contact: _____

Is Surety registered 220 Agent in
State of Florida (Yes or No): _____

License Number: _____

Address: _____

County: _____

Contact Name: _____

Phone: _____

Email Address: _____

How many years has the Surety Company been providing bonding services for the
Bidder(s) listed in Section 4: _____

Aggregate Bonding Capacity: _____

Available Bonding Capacity as of date of this submittal: _____

Include as an Attachment to this form labeled “10 – Bonding”, a current letter from surety as evidence of bonding capacity and bonding status of the Bidder (as outlined in Division 00 Section 00800, 6.12 of Supplementary Conditions - “Construction Payment and Performance Bonds”).
Bidder’s not meeting this requirement may be deemed as being non-responsive and their bid rejected.

Have Bid Bond, Performance Bond or Payment Bond claims ever been made to a Surety for this Bidder on any project, within the past ten (10) years?

☐ YES ☐ NO

If YES, include in the Attachment labeled “10 – Bonding”, details describing the claim, name of company or person making the claim, and the resolution of claim.

In the past ten (10) years, has any Surety company refused to bond the Bidder on any project?

☐ YES ☐ NO

If YES, include in the Attachment labeled “10 – Bonding”, details specifying the reasons given for that refusal, and the name and address of the Surety company that refused to bond.

In the past ten (10) years, has any Surety company refused to bond the Bidder’s parent or subsidiaries on any project?

☐ YES ☐ NO

If YES, include in the Attachment labeled “10 – Bonding”, details specifying the reasons given for that refusal, and the name and address of the Surety Company that refused to bond.

11. FINANCIAL INFORMATION:

Financial Institution:

Address:

Account Manager:

Phone:

12. FINANCIAL STATUS:

A. BANKRUPTCIES

1. Has the Contractor, or any of its parents or subsidiaries, ever had a Bankruptcy Petition filed in its name, voluntarily or involuntarily?

☐ YES ☐ NO

If YES, include as an Attachment labeled “12 Bankruptcies – 1”, details specifying date, circumstances, and resolution.

2. Has any current officer, director, shareholder or managing member of Contractor ever had a Bankruptcy Petition filed in his/her name, voluntarily or involuntarily?

☐ YES ☐ NO

If YES, include as an Attachment labeled [“12 Bankruptcies – 2”](#), details specifying date, circumstances, and resolution.

B. LOANS

1. Is this Bidder currently in default on any loan agreement or financing agreement with any bank, financial institution, or other?

☐ YES ☐ NO

If YES, include as an Attachment to this form labeled [“12 - Loans”](#), details specifying details, circumstances, and prospects for resolution.

13. CONSTRUCTION EXPERIENCE

List the Categories of Work that your organization normally performs with its own forces.

BE SPECIFIC. (Attach additional pages to this form as Attachment [“13 – Active – Licensed – State of Florida – ‘General Contractor’ – Construction Experience.”](#)

Complete for the Active [Licensed State of Florida – General Contractor’s](#) Construction experience the “Schedule A – Reservoir Pump Station & Transmission Main” form, Project Description Sheet, for a minimum of Three (3) different projects in Florida that are currently under way and/or have been completed within the last five (5) years involving the construction of Work the same as or similar to the following:

The Work is comprised of the construction of a 36” raw irrigation water transmission main, restoration, road/driveway reconstruction, site and drainage work, Pump Station and other Work displayed or described in the Contract Documents from the Southwest Aggregate Mine to Gator Slough along with all associated valves, fittings, air release valves, casings, and all necessary restoration and site work.

Be specific, FILL IN ALL BLANKS and use additional sheets as necessary to fully describe the listed project. (If a Joint Venture list each participant's required minimum number of projects (Schedule "A" separately.) *Bidder's not meeting this requirement may be deemed as being non-responsive and their bid rejected.*

Include as Attachments to this form under the label: "**13A – Active Licensed State of Florida – General Contractor's Construction experience - Schedule A – Reservoir Pump Station & Transmission Main**". Please complete Three (3) "Schedule A" forms in their entirety for three (3) different projects completed in the last five (5) years.

14. RECORD OF PERFORMANCE:

A. Has the Bidder ever failed to complete a construction contract awarded to it?

☐ YES ☐ NO

If YES, for each incident include details explaining why the work was not completed, name, phone number, and email address of the Owner's representative, and the total contract value. Include as an Attachment to this form labeled "**14 – Performance - A**".

B. Within the last ten (10) years has any officer or partner of your organization ever been an officer or partner of another organization when it failed to complete a construction contract?

☐ YES ☐ NO

If YES, include details explaining why the work was not completed including Project Owner's contact information. Include as an Attachment to this form labeled "**14 – Performance - B**".

15. LEGAL PROCEEDINGS:

A. ARBITRATIONS & MEDIATIONS

Include as an attachment to this form labeled "**15 – A - Arbitration**", a description of all construction arbitration or mediation demands filed by or against the Bidder in the last five (5) years and identify the nature of the claim, the amount in dispute, the parties involved and the ultimate resolution of the proceeding (Please identify status - open, pending, closed, or other) and year of proceeding. Provide the jurisdiction of the proceeding(s). Each arbitration or mediation should be listed in a separate paragraph on the sheet in the attachment. IF NONE SO STATE in the block.

B. LAWSUITS

Include as an attachment to this form labeled “15 – B – Lawsuit”, a description of all construction-related lawsuits (other than labor or personal injury litigation) filed by or against the Bidder in the last five (5) years and identify the nature of the claim, jurisdiction of claim, the amount in dispute, the parties involved and the ultimate resolution of the lawsuit (Please identify status - open, pending, closed or other) and year of proceeding.

Each lawsuit should be listed in a separate paragraph on the sheet in the attachment or multiple sheets as necessary. IF NONE SO STATE in the block.

C. OTHER PROCEEDINGS

1. Include as an attachment labeled “15 –C1 – Other”, any lawsuits, administrative proceedings, or hearings initiated by the Internal Revenue Service, or any State or Federal revenue department concerning the tax liability of the Bidder (other than audits), its principals, owners, and/or partners in the last ten (10) years. Identify the nature of any proceeding, (Please identify status - open, pending, closed or other) year, jurisdiction of claim, and its ultimate resolution. Each event should be listed on a separate sheet in the attachment or multiple sheets as necessary.

IF NONE SO STATE in the block.

2. Include as an attachment to this form labeled “15 – C2 – Other”, a description of any civil or criminal proceedings, investigations and/or violations of administrative orders, consent orders, suits, or permits brought against the Bidder, its principals, owners, and/or partners in the last ten (10) years (open, pending, closed). Include summary paragraph(s) of civil or criminal proceedings, jurisdiction, year of claim with status. Identify the nature of any proceeding and ultimate resolution.

Include attachments of any OSHA investigations, penalties, violations, or citations, (Please identify status - open, pending, closed, contested or other), year of proceeding, along with copies for the last ten (10) years for the overall company.

Each event should be listed in a separate paragraph or include multiple sheets as necessary. IF NONE SO STATE in the block.

3. Include as an attachment to this form labeled “15 –C3 – Other”, a description of any environmental enforcement actions (i.e., citation, consent order, civil penalty, litigation, etc.) brought against the Bidder, its principals, owners, and/or partners in the last five (5) years by a local, state or Federal regulatory agency. Identify the nature of any proceeding (Please identify status open, pending, closed, or other), jurisdiction of claim, year and its ultimate resolution. Each event should be listed in a separate paragraph on the sheet in the attachment. IF NONE SO STATE in the block.

4. Include as an attachment to this form labeled “15 – C4 – Other”, a description of any claims, disputes, protests or litigation involving the Bidder (as a prime Contractor or subcontractor), its principals, owners, and/or partners on any contracts, contracts awaiting award, bids, proposals, protests, (Please identify status - open, pending, closed or other), in the last five (5) years, identifying jurisdiction and/or agency involved in

claim and year. Provide details outlining the claim, dispute, protest or circumstances surrounding the claim or litigation, Project Owner's contact information. Each event should be listed in a separate paragraph on the sheet in the attachment.

IF NONE SO STATE in the block.

16. SAFETY PROGRAM:

Name of Bidder's Safety Officer: _____

Does the Bidder have a written General Safety Program?

☐ YES ☐ NO

Does the Bidder have a specific documented operating protocol/safety plan for handling a pandemic's positive occurrence(s) (i.e., Covid-19, etc.) on a specific project and/or within the Contractor's employee's (i.e., testing, notifications, isolation, retesting, etc.)?

☐ YES ☐ NO ☐ N/A

Does the Bidder have a documented Electrical Safety Program to include all OSHA and NFPA 70E Standards?

☐ YES ☐ NO ☐ N/A

Does the Bidder have a written Orientation Program for New Hires?

☐ YES ☐ NO

Does the Bidder have a written Drug Testing Program?

☐ YES ☐ NO

17. QUALITY CONTROL PROGRAM:

Name of Bidder's Quality Control Officer: _____

Does the Firm have a written Quality Control Program?

☐ YES ☐ NO

18. COMMENTS:

List any additional information that you believe would assist the City in evaluating the information provided for your Company as it pertains to experience and qualification for this Project. Include as an Attachment to this form labeled "18 – Comments".

19. REFERENCES:

Provide verifiable clients/references for the projects listed in Schedule A under "Section 14 – Construction Experience" – Bidder should provide references for any projects that are provided.

The City reserves the right to use an outside consultant to assist in obtaining detailed references, including recommendations of previous owners, architects, and engineers. The City and/or their designee must be able to contact the reference; no further consideration will be given if contact cannot be made. Each reference should be listed on a separate sheet included in an Attachment to this form labeled “19 – References”. The information required for each reference shall be presented in the following general format and shall include as a minimum:

- Project Name
- Project Address
- Project Type
- Total Project Construction Cost
- Value of Work Performed by Firm Listed in Section 4
- Project Completion Date
- Contact Name
- Contact Email Address
- Contact Phone Number
- Contact Fax Number
- Contact Address (Complete with Company Name)

Please be sure the contact person listed is currently available (example: not retired).

Please check phone and fax numbers to be sure numbers are still in service and it is the correct number.

Do not list duplicate contacts within your required references.

Please inform all companies providing references they may receive a Performance Evaluation Survey via fax and/or e-mail.

(Remainder of page left blank intentionally)

The failure to respond, provide detailed information or to provide requested submittal elements may result in the Bidder being deemed non-responsive and therefore have his/her Bid rejected.

I HEREBY CERTIFY THAT THE INFORMATION SUBMITTED HERewith, INCLUDING ANY ATTACHMENTS, IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF ORGANIZATION: _____

BY: _____

TITLE: _____

DATE: _____

NOTARY ATTEST:

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____, 20____

NOTARY PUBLIC NAME:

STATE: _____ COUNTY: _____

NOTARY STAMP

MY COMMISSION EXPIRATION DATE: _____

REQUIRED **MINIMUM ATTACHMENTS TO “BIDDER’S INFORMATION STATEMENT AND QUESTIONNAIRE” - PROPERLY LABELED IN THE FOLLOWING ORDER:** (Additional attachments requested and/or required to explain and/or expand upon responses in the “Bidder’s Information Statement and Questionnaire” must be labeled properly and included in the correct order within the submittal package.)

1. Detailed list of Bidder’s labor force ([Attachment “4 – Labor”](#)).
2. Qualifications and License Requirements ([Attachment “8 – Qualifications & Licensing”](#)).
3. Certifications (If Applicable) ([Attachment “9 – Certifications”](#)).
4. A **current** letter from Surety, with Surety rating as shown in bid document (**Division 00, Section 00800 – 6.12 Supplementary Conditions “Construction Payment and Performance Bonds”**) as evidence of bonding capacity and available bonding capacity ([Attachment “10 – Bonding”](#)).

5. Schedule 13A: ([Attachment "13A – Active Licensed State of Florida – General Contractor's Construction experience - Schedule A – Utilities Extension Project"](#). **3 – PROJECTS COMPLETED IN THE LAST FIVE (5) YEARS.** If a Joint Venture list each participant's list for 3 completed PROJECTS should be provided separately.
6. Record of Performance (["14 – Record of Performance"](#)) – PROVIDE DETAIL AS APPLICABLE
7. Legal Proceeding (["15 – Legal Proceedings"](#))
(["15 – Legal Proceedings" – 15-A- Arbitration](#)) – PROVIDE DETAIL AS APPLICABLE
(["15 – Legal Proceedings - 15-B - Lawsuit](#)) – PROVIDE DETAIL AS APPLICABLE
(["15 – Legal Proceedings - 15-C1- Other](#)) – PROVIDE DETAIL AS APPLICABLE
(["15 – Legal Proceedings - 15-C2 - Other](#)) – PROVIDE DETAIL AS APPLICABLE
(["15 – Legal Proceedings - 15-C3- Other](#)) – PROVIDE DETAIL AS APPLICABLE
(["15 – Legal Proceedings - 15-C4 - Other](#)) – PROVIDE DETAIL AS APPLICABLE
8. Comments ([Attachment "18 – \(If Applicable\)](#))
9. References ([Attachment "19 – References"](#)) – **FOR PROJECTS SHOWN ON SCHEDULE A.**

ALL ITEMS and attachments are to be submitted and contained in Original, Copies and on Electronic Copy (CD/DVD) which should be identical and a mirror image of the Original including signed forms.

**SCHEDULE A – ACTIVE LICENSED STATE OF FLORIDA GENERAL CONTRACTOR’S EXPERIENCE –
RESERVOIR PUMP STATION & TRANSMISSION MAIN**

DESCRIPTION OF CONSTRUCTION INVOLVING RAW IRRIGATION WATER TRANSMISSION MAINS, RESTORATION, ROAD RECONSTRUCTION, SITE AND DRAINAGE WORK, PUMP STATION AND OTHER WORK SIMILAR TO THAT SHOWN WITHIN THE CONSTRUCTION DRAWINGS THAT HAVE BEEN COMPLETED IN THE LAST FIVE (5) YEARS.

(Prepare a separate sheet for **EACH** project - Make Copies and/or Use Additional Sheets as Necessary)

**INFORMATION REQUESTED IS REQUIRED AND MUST BE COMPLETE. THE CITY MUST BE ABLE TO CONTACT THE
OWNER’S REPRESENTATIVE AND COMPANY CONTACT (IF APPLICABLE).**

1. Project Name/Location:	Name:
	Location:
2. Owner’s Representative’s Contact Information	Name:
	Title:
	Company:
	Telephone Number w/Area Code:
	Fax Number w/Area Code:
	Email Address:
	Mailing Address:
3. Were You a Prime Contractor (Prime) or Subcontractor (Subcontractor) on the Project?	(Circle One) Prime Subcontractor
3a. If you were a Subcontractor Please List Company You Were a Subcontractor to:	Company’s Name:
	Company’s Contact (Name):
	Contact’s Title:
	Telephone Number w/Area Code:
	Fax Number w/Area Code:
	Email Address:
	Mailing Address:

SCHEDULE A – ACTIVE LICENSED STATE OF FLORIDA GENERAL CONTRACTOR’S EXPERIENCE –
RESERVOIR PUMP STATION & TRANSMISSION MAIN

4. Total Project Cost:	
5. Value of Work Actually Performed or to be Performed by Firm Listed in “Section 4. Submitted By:”	
6. Contract Date and Finish Date (Actual or Proposed)	Contract Date:
	Finish Date (Actual or Proposed):
7. Project Status:	
8. Type of Work Performed or Contracted to be Performed (Be Specific – Use Additional Sheets as Necessary to Fully Describe Work Performed or to be Performed):	Work Description:

SECTION 00410
BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,
_____ as Principal, and _____
_____ as Surety, are hereby held and firmly bound unto the City of Cape Coral,
Florida as Owner in the penal sum of, (five percent (5%) of the Contract Bid)
_____ for the payment of which, well and truly to be made, we
hereby jointly and severally bind ourselves, successors and assigns to pay Owner upon default of Bidder the
penal sum set forth on the face of this Bond.
Signed, this _____ day of _____, 20____.

The condition of the above obligation is such that whereas the Principal has submitted to City of Cape Coral,
Florida, a certain Bid, attached hereto and hereby made a part hereof, to enter into a contract in writing, for
the City of Cape Coral, BID/CONTRACT # BUT25111JM – US 41 NE RESERVOIR PUMP STATION &
TRANSMISSION MAIN

NOW THEREFORE,

1. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents.
2. This obligation shall be null and void if:
 - 2.1 Owner accepts Bidder's bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents, or
 - 2.2 All bids are rejected by Owner, or
 - 2.3 Owner fails to issue a notice of award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
3. Payment under this Bond will be due and payable upon default of Bidder and within thirty (30) calendar days after receipt of Bidder and Surety of written notice of default from Owner which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
4. Surety waives notice of any and all defenses based on or arising out of any time extension to issue notice of award agreed to in writing by Owner and Bidder.

SECTION 00410

BID BOND

5. No suit or action shall be commenced under this Bond prior to thirty (30) calendar days after the notice of default required in paragraph 3 above is received by Bidder and Surety, and in no case later than one year after Bid Due Date.
6. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
7. Notice required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the part concerned.
8. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
9. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of the Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of the Bond that is not in conflict therewith shall continue in full force and effect.
10. The term "bid" as used herein includes a bid, offer or proposal as applicable.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal (Print Full Name):

Surety (Print Full Name):

_____ (Seal)

Surety's Name and Corporate Seal

By: _____ (L.S.)

By: _____

Signature (attach power of attorney)

Title: _____

Title: _____

Attest: _____

Signature and Title

Attest: _____

Signature and Title

IMPORTANT - Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida. See Article 5 of the General Conditions as amended by Supplementary Conditions.

END OF SECTION

00410-2

SECTION 00420

CORPORATE RESOLUTION

I, _____, Secretary of _____, a corporation organized and existing under the laws of the State of _____, hereby certify that at a meeting of the Board of Directors of the Corporation duly called and held on _____, 20____, at which a quorum was present and acting throughout, the following resolutions were adopted and are now in full force and effect:

RESOLVED that the following individuals of this corporation are authorized to execute on behalf of this corporation a Bid and Agreement to City of Cape Coral, Florida for the construction of the

(Project Name) **BID/CONTRACT # BUT25111JM – US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN**

I further certify that the names of the officers of this corporation and any other persons authorized to act under this resolution and their official signatures are as follows:

NAME	OFFICER	OFFICIAL SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary and affixed the seal of the corporation this _____ day of _____, 20__.

SECRETARY: _____ DATE: _____
(Signature)

END OF SECTION

SECTION 00480
NONCOLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____, being first duly sworn deposes and says that:

1. He/She (it) is the _____, of _____, the Bidder that has submitted the attached Bid;
2. He/She is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
3. Such Bid is genuine and is not a collusive or sham Bid;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affidavit, have in any way, colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted; or to refrain from bidding in connection with such Contract; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Bidder, firm, or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Contract;
5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affidavit.

By _____

Sworn and subscribed to before me this ____ day of _____, 20____, in the State of _____, County of _____.

_____, Notary Public

My Commission Expires: _____

END OF SECTION

00480-1

SECTION 00481

BUSINESS ETHICS REQUIREMENTS

1. During the course of pursuing contracts with Owner and while performing contract work in accordance with this agreement, Contractor/Consultant/Vendor/Supplier/Sub-consultant, hereafter referred to as Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner best interests.
2. Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations shall apply to the activities of contractor employees, agents, subcontractors, subcontractor employees, consultants of contractor, etc.

Contractor employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.

Contractor employees, agents or subcontractors (or their relatives) should not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the project.

3. Contractor agrees to notify a designated Owner representative within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.
4. The e-mail address and/or telephone number to report any concerns related to any possible violations of the Owner's Business Ethics Expectations are as follows:
E-mail: Jay Myers, jmyers@capecoral.gov Telephone: 239-242-3675
5. Upon request by Owner, Contractor agrees to provide a certified Management Representation Letter executed by selected Contractor representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this contract or any similar potential conflict of interest situations.
6. Contractor agrees to include this clause in all contracts with subcontractors and material suppliers receiving more than \$25,000 in funds in connection with the Owner's project.
7. Contractor shall permit interviews of employees, reviews and audits of accounting or other records by Owner representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Contractor in their relations with Owner's current or former employees or employee relatives.
8. Contractor agrees to implement a program requiring their employees sign acknowledgements that they have read and understand Owner's Business Ethics Expectations and the related obligations outlined in this contract exhibit.

Name of Firm: _____

Authorized Signer Name: _____

Signature _____

Date _____

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

4.02 *Contract Times: Days*

- A. The Work will be substantially completed within 515 calendar days after the date when contract times commence to run as provided in Paragraph 4.01 of the General Conditions (Section 00700); and all Work will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 545 days issuance of Notice to Proceed.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02.A above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 1. Substantial Completion: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02.A for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02.A for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all work, at the Unit prices stated in the Contractor's bid (attached hereto as an Exhibit), for a total bid cost of:

\$ U.S. Dollars -- Not to Exceed (Written in Words).

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about 25 business days after the date on which the payment request or invoice is stamped as received by the Engineer. Payment for the Work shall be as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. 95 percent of Work completed (with the balance being retainage). If the Work has been completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Final Completion of Utility Work, Owner shall pay an amount sufficient to increase total payments to Contractor to 99 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions.

6.03 Final Payment

Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 - INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of one percent (1.0%) per month.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents:

- A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 13, inclusive):
Must Be Completed and Signed and Dated
Please attach Corporate Resolution (Section 00420) with the agreement.
2. Performance Bond (pages 1 to 3, inclusive) (Section 00610) **Post Contract Execution:**
Original Bond - Must Be Completed, Recorded in Lee County within 14 calendar days of bidder's receipt of Fully Executed Agreement.
3. Payment Bond (pages 1 to 3, inclusive) (Section 00620) – **Post Contract Execution:**
Original Bond - Must Be Completed, Recorded in Lee County within 14 calendar days of bidder's receipt of the Fully Executed Agreement.
4. Warranty-Guaranty and Bonds (Section 00866 and Section 1740)–**Post Contract Execution:**
Post Contract Assemblage of Warranty-Guaranty, Service and Maintenance Bonds
5. Insurance Requirements – **Post Contract Execution:**

Insurance: Unless otherwise specified, Contractor shall, at its own expense, carry and maintain the coverages as outlined in the Supplementary Conditions (Section 800), as well as any insurance coverage required by law:

As Shown in BID # BUT25111JM – Specification Section 800 - Supplementary Conditions Provide Certificate of Insurance with all required insurance coverage(s) as outlined. The City of Cape Coral named as an additional insured, shown under Description of Operations on Certificate of Insurance, and include contract number # BUT25111JM US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN. Provide waivers of subrogation and certificate of insurance endorsements.
6. General Conditions (pages 1 to 65, inclusive) (Section 00700) AND Supplementary Conditions (pages 1 to 29, inclusive) (Section 00800), plus the following exhibits:

As Shown in BID # BUT25111JM – Reference Only (June 2025)

 - a. Exhibit A – Pricing of Construction Contract Change Orders
 - b. Exhibit B – Right of Audit – Examination of Records
 - c. Exhibit C – Record Keeping
7. Specifications as listed in the BID # **BUT25111JM** [Division 00, Division 01, and Divisions 02-17 and contract drawings as prepared by the City of Cape Coral and Engineers).

As shown in BID # BUT25111JM – REFERENCE ONLY (June 2025).
8. Drawings with each sheet bearing the following general title: (AS APPLICABLE)

As shown in BID # BUT25111JM – REFERENCE ONLY (June 2025).
9. Addenda (numbers # to #, inclusive):

Signed Acceptance of Addendum included with submitted DIV 00 – Bid Form 00300
As shown in BID # BUT25111JM – REFERENCE ONLY (June 2025).

10. Fully Executed Purchase Order - POST **CONTRACT EXECUTION**

**Issuance of Signed Purchase Order will follow
Contract execution, Payment & Performance Bond Recording,
Insurance Certificate acceptance. No work is to be performed
Prior to Issuance of Fully Executed Purchase Order and Notice to Proceed**

11. Documents to this Agreement (enumerated as follows):

a. Contractor's Complete Bid Submittal Document (Division 00, Section 00300).

Completed Signed Bid Form 00300-1 through 00300-15 and all submittal documents and signed forms and attachments are a part of this agreement.

BID # BUT25111JM - Reference Only (June 2025)

(Original Signed Bid Form 00300-1 through 00300-15 is attached to this agreement)

b. Business Ethics Requirements (Division 00, Section 00481).

(Original Signed Form 00481–Business Ethics Requirements is attached to this agreement)

c. Corporate Resolution Form (Division 00, Section 00420)

(Original Signed Form 00420 -Corporate Resolution is attached to this agreement)

12. A. The following which may be delivered or issued on or after the Effective Date of the Fully Executed Contract and are not attached hereto:

- a. Notice to Proceed.
- b. Work Change Directives.
- c. Change Orders.
- d. Field Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions and Supplementary Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without

limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The compliance with all federal, state, local laws and regulations shall apply and non-compliance after written cure notice and 30 calendar day remedy period has passed may result in termination of this agreement.
- B. Contract may be cancelled with 30 calendar days written notice for "convenience". In the event of termination, the City shall compensate the firm for all accepted work performed through the termination date.
- C. Notwithstanding anything in this Agreement to the contrary, the City reserves the right to terminate this Agreement immediately without notice in the event any of the representations contained in the Recipients' project application or bid submittals are found to be false or if the Recipient fails to complete the construction activities described in contract documents.

10.05 *Appropriations and Funding*

- A. Pursuant to FL Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City, if the City Council reduces or eliminates appropriations.

10.06 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.06:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution.
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made

- (a) to influence the bidding process or the execution of the Contract to the detriment of Owner,
 - (b) to establish Bid or Contract prices at artificial non-competitive levels, or
 - (c) to deprive Owner of the benefits of free and open competition.
- 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
- 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- B. Florida Statute 287.133 and 287.134 restricts application by any person who is active in management of the entity, that is placed on convicted vendor list or discriminatory vendor list, and they may not submit to any bid, proposal or reply to a contract to provide goods or services for 36 months after being placed on such lists. The contractor shall notify the City if it or any suppliers, subconsultants, contractors are placed on the convicted vendor or discriminatory vendor list during the life of this agreement.
- C. Pursuant to Florida Statute, Section 216.347, Contractor affirms that it will not utilize any funds received under this agreement in the act of lobbying members of Legislature, the judicial branch, state, or local agency.
- D. Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List, Florida Statute 215.4725 or engaged in a boycott of Israel or engaged with business operations or on Scrutinized Companies activities in the Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, pursuant to 215.473 and is not engaged in business operations in Cuba or Syria any other countries or territories as provided in Florida Statute 287.135. Pursuant to Florida Statute 287.135, City may immediately terminate this agreement for a false statement submitted or if Contractor appears on the Scrutinized Companies List or is engaged in boycott of Israel or doing business with Cuba or Syria or Iran Petroleum Energy List any other countries appearing on the Scrutinized Companies or territories list during the term of this agreement.

10.07 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.
- B. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

C. The City is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

1. Keep and maintain public records that are required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

D. Compliance with Federal, State and Local Laws

1. The Contractor and all its agents shall comply with all federal, state, and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, registration requirements, local health and safety rules and regulation. The Contractor shall include this provision in all subcontracts issued as a result of this Agreement.
2. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this agreement.
3. This agreement shall be governed by and construed in accordance with the laws of the State of Florida.
4. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State of Florida, and venue will be in Lee County, Florida. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.
5. Contractor and subcontractors should embrace supplier diversity and offer subcontracting opportunities.
6. Contractor agrees and certifies that while receiving funds through this project and any associated grants, that they are not disqualified from participation in this contract transaction. The Contractor has provided this *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion*, which states "The prospective sub-

contractor as a sub-recipient of funds through grants or associated funding agrees by signing this contract that neither it, its principals, nor affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this transaction by any federal, state or local government agency, currently and throughout the term of this agreement”.

10.08 Immigration Affidavit Certification and E-Verify Validation – Memorandum of Understanding Required

- A. As a condition precedent to entering into this CONTRACT and in compliance with The Immigration and Nationality Act (INA), 8 U.S.C. Section 1324a(e) Section 274A(e) and Florida Statute State Section §448.095, Contractor or Consultant and their subcontractors shall register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021. The Employment Verification System (E-Verify) is operated by the Department of Homeland Security in partnership with the Social Security Administration.

A public agency must require in any contract that the contractor, and any subcontractor thereof, register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

PUBLIC AGENCY CONTRACTING

- (a) A public agency must require in any contract that the contractor, and any subcontractor thereof, register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
- (b) If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract.
- (c)
 - 1. A public agency, contractor, or subcontractor who has a good faith belief that a person or an entity with which it is contracting has knowingly violated s. 448.09(1) shall terminate the contract with the person or entity.
 - 2. A public agency that has a good faith belief that a subcontractor knowingly violated this subsection, but the contractor otherwise complied with this subsection, shall promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.
 - 3. A contract terminated under this paragraph is not a breach of contract and may not be considered as such. If a public agency terminates a contract with a contractor under this paragraph, the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated. A contractor is liable for any additional costs incurred by a public agency as a result of the termination of a contract.

- (d) A public agency, contractor, or subcontractor may file a cause of action with a circuit or county court to challenge a termination under paragraph (c) no later than 20 calendar days after the date on which the contract was terminated.

10.09 *Prohibition Against Considering Social, Political, or Ideological Interests in Government Contracting*

In accordance with Florida Statute 287.05701 the City may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor. An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

10.10 *Scrutinized Companies List*

Pursuant to 287.135 Florida Statute, s. 215.4725 and s. 215.473, A Company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency (state) or local governmental entity for goods or services of:

- a. Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel; or
- b. One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
 1. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, created pursuant to s. 215.473; or
 2. Is engaged in business operations in Cuba or Syria.

10.11 *Human Trafficking*

Pursuant to Florida Statute 787.06, when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in F.S. 787.06.

ARTICLE 11 - PUBLIC RECORDS AND RECORDS RETENTION

A. PURSUANT TO FLORIDA STATUTE §287.058 (1) (C), THIS CONTRACT MAY BE UNILATERALLY CANCELLED BY THE CITY IF THE CONSULTANT, REFUSES TO ALLOW PUBLIC ACCESS TO ALL DOCUMENTS, PAPERS, LETTERS, OR OTHER MATERIAL MADE

OR RECEIVED BY THE CONSULTANT IN CONJUNCTION WITH THIS CONTRACT, UNLESS THE RECORDS ARE EXEMPT FROM DISCLOSURE.

- B. The Contractor shall maintain books, records, and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (U.S. GAAP) consistently applied. The records for this project shall be maintained and made available for inspection for a period of 5 years from completing performance and receiving final payment under this agreement. If any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.**

END OF SECTION

IN WITNESS WHEREOF, OWNER AND CONTRACTOR HAVE SIGNED THIS AGREEMENT. THIS AGREEMENT WILL BE EFFECTIVE ON _____ (WHICH IS THE EFFECTIVE DATE OF THE CONTRACT).

OWNER:

City of Cape Coral, Florida

Signature: _____

Typed Name: Michael Ilczyszyn

Title: City Manager

Date: _____

Signature
Attest: _____

Title: City Clerk

Typed
Name: Kimberly Bruns, CMC

Date: _____

Address for giving notices:
City of Cape Coral - City Hall
(Attn: Procurement)
1015 Cultural Park Blvd.
2nd Floor
Cape Coral, FL 33990

LEGAL REVIEW:

Signature: _____

Typed Name: Aleksandr Boksner, ESQ.

Title: City Attorney

Date: _____

CONTRACTOR:

(LEGAL ENTITY/COMPANY NAME)

Signature: _____

Typed
Name: _____

Title: _____

Date: _____

(If Contractor is a corporation, a partnership, or a joint venture,
attach evidence of authority to sign with corporate resolution.)

Signature
Attest: _____

Title: _____

Typed
Name: _____

Date: _____

Address for giving notices:

State of Florida
Business and
Contractor License No.: _____
(as applicable)

SECTION 00610
PERFORMANCE BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*: **City of Cape Coral
1015 Cultural Park Blvd.
Cape Coral, Florida 33990**

CONSTRUCTION CONTRACT: **BUT25111JM – US 41 NE RESERVOIR PUMP STATION &
TRANSMISSION MAIN**

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative. **CONTRACTOR AS PRINCIPAL** **SURETY**

Contractor's Name and Corporate Seal *(seal)*

Surety's Name and Corporate Seal *(seal)*

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a

qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper

payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

SECTION 00620
PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:
City of Cape Coral
1015 Cultural Park Blvd.
Cape Coral, Florida 33990

CONSTRUCTION CONTRACT: **BUT25111JM – US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN**

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in

the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

SECTION 00700

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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(703) 684-2882
www.nspe.org

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(202) 347-7474
www.acec.org

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 Reference Standards

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

3.03 Reporting and Resolving Discrepancies

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

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

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

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

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

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other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

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

- B. *Cash Allowances*: Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

SECTION 00800

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (ACEC/NSPE/ASCE) Document No. C-700, 2013 edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1.01.36 Delete the last sentence stating, "Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents".

SC-1.01.40 Delete the definition of Substantial Completion and insert the following in its place:

Substantial Completion - The Work (or a specified part thereof) has progressed to the point where, in the opinion of the ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents and that all conditions precedent to Substantial Completion have been met in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Add the following definitions:

SC-1.01.49 Correction Period - The time during which the CONTRACTOR must correct defective Work or remove defective Work from the site and replace it with non-defective Work, all at no cost to the OWNER, pursuant to paragraph 15.08 of the General Conditions, as supplemented.

SC-1.01.50 Final Completion – The date upon which Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

SC-1.01.51 Preoperational Testing (Check-Out-Testing) - All field inspections, installation checks, water tests, performance tests, and necessary corrections required of the CONTRACTOR as a condition or conditions to achieving Substantial Completion to demonstrate to the OWNER and ENGINEER that individual components of the Work have been properly constructed and operate in accordance with the Contract Documents for their intended purposes.

SC-1.01.52 Start-Up Testing (Demonstration Testing) - A predefined trial period required as a condition to Substantial Completion during which CONTRACTOR is to operate the entire Work (or any part thereof agreed to by the OWNER) under actual and simulated operating conditions for the purpose (i) of making such minor adjustments and changes to the Work as may be necessary for the Work to comply with the Contract Documents and (ii) of complying with the final test requirements in the Contract Documents.

- SC-1.01A.53 Geotechnical Baseline Report (GBR) — The interpretive report prepared by or for Owner regarding subsurface conditions at the Site, and containing specific baseline geotechnical conditions that may be anticipated or relied upon for bidding and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR's own terms. The GBR is a Contract Document.
- SC-1.01A.54 Geotechnical Data Report (GDR) — The factual report that collects and presents regarding actual subsurface conditions at or adjacent to the Site, including Technical I and other geotechnical data, prepared by or for Owner in support of the Geotechnical Baseline Report. The GDR's content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.
- SC-1.02.B Delete the last sentence of the subparagraph.
- SC-2.01.C Delete the subparagraph in its entirety.
- SC-2.02 Delete paragraph 2.02 of the General Conditions in its entirety and insert the following in its place:
- A. After the Agreement has been executed, the CONTRACTOR will be furnished one (1) complete set of contract documents and one (1) copy in electronic portable document format (PDF).
- B. The CONTRACTOR shall furnish each of the Subcontractors, Suppliers, Permitting Agencies, and others such copies of the Contract Documents as may be required for their Work. All copies of the Contract Documents shall be printed from the reproducible.
- SC-2.05 Delete paragraph 2.05A.2 of the General Conditions in its entirety and insert the following in its place:
- 2.05.A.2 CONTRACTOR'S schedule of shop drawings and sample submittals will be acceptable to ENGINEER only if it provides a minimum of thirty (30) days for reviewing and processing the submittals. Shop Drawings requiring resubmission and review shall not rise to an excusable delay.
- SC-2.06 Add the following immediately after paragraph 2.06.C:
- 2.06.D The CONTRACTOR shall submit hard copies of all information required by Sections 01300, 01310, 01340 and 01370 and all forms that require the CONTRACTOR signature. However, the Owner and/or Engineer may opt to receive the information required by Sections 01300, 01310, 01340 and 01370 in an electronic format suitable with the Owner and/or Engineer. Electronic submittals shall include an electronic signature. Other CONTRACTOR submittals may be electronic data if approved by the ENGINEER.

- SC-3.03 Delete paragraph 3.03 A.3 of the General Conditions in its entirety and replace with the following:
- 3.03 A.3 Measurements
1. When measurements are affected by conditions already established or where items have to be fitted into construction conditions, it shall be the CONTRACTOR's responsibility to verify all such dimensions at the site and the actual job dimensions shall take precedence over scale and figure dimensions on the Drawings.
 2. The CONTRACTOR shall carefully study and compare all Drawings, Specifications and other instructions; shall test all figures on the Drawings before laying out the Work; shall notify the ENGINEER of all errors, inconsistencies, or omissions which he may discover; and obtain specific instructions before proceeding with the Work. The CONTRACTOR shall not take advantage of any apparent error or omissions which may be found in the Contract Documents, and the ENGINEER shall be entitled to make such corrections therein and interpretations thereof as may be deemed necessary for the fulfillment of their intent. The CONTRACTOR shall be responsible for all errors in construction which could have been avoided by such examination and notification and shall correct, at CONTRACTORS own expense, all Work improperly constructed through failure to notify the ENGINEER and request specific instructions.
- SC-4.01 Delete paragraph 4.01 of the General Conditions in its entirety and insert the following in its place.
- 4.01 The Contract Time will commence to run on the day indicated in the Notice to Proceed. The Notice to Proceed may be given at any time after the Effective Date of the Agreement. Contractor will not be paid for any work performed prior to the day indicated in the Notice to Proceed unless approved in writing by the Owner.
- SC-4.05.A Delete "and Contract Price" at the end of the first sentence.
- SC-4.05.B Delete "Contract Price or" in the first line of the subparagraph.
- SC-4.05.F Delete "Contract Price or" in the first line of the subparagraph.
- SC-4.05.G In the first sentence of 4.05.G amend "within 30 days" to read "within 14 days" and delete "Contract Price or" in the first line of the subparagraph.
- SC-4.05.H Add 4.05.H to read as follows: NOTWITHSTANDING ANYTHING CONTAINED IN THE CONTRACT DOCUMENTS TO THE CONTRARY, THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ANY MONETARY DAMAGES IT MIGHT SUSTAIN AS A RESULT OF ANY DELAY CAUSED THE CONTRACTOR BY ANY ACT OF THE OWNER, THE ENGINEER, ANY SEPARATE CONTRACTOR EMPLOYED BY OWNER OR ANY OTHER CAUSE WHATSOEVER. THE CONTRACTOR FURTHER AGREES THAT IT SHALL MAKE NO CLAIM FOR COMPENSATION FOR

SUCH DELAY AND WILL ACCEPT IN FULL SATISFACTION FOR SUCH DELAYS ANY EXTENSIONS OF TIME WHICH ARE GRANTED TO IT BY THE OWNER.

- SC-5.02.B Add the following to the end of 5.02.B:
- "Contractor shall remove and dispose of waste materials, rubbish, and other debris on a weekly basis or when directed by the OWNER or ENGINEER."
- SC-5.02.C Add to the end of 5.02.C:
- "Contractor shall clean the site and the Work to the satisfaction of the OWNER."
- SC-5.02 Add a new sub-paragraph immediately after paragraph 5.02.D of the General Conditions which are to read as follows:
- 5.02.E Even when available on or adjacent to the Project area, use of the OWNER's existing washrooms, lavatories, sanitary facilities or plumbing fixtures by the CONTRACTOR or any of its employees or Subcontractors will not be permitted.
- SC-5.04.A.4 In the last paragraph of 5.04.A after "then CONTRACTOR shall" amend "promptly" to read "within three (3) days".
- SC-5.05 Delete Article 5 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions, Section 5.05 Underground Facilities in its entirety and insert the following Article 5 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions, Section 5.05 Underground Facilities in its place.
- 5.05 *Underground Facilities*
- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners or such Underground Facilities, Including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data; and,
 2. The cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the site;
 - b. locating all Underground Facilities;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and,
 - d. the safety and protection of all existing Underground Facilities at the Site and repairing any damage thereto resulting from the Work.

B. *Possible Times Adjustments:*

1. Contractor shall be entitled to an equitable adjustment in Contract Times to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's time required for, performance or the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question; and
 - b. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Times, then any such adjustment shall be set forth in a Change Order.

SC-5.06.E

Delete the paragraph and add "The Owner shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered at the site which was not indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of work and which may present a substantial danger to persons or property exposed in connection with the work at the site. Owner shall not be responsible for any such materials brought to the site by Contractor or anyone else the Contractor is responsible for. Contractor shall immediately stop all work in connection with such hazardous conditions and notify Owner and Engineer (and thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Contractor shall not be required to resume work in connection with such condition until after Owner has obtained any required permits related thereto and delivered to Contractor special written notice: (i) specifying that such condition and any affected area is or has been rendered safe to resume work, or (ii) specifying any special conditions under which such work may be resumed safely. If after receipt of such special written notice Contractor does not agree to resume work based on reasonable belief it is unsafe or does not agree to resume work under such special conditions, then Owner may order such portion of work that is in connection with such hazardous condition to be deleted from the work. If Owner and Contractor cannot agree as to the amount or extent of an adjustment, if any, in Contract Price as a result of deleting such portion of the work, then either party may make a claim as provided in the Contract Documents. Owner may have such deleted portion performed by Owner's own forces or others in accordance with the Contract Documents. To the fullest extent permitted by laws and regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, Engineer, Engineer's consultants, and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition provided that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss

of use resulting therefrom, however nothing shall obligate Owner to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

SC-5.06.I Delete paragraph 5.06.I of the General Conditions in its entirety.

SC-5.06.L Add Section 5.06.L to read as follows:

Burrowing owls are classified as a "Threatened" species and are state and federally protected under Rule 68A-27 of the Florida Administrative Code; the Migratory Bird Treaty Act and City Ordinance 20-19. In accordance with the Florida Fish and Wildlife Conservation Commission, the City of Cape Coral is mandating that appropriate protective techniques must be initiated.

1. It is hereby acknowledged and accepted by all contractors that the Burrowing Owls are protected by State and Federal law. Any malicious harassing of an owl, causing injury or death, or unlawful taking of their nesting sites can result in a fine up to five thousand (\$5,000) dollars and/or imprisonment to the contractor.
2. Therefore, the contractor shall through the execution of his/her contract, acknowledge that they have been made aware of applicable laws concerning Burrowing Owls and their burrow.
3. The proper methods for identifying and protecting owls and burrows are as follows:
 - a. Pre-inspection of the project limits prior to the commencement of construction and staking each owls nest so as to prevent destruction during the construction operations; and the contractor, to the best of his ability, shall be required to submit the list of all owls' nests to the A/E. Nests should be staked and roped off with a minimum ten (10) foot radius buffer. This buffer shall be increased to thirty-three (33) feet from Feb 15th – July 10th.
 - b. The Contractor shall do no construction within a ten (10) foot radius of each nest, identified by four (4) stakes, between July 11th and February 14th or within a thirty-three (33) foot radius between February 15th and July 10th. Stakes shall be 1" x 2" x 36" above ground level, topped by red surveying ribbon supplied by the Contractor. Stakes should be placed in a square pattern ten (10) feet from the burrow entrance July 11th – February 14th and thirty-three (33) feet from the burrow entrance February 15th – July 10th.
 - c. The Contractor shall accept full responsibility for the actions of his employees and subcontractors to ensure that all laws protecting the owls are adhered to. It shall be clearly understood by each Contractor that City staff will monitor their activities and will take action if a burrow is maliciously/unlawfully destroyed, or if injury/death occurs as a direct result of his actions.
 - d. By submitting a bid, it is hereby acknowledged and accepted by each bidder that the Burrowing Owls are protected by these laws and that they have been informed by the City of the laws concerning Burrowing Owls and their burrows. The City's Department of Community Development use white PVC stakes for marking owl burrows and the Contractors are to exercise caution when around these areas.

By submitting a bid or proposal, it is hereby acknowledged and accepted by each Bidder that **Gopher Tortoises** are protected by Ordinance 20-19 and State Laws which prohibit the harming of Gopher Tortoises and their burrows. Harming of Gopher Tortoises and their burrows will be reported to State authorities. The City marks the half-moon shaped burrows with a single white PVC stake. The Contractor should be on careful watch for any unmarked burrows/nest and maintain a minimum twenty-five (25) feet buffer from the burrow/nest. Burrows shall be roped off with a 25 ft buffer prior to commencement of any construction activities. Units 33, 35, 37, 51, 53, 80, 91, and 97 have heavy Gopher Tortoise Populations. Gopher Tortoises are typically active during daylight hours and due care should be taken by the awarded Contractor(s) during that time.

Bald Eagles - Be advised that specific areas of this project may lie within a protective zone of a Bald Eagle nesting site, which are protected by City Ordinance 165-06, and Federal and State laws.

The Contractor shall accept full responsibility for the actions of their employees and subcontractors to ensure that all laws protecting the Burrowing Owls, Gopher Tortoise and Bald Eagles are adhered to. It shall be clearly understood by each Contractor that City staff will monitor their activities and will take action.

SC-Article 6 Delete Article 6 – Bonds and Insurance in its entirety and insert the following Article 6 – Bonds and Insurance in its place.

ARTICLE 6 – BONDS AND INSURANCE

The Contractor shall secure, pay for, and file with the Owner prior to commencing any work under the Contract certificates for the types of insurance set forth herein. All such certificates shall provide for minimum coverage in the amounts set forth herein, unless a greater minimum amount is specified elsewhere in the Contract Documents. Contractor shall, at all times during the performance of this Agreement, provide and maintain the following types of insurance. All certificates of insurance must be accompanied by all endorsements being required, including additional insured endorsements, cancellation/material change endorsements, and waivers of subrogation, USL&H Act and Jones Act endorsements.

6.01 Comprehensive General Liability Insurance. Comprehensive General Liability Insurance which shall include coverage on an “occurrence” basis for:

- 6.01.1 Personal injury liability with employee exclusion deleted;
- 6.01.2 Completed operations liability;
- 6.01.3 Blanket contractual liability insuring the Contractor’s obligations under this Agreement;
- 6.01.4 Contractor’s protective liability to cover the Contractor’s liability arising out of the Work performed by its subcontractors;
- 6.01.5 Mold coverage;
- 6.01.6 Explosion, collapse, and underground property damage;
- 6.01.7 Advertising injury;
- 6.01.8 Premises medical payments;

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- 6.01.9 Property damage liability;
- 6.01.10 Independent contractor liability; and
- 6.01.11 Property damage extended to apply to completed operations.

Notwithstanding anything contained herein to the contrary, the coverages under the Comprehensive General Liability Policy to be furnished by the Contractor must be afforded on a policy form no more restrictive than the last edition of the Comprehensive General Liability Policy filed by the Insurance Service Office, Inc.

The limits of liability associated with the Contractor's Comprehensive General Liability Policy shall not be less than the following: \$1,000,000.00 each occurrence \$2,000,000.00 aggregate and shall remain in force and effect until at least three (3) years beyond completion and delivery by Contractor of the work under the Contract Documents.

- 6.02 **Excess Liability Insurance is required for this project.** The Contractor shall maintain an Excess Liability Insurance Policy in amount not less than two (2) Million and No/100 Dollars (\$2,000,000) combined single limit bodily injury/property damage, in excess of the Commercial General Liability Insurance. Such insurance shall remain in force and effect until at least three (3) years beyond completion and delivery by Contractor of the work under the Contract Documents.
- 6.03 Commercial Automobile Insurance. The Contractor shall maintain Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used by the Contractor in connection with the Project with a combined minimum limit of One Million and No/100 Dollars (\$1,000,000.00), single limit for bodily injury and property damage liability for each person/each occurrence.
- 6.04 Worker's Compensation Insurance. The Contractor shall maintain Worker's Compensation Insurance insuring its liability under the Worker's Compensation and Occupational Disease Laws of the State of Florida, with limits of liability not less than:
 - 6.04.1 One Million and No/100 Dollars (\$1,000,000.00) each accident for bodily injury by accident;
 - 6.04.2 One Million and No/100 Dollars (\$1,000,000.00) each employee for bodily injury by disease; and
 - 6.04.3 One Million and No/100 Dollars (\$1,000,000.00) policy limit for disease.
 - 6.04.4 The Worker's Compensation Policy to be provided by the Contractor must be endorsed with a waiver of subrogation endorsement waiving the Contractor's right of subrogation against the City.
 - 6.04.5 Notwithstanding any other provision of the Contract, the Contractor shall maintain complete worker's compensation coverage for each and every employee, principal, officer, representative, or agent of the Contractor who is performing any labor, service or material under the Contract.
 - 6.04.6 If the work is being done on or near a navigable waterway, Contractor's workers compensation policy should be endorsed to

provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage as specified by Owner.

- 6.05 Property Insurance. It is the Contractor's responsibility to carry its own Property Insurance on all property, including equipment that will not become an integral part of the completed Project.
- 6.06 Builder's Risk Insurance. The Contractor is required to purchase Builder's Risk Insurance for the Project. If requested by the City, the Contractor shall purchase such insurance for the City's benefit and shall be reimbursed by the City for such expense. If the Contractor assists the City in this regard, the cost of such coverage shall not be considered a part of the cost of the Work and the Contractor shall not be entitled to any fee in connection with such expenditure.
- 6.07 Extent of Coverages. The insurance coverages referred to above are set forth in full in their respective policy forms, and the foregoing descriptions of such policies are not intended to be complete or to limit any provisions of the actual policies and should said descriptions be narrower than the coverages afforded under the actual policies of insurance, the provisions of the actual policies of insurance shall govern.
- 6.08 Pollution Liability: The insurance coverage is covering property loss and liability arising from pollution-related damages, for sites that have been inspected and found to be uncontaminated. Transporter moving hazardous products or waste as cargo aboard the transporter's truck:
- \$1,000,000 bodily injury/property damage/clean-up, including wrongful delivery.
\$2,000,000 General Aggregate.
- 6.09 Longshore and Harbor Workers' Compensation & Employers' Liability: *(TO BE SWAPPED OUT WITH THE STANDARD WORKERS' COMPENSATION FOR THOSE CONTRACTORS WORKING IN AND AROUND THE NAVIGABLE WATERS)* - Statutory benefits as defined by federal law for job injuries that occur on the navigable waters of the United States as described in the United States Longshore and Harbor Workers' Compensation Act ("LHWCA" or "USL&H") to include all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Employers' Liability will have minimum limits of:
- \$1,000,000 per accident/disease limit/disease – policy limit
- 6.10 Waiver of Subrogation. The Contractor's insurance policies shall be endorsed to provide that the insurers waive their rights of subrogation against the City to provide that the policies afford primary coverage over any other applicable insurance coverages.
- 6.11 Insurance Certificate. Prior to performing any services hereunder, the Contractor shall file with the City a Certificate of Insurance in a form acceptable to the City. The Certificate of Insurance shall reflect the City as an additional insured on the Contractor's Commercial General Liability, Business Automobile Liability, Property

Insurance, and Excess Liability Policies. The Certificate of Insurance furnished by the Contractor shall contain a provision that the coverages afforded under the policies thereon will not be cancelled until at least thirty (30) days prior written notice has been given to the City. In addition to the foregoing Certificate of Insurance, the Contractor shall procure and furnish to the City endorsements to its Commercial General, Excess Liability and Automobile Liability Insurance Policies reflecting the City as an additional insured under said policies.

Additional Insured:

Owner: City of Cape Coral
1015 Cultural Park Blvd., 2nd Floor
Cape Coral, FL 33990

Deductibles: The City is exempt from, and is no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the firm providing such insurance.

Notification Clause: In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy. Unless otherwise specified, it shall be the responsibility of the Consultant's and Sub-Consultant's to ensure that all subcontractors comply with the same insurance requirements spelled out above.

All certificates of insurance must be on file with and approved by the City of Cape Coral before the commencement of any work activities.

- 6.12 Rating of Insurance Companies. All companies issuing the policies provided for hereunder shall be licensed or approved by the Department of Insurance, State of Florida and shall have financial rating no lower than II and a policyholders surplus rating no lower than (A) as listed in AMBest TK Rating Guide, current edition, or interim report. Companies with ratings lower than those specified herein shall be acceptable only upon the written consent of the City.
- 6.13 Subcontractor Insurance Coverage. The Contractor shall require its subcontractors to maintain the following minimum insurance coverages for the Project:
 - 6.13.1 Worker's Compensation and Employer's Liability insurance with limits of liability not less than:
 - 6.13.1.1 One Hundred Thousand and No/100 Dollars (\$100,000.00) each accident for bodily injury by accident;
 - 6.13.1.2 One Hundred Thousand and No/100 Dollars (\$100,000.00) each employee for bodily injury by disease; and
 - 6.13.1.3 Five Hundred Thousand and No/100 Dollars (\$500,000.00) policy limit for disease.

- 6.13.2 A policy of Comprehensive General Liability Insurance containing the same coverages as required by the Contractor with a combined a single limit for liability injury, personal injury and property damage of at least Two Million and No/100 Dollars (\$2,000,000.00) per occurrence and Ten Million and No/100 Dollars (\$10,000,000.00) aggregate. The general aggregate limit shall apply on a per project basis. The limit may be provided through a combination of primary and umbrella/excess liability policies.
- 6.13.3 Commercial Automobile Liability Insurance Policy covering all owned, non-owned, and hired vehicles used by the subcontractor in connection with the Project with a combined minimum limit of One Million and No/100 Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence/aggregate.
- 6.13.4 Excess Liability Policies may be used to comply with the Comprehensive General Liability, Business and Automobile Liability Insurance limits referred to above.
- 6.13.5 All of subcontractors' policies shall be endorsed to provide that the insurers waive their right of subrogation against the City.

6.14 **Subcontractor Commercial General Liability:**

Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

- 6.14.1 One (1) Million Dollars (\$1,000,000) per each occurrence
- 6.14.2 Two (2) Million Dollars (\$2,000,000) general aggregate
- 6.14.3 One (1) Million Dollars (\$1,000,000) products and completed operations
- 6.14.4 One (1) Million Dollars (\$1,000,000) personal and advertising injury

A policy of Comprehensive General Liability Insurance containing the coverages as required by the Contractor with a combined single limit for liability injury, personal injury and property damage of at least One (1) Million \$1,000,000.00 per occurrence and Two (2) Million Dollars (\$2,000,000.00) aggregate. The general aggregate limit shall apply on a per project basis. The limit may be provided through a combination of primary and umbrella/excess liability policies.

6.15 **Subcontractor Business Automobile Liability:**

Insurance Policy covering all owned, non-owned, and hired vehicles used by the subcontractor in connection with the Project with minimum limits of:

- 6.15.1 One (1) Million Dollars (\$1,000,000) combined single limit (CSL); or

- 6.15.2 Five (5) Hundred Thousand Dollars (\$500,000) bodily injury per person;
- 6.15.3 One (1) Million Dollars (\$1,000,000) bodily injury per accident
- 6.15.4 Five (5) Hundred Thousand Dollars (\$500,000) property damage per accident

6.16 **Subcontractor Excess Liability Policies** may be used to comply with the Comprehensive General Liability, Business and Automobile Liability Insurance limits referred to above. All of subcontractors' policies shall be endorsed to provide that the insurers waive their right of subrogation against the City.

6.17 Construction Performance and Payment Bond. The Contractor shall furnish a certified copy of a recorded Construction Performance and Payment Bond in an amount equal to one hundred percent (100%) of the Contract Price. The bond must be recorded at the Lee County Clerk of Courts upon receipt of the fully executed agreement and before **work begins on the project.** The Construction Performance and Payment Bond shall be issued by a surety and in a form acceptable to the City. The Payment and Performance Bond shall name the City as an obligee thereunder. To be acceptable to the City as surety on bonds, surety shall comply with the following provisions:

- (a) Surety must be licensed to do business in Florida and shall comply with all provisions of Florida State Statutes.
- (b) Surety must have been in business and have a record of successful, continuous operation for at least (5) years.
- (c) Attorneys-in-fact who sign bid bonds or supply contract bonds must file with such bond a certified copy of their power of attorney to sign such bond.
- (d) Agents of Surety Companies must list their name, address, and telephone number on all bonds.
- (e) Surety shall have the following minimum rating:
 - 1. Best's Financial Rating of A-XII.
 - 2. Best's Policyholder's Rating of "A" which signifies "excellent" based on good underwriting, economic liabilities, net resources for unusual stock, and sound investment.

The bond shall remain in effect during the guarantee and warranty period.

All bonds must be executed under the corporate seal of the surety and countersigned on the part of the surety by a qualified resident agent of the company or any attorney-in-fact with proof of power attached to the bond.

SC-7.01.B Add to the end of 7.01.B "Resident superintendent shall be fluent in English." The Owner shall have the right to have the Contractor's Resident Superintendent, reasonably objectionable to the Owner, removed from the site and/or participation in the project."

SC-7.01.C Add Section 7.01.C to provide as follows: At all times during the progress of the Work, Contractor shall assign a competent Project Manager/Project Management Team or other Staff who (whom) shall not be replaced without written notice to Owner and Engineer

except under extraordinary circumstances. The Project Manager/Members of the Project Management Team or other Staff shall be fluent in English. The Owner shall have the right to have the Contractor's Project Manager and/or specific members of the Project Management Team or other Staff, reasonably objectionable to the Owner, removed from the site and/or participation in the project.

SC-7.02.A Add to the end of 7.02.A "The Owner shall have the right to have Contractor personnel reasonably objectionable to the Owner removed from the site and/or participation in the project."

SC-7.02.B Delete Section 7.02.B in its entirety and replace with the following:

7.02.B.1 In performing its work, Contractor, and or Contractor's Subcontractors, shall observe the following working hours, Monday through Friday, beginning no earlier than 7:00 AM and ending no later than 5:00 PM, excluding Owner recognized holidays. Work on Saturday may be permissible with proper notification to the Engineer for holiday make-up, rain days, and unforeseen instances. Any additional Saturday work outside of these instances will require notification and approval by the Engineer. No work will be permitted on Sunday. The Owner observes the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving and Christmas Day. Requests to work other than regular working hours, as defined herein, must be submitted to Owner for approval at least 48 hours prior to any proposed weekend or extended work weeks. Periodic unscheduled overtime on weekdays may be permitted provided two (2) hours minimum notice is provided to Owner.

7.02.B.2 The CONTRACTOR shall pay for additional engineering and construction observation charges required during irregular hours which may be authorized under the provisions of paragraph SC-7.02.B.1.

7.02.B.3 The CONTRACTOR shall also pay for the costs of additional engineering charges and construction observation required during the correction of defective Work. Such additional costs incurred during irregular working hours and during the correction of defective Work, shall be subsidiary obligation of the CONTRACTOR and no extra payment shall be made by the OWNER on account of such Work.

SC-7.03.D Add the following to Section 7.03:

SC-7.03 D Add Section 7.03.D to provide as follows: Owner is exempt from State of Florida sales tax on materials it purchases. On the basis of this exemption the Owner can purchase materials and furnish them to Contractor and its Subcontractors thereby reducing the overall cost of the Work. The process used to ensure the responsibility for materials stays with the Contractor and/or Subcontractor installing the items while saving the Owner the amount of sales tax normally included in the price of construction. This process is called the Direct Purchase Procedure.

SC-7.03 E In general, Contractor's and/or Subcontractors will include the price of all materials including sales tax in each of the unit priced items indicated on the Contractor's Bid Form. The Contractor will take proposals for the materials from the vendors of Contractor's choice. The vendors will include sales tax in their proposal as if this were a typical commercial purchase and those costs will be included in the bid prices the Contractor submits in Contractor's bid. After a work authorization is issued to Contractor, the Owner will be provided with 1) the name of the vendor, 2) a list of the materials to be purchased, and 3) the delivery scheduled for the items. The Contractor will also provide any other information or forms that the Owner would require to issue the purchase order for the material. The Owner may choose to place the purchase order for the material less the amount of State of Florida sales tax. Deliveries and payment shall be limited to a maximum of 90 days' worth of materials to be installed as to be demonstrated by the Contractor in his schedule and shall be based on the projected rate of infrastructure installation and number of work crews. After the material is delivered, Contractor and/or Subcontractor will credit the Owner for the price of materials plus the amount of the sales tax which would have normally been paid from the amounts due for the Work performed. Materials not installed shall be included as stored materials on the form provided in Section 00846 – Materials Stored On-Site Form. Contractor will only be compensated for materials installed. Materials stored will be paid as outlined in Section 00500 – Agreement, Article 6, Payment Procedures. Contractor will not be paid for any excess materials ordered and not installed. It is understood and anticipated that multiple orders may be made from multiple vendors.

SC-7.03 F The Contractor will be responsible for accurately estimating the quantities to be ordered; providing said information to the City for preparing/issuing a purchase order; reviewing and verifying the City's prepared purchase order prior to issuance; notifying the City of any purchase order corrections prior to issuance; coordinating deliveries (dates and locations); verifying acceptability of delivery (quality and quantity); signing for deliveries; retaining packing slips and delivery receipts (with copy to City); securing and storing the materials in their custody prior to installation; handling returns as required; and all other efforts customary to material procurement as if the Contractor were making the purchase directly. For deliveries, Contractor shall notify the City of the proposed delivery date and location. A City representative along with a Contractor representative will review the materials together to assure that the quantities are accurate. Quantity verification shall be required prior to installation of any delivered material. The Contractor shall be solely responsible for the cost of replacing any goods or materials lost, stolen, or destroyed and the cost of any repair for any damage to the goods and materials, as well as processing all warranty claims for defective goods and materials to the same extent as if such goods had been Contractor supplied or purchased in the name of the Contractor. The City will solely be responsible for issuing the purchase order and making payment. The City of Cape Coral typically pays invoices within 30 days of receipt by the City of Cape Coral, but payment within 30 days is not guaranteed.

SC-7.03G The Contractor shall work with the Owner to develop a mutually satisfactory Direct Purchase program, if so, requested by the Owner, to allow for such purchases of materials for the project by the Owner. The Owner intends to purchase 90 percent of the quantity identified on the Contractor's Bid Form for those items where quantities are estimated, such as pipe. For specific quantity items such as pumps, fire hydrants, valves, etc. which have a defined quantity, the City intends to purchase 100 percent of the actual quantity required for installation.

SC-7.04 Delete the first paragraph in 7.04.A of the General Conditions in its entirety and insert the following in its place:

7.04.A ENGINEER and OWNER have no obligation to consider "or equal" items or substitutions. All "or equal" items and substitute items may be considered after the contract has been awarded. It is the OWNER's sole prerogative to have ENGINEER review substitutions and will not be considered during the bidding period. Substitutes may be considered after contract award for those items identified in Section 00300 and may be proposed by CONTRACTOR during the course of the Work. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words "or equal" or "or approved equal" no substitution is permitted. Other items of material or equipment of other Suppliers will be reviewed by ENGINEER, with OWNER's approval, if the material or equipment is not named in Section 00300 and may be considered after contract award.

SC-7.06.A Add the following sub-subparagraphs:

7.06.A.1 Contractor agrees it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin. The Contractor shall comply with all aspects of the Americans with Disabilities Act ("ADA") during the performance of this Contract.

7.06.A.2 Owner encourages the Contractor to use subcontractors who are certified as disadvantaged business enterprises as defined in Section 288.703, Florida Statutes ("DBEs") so as to promote opportunities for DBEs to participate in the project. The Contractor, when seeking subcontractors for the project, agrees to use its best efforts to assure the participation of local DBEs.

7.06.A.3 Owner encourages the Contractor to utilize business enterprises based in Cape Coral, Florida. The Contractor, when seeking subcontractors for the project, agrees to use its best efforts to assure the participation of business enterprises based in Cape Coral, Florida.

7.06.A.4 Notwithstanding Contractor's right to retain Subcontractors and Suppliers for the performance of parts of the Work, Contractor must perform no less than fifty (50%) of the total value of the Work less "Mobilization/Demobilization", "General Requirements", and specified "Allowances" utilizing Contractor's own employees.

- SC-7.06.D In the last sentence of the paragraph replace "five days" with "ten days."
- SC-7.07.B Delete this paragraph of the General Conditions in its entirety.
- SC-7.08.A Delete the last sentence of 7.08.A.
- SC-7.11 Add 7.11.B to read as follows: The Contractor shall keep full and detailed accounts and financial records pertaining to the provision of services for the Owner. All financial records of Contractor shall be kept in accordance with generally accepted accounting practices. The Contractor shall preserve the aforementioned records for a period of ten (10) years after final payment, or for such longer period as may be required by law.
- SC-7.11 Add 7.11.C to read as follows: The Owner expressly reserves the right to audit any and all costs attributable to the work performed by Contractor as well as any records relating to the Contract Documents as more particularly described in the "Right of Audit" attached hereto as Exhibit B and incorporated herein by reference.
- SC-7.12.D Replace paragraph 7.12.D with the following:
- "Contractor's duties and responsibilities for safety and protection of the Work shall continue until Final Completion and at all times during the correction period that Contractor, subcontractor, supplier, or any other individual directly or indirectly employed by any of them are on site to perform work."
- SC-7.16 E.1 Add the following at the end of paragraph 7.16.E.1 in the General Conditions:
- "Shop Drawings and other submittal data shall be reviewed by the ENGINEER for each original submittal and first re-submittal; thereafter, the CONTRACTOR shall reimburse OWNER for services rendered by ENGINEER for review time and other associated costs of subsequent re-submittals."
- SC-7.18 Delete Section 7.18 in its entirety and replace with the following: For and in consideration of the first One Hundred and No/100 Dollars (\$100.00) paid hereunder, the Contractor shall indemnify, defend and hold harmless the Owner, the Engineer, and their officers, employees, and agents from any and all liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Contractor or any subcontractors, agents or employees utilized by the Contractor in the performance of this Agreement. The Contractor's monetary obligation under this indemnification provision is specifically limited to a sum equal to the Contract Price set forth herein. The parties agree that the foregoing monetary limitation bears a reasonable commercial relationship to the parties' agreement and the project. This indemnification provision forms a part of the specifications for the project. This indemnification clause is intended to comply with Florida laws on indemnity and, specifically, to comply with Section 725.06, Florida Statutes, and is to be interpreted in such a way as to be enforceable.
- SC-7.20 Add the following new paragraphs after paragraph 7.19 of the General Conditions to read as follows:

7.20 Additional Costs: The CONTRACTOR shall reimburse the OWNER for services rendered by the ENGINEER when made necessary by the following:

7.20.1. Work damaged by fire, flood, lightning, or any other cause during construction.

7.20.2. Default by CONTRACTOR or any Subcontractor.

SC-8.01.D In the first sentence of paragraph 8.01.D, amend "promptly" to read "within three (3) days."

Amend the last sentence to read, "Contractor's failure to so report within three (3) days will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work."

SC-8.02 Delete paragraph 8.02 of the General conditions in its entirety and insert the following in its place:

8.02 The parties expressly acknowledge that the Work to be done by the CONTRACTOR under this contract may interface with the Work of other contractors. Thus, in addition to the foregoing paragraphs in this Article 8, the following provisions apply.

8.02.A The CONTRACTOR shall cooperate with all other contractors who may be performing Work on behalf of the OWNER in the vicinity of the Work to be done under this contract, and CONTRACTOR shall conduct his operation as to interfere to the least possible extent with the Work of such contractor.

8.02.B The CONTRACTOR shall promptly make good, at its own expense, any injury or damage that may be caused by it to other contractors, employees or subcontractors or suppliers thereof.

8.02.C Any difference or conflict which may arise between the CONTRACTOR and other contractors in regard to their respective Work shall be adjusted and determined by the OWNER.

8.02.D If the Work is delayed because of any acts or omissions of any other contractor, the CONTRACTOR shall have no claim against the OWNER on that account.

SC-9.06 Delete paragraph 9.06 of the General Conditions in its entirety.

SC-10.01A Amend the first sentence to read, "Engineer will act in the capacity as the Owner's representative during the construction period."

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.A:

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- B. The Engineer/Approved Engineer's Sub-Consultant (Engineer) will act as the Owner's representative and generally assume the following duties and responsibilities in connection with the completion of the Work in accordance with the Contract Documents:
1. General: The Engineer's dealings in matters pertaining to Work in general shall be as the Owner/Owner's Representative (Owner).
 2. Prepare final stamped approved plans, summary of quantities and Engineer's Opinion of Probable Cost.
 3. Provide special provisions and other appropriate contract documents for incorporating City of Cape Coral specifications and requirements in the bid documents. The City will combine these special conditions and technical specifications with the Owner-provided "Bidding and Contract Requirements" documentation and the required "General Requirements".
 4. Assist the Owner prepare the complete bidding and contract documents ready for bid including all forms, general conditions, specification, bid schedule, design plans, all approved permits and other material required by the Owner, the Utilities Department, Legal Department and Risk Management Department.
 5. Attend and participate with the Owner in scheduling and presenting a Pre-Bid Conference.
 6. Respond to Bidders' inquiries and prepare up to two (2) addenda for issuance by the Owner.
 7. Evaluate the bids received by the Owner and provide written recommendations to the Owner.
 8. In connection with observations of the work of Contractor while it is in progress: Engineer shall provide periodical construction observation at critical times during construction including tie-ins and pressure tests. Based on information obtained during such observations, Engineer shall endeavor to determine in general if such work is proceeding in accordance with the design concept and the design information shown in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
 9. Engineer shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the design information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole

as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. Review of a specific item shall not indicate the Engineer has reviewed the entire assembly of which the item is a component. Engineer shall not be responsible for any deviations from the Contract Documents not brought to the attention of the Engineer in writing by the Contractor. Engineer shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

10. Engineer will review and approve Contractor's applications for payment based upon information provided by the Owner and/or Owner's Project Representative's review of the quantities.
11. Engineer will attend up to one public meeting, one Pre-Construction meeting and bi-weekly construction progress meetings. Engineer will provide meeting minutes to the team for each meeting.
12. Engineer will provide digital as-built record drawings based on red-line drawings provided by the Contractor. Deliverable will be in PDF, DWG, and/or GIS format as directed by Owner.
13. Engineer shall witness water main tie-ins, certify project completion and submit request to FDOH to place the system into service.
14. Engineer may provide the following services using an Approved Engineer's Sub-Consultant on an as needed basis to include, but not limited to, the following:
 - a. Prepare and maintain mailing list database for approximately 150 properties.
 - b. Postcard/letter announcing public meeting.
 - c. Prepare for and attend one neighborhood pre-construction public meeting.
 - d. Communication and coordination with property Owners & tenants regarding water shut-off/boil water notices, driveway/access changes.
 - e. Preparation and distribution of flyers.
 - f. Roadwatch/Press releases.
 - g. Coordination regarding variable message boards/voice message broadcasting (VMBs) for any road closures.
 - h. Telephone Hotline w/project contact cards.
 - i. Attendance at project progress meetings.
 - j. Coordination with Fire/EMS/garbage/mail/school transportation/police.

- C. The Owner's Project Representative (OPR) will be Owner's representative at the Site, will act as directed by and under the supervision of Owner, and will confer with Owner regarding OPR's actions.
1. General: OPR's dealings in matters pertaining to the Work in general shall be with Owner, Engineer and Contractor. OPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor.
 2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
 3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and if not done so by the RPR, prepare and circulate copies of minutes thereof.
 4. Liaison:
 - a. Serve as Owner's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Act as Owner's liaison with Contractor when Contractor's operations affect Owner's On-Site operations.
 - c. Assist in obtaining from Engineer additional details or information, when required for proper execution of the Work.
 5. Interpretation of Contract Documents: Report to Owner when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Owner.
 6. Shop Drawings and Samples:
 - a. Maintain a copy of Engineer-approved Samples and Shop Drawings.
 - b. Assist RPR and Engineer by receiving samples which are furnished at the Site by Contractor and notify RPR and Engineer of availability of Samples for examination.
 - c. Advise Owner, Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which OPR believes that the submittal has not been approved by Engineer.
 7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with OPR's recommendations, if any, to Owner. Transmit to Contractor in writing decisions as issued by Owner.
 8. Review of Work and Rejection of Defective Work:
 - a. Conduct On-Site observations of Contractor's work in progress to assist Owner in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Owner whenever OPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design

concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Owner of that part of work in progress that OPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. Inspections, Tests, and System Start-ups:

- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- b. Observe, record, and report to Owner and Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:

- a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Owner.
- b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

11. Reports:

- a. Furnish to Owner and Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Owner and Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Owner of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12. Payment Requests: Review applications for payment with RPR and Contractor for compliance with the established procedure for their submission and forward with recommendations to Owner and Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these

documents delivered to Owner for review prior to payment for that part of the Work.

14. Completion:

- a. Participate in Owner and Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and assist in the preparation of a punch list of items to be completed or corrected.
- b. Participate in Owner and Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and assist in the preparation of a final punch list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Owner concerning acceptance and issuance of the notice of acceptability of the work.
- d. OPR in conjunction with the RPR, Engineer, with assistance from the Owner, will field verify information provided by the Contractor (redline drawings) to certify completion of the Project in accordance with the Plans and Specifications to the Owner and the applicable regulatory agencies.
- e. OPR and RPR will review the final Application for Payment with Contractor for compliance with the established procedure for its submission and forward with recommendations to Owner and Engineer for final payment to the Contractor and submission of Certification of Completion to applicable regulatory agencies.

D. The OPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items) without prior approval of the Owner.
2. Exceed limitations of Owner's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Owner.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

SC-10.07.A

Add the following sentences to the end of paragraph 10.07.A of the General Conditions:

"No action, either at law or at equity, shall be brought in connection with any such claim, dispute or other matter later than thirty (30) days after the date on which the ENGINEER has rendered such written decision in respect thereof except as otherwise may be permitted by Florida Law or Statute. Failure to bring an action within said thirty (30) day period shall result in ENGINEER's decision being final and binding upon the OWNER and

the CONTRACTOR. In no event may any such action be brought after the time at which instituting such proceedings would be otherwise barred by the applicable statute of limitations."

SC-11.02.B
&
SC-11.02.C

Add the following new paragraphs after paragraph 11.02.A of the General Conditions:

11.02.B At anytime, ENGINEER may request a quotation from CONTRACTOR for a proposed change in the Work. Within seven (7) calendar days after receipt of a request for a quotation for a proposed change, the CONTRACTOR shall submit a written and detailed proposal for an increase or decrease in the Contract Price or Contract Time for the proposed change. ENGINEER shall have twenty-one (21) calendar days after receipt of the detailed proposal to respond in writing. The proposal shall include an itemized estimate of all costs and time for performance that will result directly or indirectly from the proposed change. Unless otherwise directed, itemized estimates shall be in accordance with Articles 11 and 12 of the General Conditions and in sufficient detail to permit an analysis by ENGINEER of all material, labor, equipment, subcontract, and overhead costs and fees and shall cover all Work involved in the change, whether such Work was deleted, added, changed, or impacted. Any amount claimed for subcontracts shall be similarly supported. Itemized schedule adjustments shall be in sufficient detail to permit an analysis of impact as required in Section 01310: Progress Schedules. Notwithstanding the request for quotation, the CONTRACTOR shall carry on the Work and maintain the progress schedule.

11.02.C The adjustment in Contract Price and/or Contract Time stated in a Change Order shall comprise the total price and/or time adjustment due or owed the CONTRACTOR for the Work or changes defined in the Change Order. By executing the Change Order, the CONTRACTOR acknowledges and agrees that the stipulated price and/or time adjustments include the costs and delays for all Work contained in the Change Order, including costs and delays associated with the interruption of schedules, extended overheads, delay, acceleration and cumulative impacts or ripple effect on all other non-affected Work under this contract. Signing of the Change Order constitutes full and mutual accord and satisfaction for the adjustment in the Contract Price or Contract Time as a result of increases or decreases in costs and time of performance caused directly and indirectly from the change, subject to the current scope of the entire Work as set forth in the Contract Documents. Acceptance of the Change Order constitutes an agreement between OWNER and CONTRACTOR that the Change Order represents an equitable adjustment to the Contract Documents, and that the CONTRACTOR will waive all rights to file a claim on this Change Order after it is properly executed.

SC-11.04

Delete Section 11.04 in its entirety, including all subparagraphs, and replace with the following: The provisions of Owners' Pricing of Construction Contract Change Orders, Exhibit "A" which are attached hereto and incorporated herein by reference, shall govern the pricing and administration of all change order proposals submitted by Contractor

and/or all other lower tier subcontractors. In the event of a conflict between Exhibit "A" and other Contract Documents, the change order pricing provisions set forth in Exhibit "A" shall govern.

SC-11.05 Add as 11.05.C the following: NOTWITHSTANDING ANYTHING CONTAINED IN THE CONTRACT DOCUMENTS TO THE CONTRARY, THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ANY MONETARY DAMAGES IT MIGHT SUSTAIN AS A RESULT OF ANY DELAY CAUSED THE CONTRACTOR BY ANY ACT OF THE OWNER, THE ENGINEER, ANY SEPARATE CONTRACTOR EMPLOYED BY OWNER OR ANY OTHER CAUSE WHATSOEVER. THE CONTRACTOR FURTHER AGREES THAT IT SHALL MAKE NO CLAIM FOR COMPENSATION FOR SUCH DELAY AND WILL ACCEPT IN FULL SATISFACTION FOR SUCH DELAYS ANY EXTENSIONS OF TIME WHICH ARE GRANTED TO IT BY THE OWNER.

SC-12.01 Add the following new paragraphs after paragraph 12.01.G of the General Conditions:

12.01.H. This Project is a "Public Work" under Chapter 255, Florida Statutes. No liens may be filed against OWNER. Any Claimant may apply to the OWNER for a copy of this Contract and the Public Construction Bond. The Claimant shall have a right of action against the CONTRACTOR and surety for the amount due him. Such action shall not involve the OWNER in any expense claims against the CONTRACTOR or the surety and are subject to timely prior notice to both the CONTRACTOR and the Surety as specified in Section 255.05 Florida Statutes. The CONTRACTOR shall insert the following in all subcontracts hereunder.

"NOTICE: Claims for labor, materials, and supplies are not assertable against the OWNER and are subject to proper prior notice to the CONTRACTOR and the Surety pursuant to Chapter 255 of the Florida Statutes. This paragraph shall be inserted in every subcontract hereunder."

SC-13.03 E 1. Delete Paragraph 13.03 E. 1. B in its entirety and insert the following:

13.03 E. 1. The quantity of any item of Unit Price Work performed by the Contractor differs from the bid sheet by greater than 25% of the total quantity shown on the bid sheet.

SC-14.02 B Delete Paragraph 14.02.B in its entirety and insert the following:

14.02.B Payment of testing and laboratory services is specified in Section 01400; Quality Control for inspections and tests required by the Contract Documents. In addition to the requirements specified in Section 01400, CONTRACTOR shall pay for all inspections, tests or approvals covered by paragraph 14.02.C.

SC-15.01 Add a new paragraph 15.01.B.4 as follows:

"Applications for payment shall be in accordance with Section 00844."

- SC-15.01 A Delete the second sentence of paragraph 15.01.A of the General Conditions and replace it with the following sentences:
- “Progress payments on account of Unit Price Work, to only two decimal places, will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03.”
- SC-15.01 B Delete the first sentence of paragraph 15.01.B.1. of the General Conditions and replace it with the following sentences:
- “At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed, with quantities and costs only to two decimal places, as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.”
- Add a new paragraph 15.01 B.1.a:
- Application for payment shall include the following documents:
1. Schedule of Values
 2. Highlighted Master Sheets detailing progress of construction made within the application time period
 3. Survey files: Provide survey files in the following formats: .dwg, .pdf, and .csv
 4. Percentage of roads within the contract area that are unpaved
- SC-15.01 Delete subparagraph 15.01.D of the General Conditions and replace it with the following sentence:
- "Thirty (30) days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 15.01.C) become due and payable by OWNER to CONTRACTOR."
- SC-15.03.A Delete the first sentence of paragraph 15.03.A of the General Conditions and replace it with the following sentences:
- "After all requirements of Section 01700: Contract Closeout have been met with respect to Substantial Completion, then when CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion."
- SC-15.05.A Amend 15.05.A to read as follows:
- "After all requirements of Section 01700: Contract Closeout have been met with respect to Final Inspection Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection

reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies. Contractor shall not request a Final Inspection until CONTRACTOR has achieved Substantial Completion."

- SC-15.06.A Add the following subparagraphs after Paragraph 15.06.A.3 of the General Conditions:
- 15.06.A.4 Notwithstanding any provision of the Contract Documents to the contrary, the OWNER shall not be deemed to have accepted the Work or waived claims against the CONTRACTOR until (i) payment of all remaining amounts of the Contract Price as provided under Paragraph 5. of the Agreement, (ii) all Record Drawings, specifications, addenda, modifications and shop drawings are delivered to and accepted by the ENGINEER, and (iii) the CONTRACTOR has met all conditions of General Condition 15.08 - Correction Period.
- SC-15.08.A Modify the third and fourth words of the subparagraph from "one year" to "three years".
- SC-15.08.A On the fourth line of the subparagraph, add "or reasonably suspected by Owner or Engineer" following "found".
- SC-15.08.A.1 Add "investigate and" to the beginning of the sub-subparagraph.
- SC-16.01.A Delete the fourth sentence of the subparagraph in its entirety and replace with the following: In the event Owner's suspension is not due to or the result, in whole or in part, of any failure in performance on the part of Contractor, then Contractor shall be entitled to an extension of the Contract Times as determined to be equitable by Engineer.
- SC-16.03 Add 16.03.A.4 to read as follows: Such sums will be due and payable on the same conditions as set forth for final payment to the extent applicable. Upon receipt of such payment, the parties hereto shall have no further obligations to each other except for the Contractor's obligations to perform corrective and/or warranty work and to indemnify the Owner as provided for in the Contract Documents.
- SC-16.03 Add 16.03.C to read as follows: Termination by Owner as provided in this section shall not obviate, release or otherwise waive any claims the Owner possesses against insurance policies maintained by the Contractor.
- SC-16.03 Add 16.03.D to read as follows: The Contractor agrees that each subcontract and purchase order issued by it will reserve for the Contractor the same right of termination provided by this section, and the Contractor further agrees to require that comparable provisions be included in all lower tier subcontracts and purchase orders.
- SC-17.01 Delete all of Section 17.01 in its entirety and replace with the following: Prior to the filing of any litigation by the Owner or the Contractor against the other (and, except as described below, as a precondition to any such filing), the Owner and the Contractor shall engage in pre-suit non-binding mediation. Such mediation may be requested by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all of the laws and rules applicable to court-ordered mediation). Such mediation shall be conducted within a reasonable period

of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court in Lee County, Florida (or the Mediation Coordinator for the Courts of Lee County, Florida) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not preemptorally. While the request for and the conducting of such a mediation may be a precondition of the filing of a civil action, in the event either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then suit may be filed before a mediation is conducted provided that mediation is requested before, or simultaneously with the filing of such suit, and is conducted before the named Defendant in the suit is required to respond to the Complaint. If the scheduling of mediation requires, the Plaintiff in the suit shall grant the Defendant an appropriate extension of time to respond to the Complaint so as to permit the mediation to be conducted before the Defendant must so respond. The mediation contemplated hereunder shall be conducted, unless otherwise agreed by the parties, in Lee County, Florida. The parties shall bear the mediator's fee and any filing fees associated with the mediation equally.

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| SC-17.02 | Add Section 17.02 entitled "Attorneys Fees" to read as follows: In connection with any litigation arising out of or related to the Contract, Work or Contract Documents, the prevailing party shall be entitled to recover all costs and expenses incurred, including all reasonable attorneys' fees. |
| SC-18.01 | Add the following after paragraph 18.01.A.2:

"3. Delivered by an independent carrier than can substantiate delivery with a tracking number and name of an individual or member of the firm accepting receipt." |
| SC-18.03 | Delete all of Section 18.03.A in its entirety and replace with the following: The rights and remedies of the Owner provided for herein are in addition to any other rights and remedies provided by law. |
| SC-18.04 | Delete all of Section 18.04.A in its entirety and replace with the following: Contractor expressly waives and releases any and all claims Contractor may have now, or in the future, against Owner arising in tort, negligence or other equitable theory, it being the express intent of this provision that Contractor's recover, if any, against owner is limited to the express contractual rights and provisions set forth in the Contract Documents. |
| SC-18.05 | Add subparagraph 18.05.B to read as follows: No modification, waiver, amendment, discharge, or change of the Contract Documents shall be valid unless the same is in writing, signed by the parties against whom the enforcement of such modification, waiver, amendment, discharge, or change is sought. |
| SC-18.08 | Delete all of Section 18.08.A and replace with the following: All articles, titles, or captions contained in the Contract Documents are for convenience only and shall not be deemed a part of the Contract and shall not affect the meaning or interpretation of the Contract Documents. |
| SC-18.09
& | Add the two paragraphs immediately after paragraph 18.08 of the General Conditions which are to read as follows: |

SC-18.10

18.09 The form of all submittals, notices, change orders and other documents permitted or required to be used or transmitted under the Contract Documents shall be determined by the ENGINEER.

18.10 All representations, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of the Agreement. Also, the obligation of the CONTRACTOR to maintain the Work until Substantial Completion shall survive final payment and termination or completion of the Agreement.

SC-18.11 Add 18.11 entitled "Standards and Specifications" to read as follows: Reference to standards, specifications, manuals or codes of any technical society, organization or association or laws or regulations of any governmental entity, shall mean the latest standard, specifications, manuals or codes, laws or regulations in effect at the issue date of the execution of this Agreement.

SC-18.12 Add 18.12 entitled "Severability" to read as follows: If any provision or any portion of any provision of the Contract Documents or the application of any such provision or portion thereof to any person or circumstance shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of the Contract Documents, or the application of such provision held invalid, or unenforceable to persons or circumstances other than those to which it has been invalid or unenforceable, shall not be affected thereby.

SC-18.13 Add 18.13 entitled "Construction of Contract Documents" to read as follows: In the event of any dispute as to the precise meaning of any term contained herein, the principles of construction and interpretations that written instruments be construed against the drafter shall not apply.

SC-18.14 Add 18.14 entitled "Complete Agreement" to read as follows: This Contract and the exhibits and attachments attached hereto constitute the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.

SC-18.15 Add 18.15 entitled "Further Documents" to read as follows: The parties hereto shall, at any time and from time to time following the execution hereof, execute and deliver all such further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out more effectively the purposes of the Contract Documents.

SC-18.16 Add 18.16 entitled "Assignment" to read as follows: Contractor shall not assign, subcontract or transfer any interest in the Contract Documents without the prior written consent of the Owner.

SC-18.17 Add 18.17 entitled "Conflicts of Contract Documents" to read as follows: In the event of any conflict between the terms of the Contract Documents, the provisions of the various Contract Documents shall govern and control in the following hierarchy:

- (1) Change Orders/Work Change Directives
- (2) Standard Form of Agreement
- (3) Addenda
- (4) Supplementary Conditions

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- (5) Standard General Conditions
- (6) General Requirements
- (7) Technical Specifications
- (8) Drawings.

SC-18.18 Add 18.18 entitled “No Third-Party Beneficiaries” to read as follows: There are no third-party beneficiaries under the Contract Documents and nothing contained in the Contract Documents shall create a contractual relationship or cause of action in favor of a third party against either the Owner or Contractor.

SC-18.19 Add 18.19 entitled “Construction Defect Notice” to read as follows: ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

SC-19.01 Add Article 20.01 entitled “Immigration Affidavit Certification and E-Verify Validation – Memorandum of Understanding Required” to read as follows:

- A. As a condition precedent to entering into this CONTRACT and in compliance with The Immigration and Nationality Act (INA), 8 U.S.C. Section 1324a(e) Section 274A(e) and Florida Statute State Section §448.095, Contractor or Consultant and their subcontractors shall register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021. The Employment Verification System (E-Verify) is operated by the Department of Homeland Security in partnership with the Social Security Administration.

A public agency must require in any contract that the contractor, and any subcontractor thereof, register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

PUBLIC AGENCY CONTRACTING

- (a) A public agency must require in any contract that the contractor, and any subcontractor thereof, register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
- (b) If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract.
- (c)
 1. A public agency, contractor, or subcontractor who has a good faith belief that a person or an entity with which it is contracting has knowingly violated s. 448.09(1) shall terminate the contract with the person or entity.
 2. A public agency that has a good faith belief that a subcontractor knowingly violated this subsection, but the contractor otherwise complied with this subsection, shall

promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.

3. A contract terminated under this paragraph is not a breach of contract and may not be considered as such. If a public agency terminates a contract with a contractor under this paragraph, the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated. A contractor is liable for any additional costs incurred by a public agency as a result of the termination of a contract.

- (d) A public agency, contractor, or subcontractor may file a cause of action with a circuit or county court to challenge a termination under paragraph (c) no later than 20 calendar days after the date on which the contract was terminated.

SC-20.01 Add Article 20.01 entitled "Prohibition Against Considering Social, Political, or Ideological Interests in Government Contracting" to read as follows: In accordance with Florida Statute 287.05701 the City may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor. An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

SC-21.01 Add Article 21.01 entitled "Scrutinized Companies List" to read as follows: Pursuant to 287.135 Florida Statute, s. 215.4725 and s. 215.473, A Company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency (state) or local governmental entity for goods or services of:

- a. Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel; or
- b. One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
 1. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, created pursuant to s. 215.473; or
 2. Is engaged in business operations in Cuba or Syria.

SC-22.01 Add Article 22.01 entitled "Human Trafficking" to read as follows: Pursuant to Florida Statute 787.06, when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in F.S. 787.06.

END OF SECTION

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Exhibit "A"

Pricing of Construction Contract Change Orders Lump Sum (Fixed Price) and/or Unit Price Contracts

The contract language contained in this Exhibit "A" will supplement and take precedence over all other change order pricing contract provisions in the contract documents provided by either the Owner, Construction Manager (Contractor), General Contractor (Contractor) and/or Architect/Engineer.

It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by Contractors and/or all other lower tier subcontractors (all referred to as "Contractor" in this Exhibit "A"). **In the event of a conflict between the other contract documents used for the project, the change order pricing contract provisions in this Exhibit "A" shall govern.**

Contractor agrees that it will incorporate the provisions of this Exhibit "A" into all agreements with lower tier Contractors who will also include this Exhibit "A" into agreements with all lower tier subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost-plus Fee change order proposals.

Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the contractor in accordance with the pricing provisions found in this Exhibit "A". The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus Fee change order proposal as defined in the following provisions.

- 1.1 Lump Sum Change Order Proposals:** The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner. The Owner will require itemized change orders on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.)
- 1.2 Labor:** Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, non-working foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Exhibit "A". Note: No separate allowances for warranty or safety expenses will be allowed as a direct cost of a change order. Costs attributed to warranty expenses and safety expense will be considered to be covered by the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Exhibit "A".
- 1.3 Labor Burden:** Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc.

Exhibit "A"

Pricing of Construction Contract Change Orders Lump Sum (Fixed Price) and/or Unit Price Contracts

Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

(An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.

- 1.4 Material:** Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to "non-Cash" discounts, trade discounts, free material credits, and/or volume rebates. "Cash" discounts (i.e. prompt payment discounts of 1.5% or less) available on material purchased for change order work shall be credited to Owner if the Contractor is provided Owner funds in time for Contractor to take advantage of any such "cash" discounts. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.
- 1.5 Equipment:** Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for contractor owned equipment the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.
- 1.6 Maximum Markup Percentage Allowable on Self-Performed Work:** With respect to pricing change orders, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed eight percent (8%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.
- 1.7 Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors:** With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower tier contractor's work shall not exceed three percent (3%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal.

Exhibit "A"

Pricing of Construction Contract Change Orders Lump Sum (Fixed Price) and/or Unit Price Contracts

- 1.8 No Markup on Bonds and Liability Insurance Costs:** Change Order cost adjustments due increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.
- 1.9 Direct and Indirect Costs Covered by Markup Percentages:** As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.
- 1.10 Deduct Change Orders and Net Deduct Changes:** The application of the markup percentages referenced in the preceding paragraphs 1.6 and 1.7 will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined in paragraphs 1.6 and 1.7 so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.
- 1.11 Contingency:** In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
- 1.12 Change Order Proposal Time and Change Directives:** The Contractor's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.

Exhibit "A"

Pricing of Construction Contract Change Orders Lump Sum (Fixed Price) and/or Unit Price Contracts

- 1.13 General Liability Insurance and Bonds:** In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Contractor's net increase or decrease in comprehensive general liability insurance costs and/or bond premium costs associated with change orders to Contractor's base contract price.
- 2.1 Unit Price Change Order Proposals:** As an alternative to Lump Sum Change Order Proposals, the Owner or the Construction Manager acting with the approval of the Owner may choose the option to use Contract Unit Prices. Agreed upon Contract Unit Prices shall be the same for added quantities and deductive quantities. Unit Prices are not required to be used for pricing change orders where other methods of pricing change order work are more equitable.
- 2.2** The Contractor will submit, within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.
- 2.3** Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.
- 3.1 Cost Plus Change Order Proposals:** As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant) plus the approved Markup Percentage Fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as outlined in subparagraphs 1.1 through 1.13 above. Owner and Contractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Contractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.
- 4.1 Accurate Change Order Pricing Information:** Contractor (subcontractor or sub-sub contractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the contract with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on change orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a subcontractor or a material supplier after receiving approval of a change order amount that

Exhibit "A"

Pricing of Construction Contract Change Orders Lump Sum (Fixed Price) and/or Unit Price Contracts

was designated to be paid to a specific subcontractor or supplier for the approved change order work.

- 4.2 Right to Verify Change Order Pricing Information:** Contractor, subcontractor and sub-sub-contractor agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Contractor, subcontractor or sub-sub contractor's records (during the contract period and up to three years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the contract regarding pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval contract price adjustments will apply to all levels of contractors and/or subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.
- 4.3 Requirements for Detailed Change Order Pricing Information:** Contractor, subcontractor agrees to provide and require all Subcontractors and sub-subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this Exhibit "A". This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.
- 5.1 Discounts:** If a Contractor enters into an agreement to pay a subcontractor before they receive payment by the Owner and in return they negotiate an early payment discount, the amount of any such discount that the contractor is allowed to keep as a "cash discount earned" will be limited to one and ½ percent (1.5%) of the costs subject to discount. Any percentage of discount greater than 1 and ½ percent (1.5%) shall be credited to the Owner as a reduction to the reimbursable Cost of Work and a credit to trade contracts or material purchases, and change orders as applicable.

"EXHIBIT "B"

Right of Audit - Examination of Records

1. Records for all contracts, specifically including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time & material contracts with or without a guaranteed maximum (or not-to-exceed amounts) shall upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any Owner's representative or any outside representative engaged by Owner for the purpose of examining such records. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law. Owner's representatives may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.
2. Contractor's "records" as referred to in this Exhibit shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with the contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:
 - (a) Compliance with contract requirements for deliverables
 - (b) Compliance with approved plans and specifications
 - (c) Compliance with Owner's business ethics expectations
 - (d) Compliance with contract provisions regarding the pricing of change orders
 - (e) Accuracy of contractor representations regarding the pricing of invoices
 - (f) Accuracy of contractor representations related to claims submitted by the contractor or any of his payees.
- 3.
4. Contractor shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract.
5. Owner's authorized representative(s) shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
6. If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges to the Owner (of any nature) by the Contractor and/or the Contractor's Subcontractors in excess of \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Contractor.

“EXHIBIT “B”

Right of Audit - Examination of Records

Records to Be Provided to Owner’s Representatives Upon Request

In addition, to the normal paperwork documentation the Contractor typically furnishes to the Owner, in order to facilitate efficient use of Owner resources when reviewing and/or auditing the Contractor’s billings and related reimbursable cost records, the Contractor agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

Type of Record	PC Readable File Format
Monthly Job Cost Detail	.pdf and Excel
Detailed job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed change orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

Exhibit "C"

Record Keeping

RECORD KEEPING

The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity. If a Public Construction Bond is required records shall be maintained for ten (10) years, after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

Records of the Contractor's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Contractor shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Contractor shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Contractor on the Project. Contractor shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

PUBLIC RECORDS

Pursuant to Florida Statute §287.058 (1) (c), this contract may be unilaterally cancelled by the City if the Consultant, refuses to allow public access to all documents, papers, letters, or other material made or received by the Consultant in conjunction with this contract, unless the records are exempt from disclosure.

The failure of Supplier to comply with the provisions set forth in record keeping and public records shall constitute a Default and Breach of this Agreement and the City shall enforce the Default.

NOTICE TO PROCEED

Owner:	Owner's Contract No.: BUT25111JM
Contractor:	Contractor's Project No.:
Engineer:	Engineer's Project No.:
Project: US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN	Contract Name:

Effective Date of Contract:

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on [REDACTED], 20[REDACTED]. *[See Paragraph 4.01 of the General Conditions]*

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, [the date of Substantial Completion is _____, and the date of readiness for final payment is _____] **or** [the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____].

Before starting any Work at the Site, Contractor must comply with the following:
[Note any access limitations, security procedures, or other restrictions]

Owner: _____	Contractor: _____
Authorized Signature: _____	Authorized Signature: _____
By: _____	By: _____
Title: _____	Title: _____
Date Issued: _____	Date Received: _____

Copy: Engineer
Procurement

Section 00843
Change Order Form

Change Order _____

Date of Issuance:

Effective Date:

Owner:

Owner's Contract No.: BUT25111JM

Contractor:

Contractor's Project No.:

Engineer:

Engineer's Project No.:

Project: US 41 NE RESERVOIR PUMP STATIN & TRANSMISSION MAIN

Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description:

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:

ACCEPTED:

ACCEPTED:

By: _____ Engineer (if required)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

SECTION 00844

Contractor's Application for Payment No.

	Application Period:	Application Date:
To (Owner):	From (Contractor):	Via (Engineer):
Project:	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:

**Application For Payment
Change Order Summary**

Approved Change Orders		
Number	Additions	Deductions
TOTALS		
NET CHANGE BY CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE..... \$ _____

2. Net change by Change Orders..... \$ _____

3. Current Contract Price (Line 1 ± 2)..... \$ _____

4. TOTAL COMPLETED AND STORED TO DATE
(Column F total on Progress Estimates)..... \$ _____

5. RETAINAGE:

a. X _____ Work Completed..... \$ _____

b. X _____ Stored Material..... \$ _____

c. Total Retainage (Line 5.a + Line 5.b)..... \$ _____

6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... \$ _____

7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ _____

8. AMOUNT DUE THIS APPLICATION..... \$ _____

9. BALANCE TO FINISH, PLUS RETAINAGE
(Column G total on Progress Estimates + Line 5.c above)..... \$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

<p>Contractor's Certification</p> <p>The undersigned Contractor certifies, to the best of its knowledge, the following:</p> <p>(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;</p> <p>(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and</p> <p>(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.</p>		<p>Payment of: \$ _____ (Line 8 or other - attach explanation of the other amount)</p> <p>is recommended by: _____ (Engineer) (Date)</p> <p>Payment of: \$ _____ (Line 8 or other - attach explanation of the other amount)</p> <p>is approved by: _____ (Owner) (Date)</p> <p>Approved by: _____ Funding or Financing Entity (if applicable) (Date)</p>
<p>Contractor Signature</p> <p>By: _____ Date: _____</p>		

SECTION 00845
SCHEDULE OF VALUES

Progress Estimate - Unit Price Work

Contractor's Application

[illegible]

MATERIALS STORED ON-SITE FORM

Stored Material Summary

Contractor's Application

[illegible]

SECTION 00847
SHOP DRAWING SUBMITTAL FORM

Owner: City of Cape Coral, Florida

Specification No.: _____
Project: _____

Contractor: _____

FOR ENGINEER USE ONLY:	
DATE RECEIVED	_____
DATE RETURNED	_____

Project No.: _____

Owner's
Project No.: **BUT25111JM**

Contractor's
Submittal No.: _____

Contractor's
Project No.: _____

Resubmittal Yes _____ No _____

ITEM NO	RESUBMITTAL NO.	NO. COPIES	VENDOR	DESCRIPTION	ENGINEER'S ACTION
<p>ACTION CODE (As defined in the General Conditions)</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>A APPROVED</p> <p>AN APPROVED AS NOTED</p> <p>A/R AMEND AND RESUBMIT</p> <p>R NOT APPROVED/REJECTED</p> <p>(DO NOT ORDER OR FABRICATE UNTIL APPROVED)</p> </div> <div style="width: 35%;"> <p>SUBMITTED BY: _____</p> <p style="text-align: right;"><i>Contractor</i></p> <p>DATE: _____</p> </div> </div>					
<p>ENGINEERS COMMENTS:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>					

Distribution

- Contractor _____ Copies
- Owner _____ Copies
- Engr. Office _____ Copies
- Engr. Subconsultant _____ Copies
- Engr. Field _____ Copies

Discipline Review:

Reviewed By _____ Date _____

Discipline Review:

Reviewed By _____ Date _____

Project Manager _____ Date _____

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner:
 Contractor:
 Engineer:
 Project: **US 41 NE RESERVOIR PUMP STATION & TRANSMISSION
 MAIN**

Owner's Contract No.: **BUT25111JM**
 Contractor's Project No.:
 Engineer's Project No.:
 Contract Name:

This [preliminary] [final] Certificate of Substantial Completion applies to:

- ☐ All Work ☐ The following specified portions of the Work:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work shall be as provided in the Contract, except as amended as follows: *[Note: Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.]*

Amendments to Owner's
responsibilities:

- ☐ None
☐ As follows

Amendments to
Contractor's responsibilities:

- ☐ None
☐ As follows:

The following documents are attached to and made a part of this Certificate: *[punch list; others]*

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

EXECUTED BY ENGINEER:		RECEIVED:		RECEIVED:	
By: _____	By: _____	By: _____	By: _____	By: _____	By: _____
(Authorized signature)	Owner (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)	Contractor (Authorized Signature)	Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____	Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____	Date: _____	Date: _____	Date: _____

SECTION 00849
CONTRACTOR'S FINAL
RELEASE OF LIEN

Before me the undersigned authority in said County and State, appeared _____ who, being first duly sworn, deposes and says that he is _____ of _____, a company and/or corporation authorized to do business under the laws of Florida, which is the Contractor on the Contract described as: BUT25111JM US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN, dated the _____ day of _____, 20____, that the said deponent is duly authorized to make this affidavit by resolution of the Board of Directors of said company and/or corporation; that deponent knows of his own knowledge that said Contract has been complied with in every particular way by said Contractor and that all parts of the work have been approved by the Owner's Engineers; that there are no bills remaining unpaid for labor, material, or otherwise, in connection with said Contract and work, and that there are no suits pending against the undersigned as Contractor or anyone in connection with the work done and materials furnished or otherwise under said Contract. Deponent further says that the final estimate which has been submitted to the owner simultaneously with the making of the affidavit constitutes all claims and demands against the Owner on account of said Contract or otherwise, and the acceptance of the sum specified in said final estimate will operate as a full and final release and discharge of the Owner from any further claims, demands or compensation by Contractor under the above Contract. Deponent further agrees that all guarantees under this Contract shall be in full force from the date of this release as spelled out in the Contract Documents.

Sworn to and subscribed to before me this _____ day of _____, 20____.

Notary Public

My Commission Expires_____

We, the _____ having heretofore executed a Performance Bond for the above-mentioned Contractor covered Project and Section as described above in the sum of _____ dollars (\$_____), hereby agree that the Owner may make full payment of the final estimate, including the retained percentage, to said Contractor.

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

SECTION 00849
CONTRACTOR'S FINAL
RELEASE OF LIEN

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

Surety Company

Attorney in Fact

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

STATE OF FLORIDA

COUNTY OF _____

Before me the undersigned authority, personally appeared to me well known as the person described in and who executed the foregoing instrument in the name of _____ and/or _____ purpose therein expressed and that he had due and legal authority to execute the same on behalf of said _____, a corporation.

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

Notary Public

END OF SECTION

Section 00850
Field Order Form

Field _____

Date of Issuance:

Effective Date:

Owner:

Owner's Contract No.: BUT25111JM

Contractor:

Contractor's Project No.:

Engineer:

Engineer's Project No.:

Project: US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN

Contract Name:

Contractor is hereby directed to promptly execute this Field Order, issued in accordance with General Conditions Paragraph 11.01, for minor changes in the Work without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

Reference:

Specification(s)

Drawing(s) / Detail(s)

Description:

Attachments:

ISSUED:

RECEIVED:

By: _____
Engineer (Authorized Signature)

By: _____
Contractor (Authorized Signature)

Title: _____

Title: _____

Date: _____

Date: _____

Copy to: Owner

SECTION 00851

CONTRACTOR REQUEST FOR INFORMATION

[]	OWNER:	<u>City of Cape Coral</u>	No. Copies	<u> </u>	CONTRACTOR REQUEST FOR INFORMATION NO. <u> </u>
[]	ENGINEER:	<u> </u>	No. Copies	<u> </u>	
[]	ARCHITECT:	<u> </u>	No. Copies	<u> </u>	
[]	CONTRACTOR:	<u> </u>	No. Copies	<u> </u>	
[]	FIELD	<u> </u>	No. Copies	<u> </u>	
[]	OTHER:	<u> </u>	No. Copies	<u> </u>	

PROJECT DATA

NAME:
LOCATION:
OWNER:

CONTRACT DATA

NUMBER: BUT25111JM
DATE:
DRAWING NO:
SPECIFICATION SECTION:

QUESTION:

BY: DATE:

REPLY:

BY: DATE:

END OF SECTION

SECTION 00852

CONSTRUCTION ACCIDENT REPORT

[]	OWNER:	<u>City of Cape Coral</u>	No. Copies	_____	
[]	ENGINEER:	_____	No. Copies	_____	CONSTRUCTION
[]	ARCHITECT:	_____	No. Copies	_____	ACCIDENT
[]	CONTRACTOR:	_____	No. Copies	_____	REPORT
[]	FIELD	_____	No. Copies	_____	NO. _____
[]	OTHER:	_____	No. Copies	_____	

PROJECT DATA

NAME:	_____	CONTRACTOR:	_____
LOCATION:	_____	SUBCONTRACTOR:	_____
OWNER:	_____	OTHER:	_____
ENGINEER:	_____		

ACCIDENT INFORMATION

Accident Date: _____ Time: _____

Name(s) of Injured or Deceased: _____

Describe what occurred: _____

NOTE: Use other side or attach additional sheets as required.

Names & Address of Witnesses: _____

Employer's Name & Address: _____

Where treated (Name & Address): _____

Attach sketch (if applicable)

Send original to Project Manager in charge
of Construction immediately.

Signed

END OF SECTION

SECTION 00853

PRESSURE TEST FORM

[]	OWNER:	<u>City of Cape Coral</u>	No. Copies	_____	
[]	ENGINEER:	_____	No. Copies	_____	PRESSURE
[]	ARCHITECT:	_____	No. Copies	_____	TEST
[]	CONTRACTOR:	_____	No. Copies	_____	NUMBER _____
[]	FIELD:	_____	No. Copies	_____	
[]	OTHER:	_____	No. Copies	_____	

PROJECT DATA:

Name: US 41 NE RESERVOIR PUMP STATION & TRANSMISSION MAIN

Owner: City of Cape Coral

Location: _____

Contractor: _____

Number: BUT25111JM

Subcontractor: _____

Date: _____

LOCATION OF TEST:

COMPUTATION FOR MEASURED LEAKAGE:

Time-End of Test _____ Pressure-End of Test (psi) _____

Time-Start of Test _____ Pressure-Start of Test (psi) _____

Test Time (Hours) _____

Pipe Material _____

REMARKS:

THE ABOVE TEST (DOES) (DOES NOT) MEET THE SPECIFICATIONS

TEST WITNESS

by Contractor

by Subcontractor

by Engineer

END OF SECTION

Section 00861
Work Directive Form

Work Change Directive No.

Date of Issuance:

Effective Date:

Owner:

Owner's Contract No.: **BUT25111JM**

Contractor:

Contractor's Project No.:

Engineer:

Engineer's Project No.:

Project: **US 41 NE RESERVOIR PUMP
STATION & TRANSMISSION MAIN**

Contract Name:

Contractor is directed to proceed promptly with the following change(s):

Description:

Attachments: *[List documents supporting change]*

Purpose for Work Change Directive:

Directive to proceed promptly with the Work described herein, prior to agreeing to changes on Contract Price and Contract Time, is issued due to: *[check one or both of the following]*

☐ Non-agreement on pricing of proposed change.

☐ Necessity to proceed for schedule or other Project reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price \$ [increase] [decrease].

Contract Time days [increase] [decrease].

Basis of estimated change in Contract Price:

☐ Lump Sum

☐ Unit Price

☐ Cost of the Work

☐ Other

RECOMMENDED:

AUTHORIZED BY:

RECEIVED:

By:

By:

By:

Engineer (Authorized Signature)

Owner (Authorized Signature)

Contractor (Authorized Signature)

Title:

Title:

Title:

Date:

Date:

Date:

Approved by Funding Agency (if applicable)

By:

Date:

Title:

SECTION 00862

CONSTRUCTION REPORT

<input type="checkbox"/>	OWNER:	<u>City of Cape Coral</u>	No. Copies <u> </u>	DAILY
<input type="checkbox"/>	ENGINEER:	<u> </u>	No. Copies <u> </u>	CONSTRUCTION
<input type="checkbox"/>	ARCHITECT:	<u> </u>	No. Copies <u> </u>	REPORT
<input type="checkbox"/>	CONTRACTOR:	<u> </u>	No. Copies <u> </u>	DAYS FROM
<input type="checkbox"/>	FIELD:	<u> </u>	No. Copies <u> </u>	NOTICE TO
<input type="checkbox"/>	OTHER:	<u> </u>	No. Copies <u> </u>	PROCEED <u> </u>

PROJECT DATA:

CONTRACT DATA

NAME:	<u> </u>	NUMBER:	<u>BUT25111JM</u>
LOCATION:	<u> </u>	DATE:	<u> </u>
OWNER:	<u> </u>	DRAWING NO.:	<u> </u>
CONTRACTOR:	<u> </u>	SPECIFICATION	
		SECTION:	<u> </u>

1.	WEATHER		Temp. Range	Precipitation
	<input type="checkbox"/> Sunny	<input type="checkbox"/> Overcast	AM <u> </u> °F	Type:
	<input type="checkbox"/> Cloudy	<input type="checkbox"/> Windy	PM <u> </u> °F	Duration:

2.	GROUND CONDITIONS	Time		
	<input type="checkbox"/> Saturated	<input type="checkbox"/> Dry	Work Started:	
	<input type="checkbox"/> Frozen	<input type="checkbox"/> Wet but workable	Work Stopped:	

3. RECORD OF LABOR

Contractor	Type	No.	Hrs.	Contractor	Type	No.	Hrs.

4. EQUIPMENT

[illegible]

5. MATERIAL RECEIVED

[illegible]

6. DESCRIPTION OF WORK PERFORMED

[illegible]

END OF SECTION

SECTION 00863

CHANGE PROPOSAL SUMMARY FORM

[]	OWNER:	<u>City of Cape Coral</u>	No. Copies	_____	
[]	ENGINEER:	_____	No. Copies	_____	CHANGE
[]	ARCHITECT:	_____	No. Copies	_____	PROPOSAL
[]	CONTRACTOR:	_____	No. Copies	_____	SUMMARY
[]	FIELD:	_____	No. Copies	_____	NO. _____
[]	OTHER:	_____	No. Copies	_____	

PROJECT DATA:

CONTRACT DATA

70NAME:	_____	NUMBER:	<u>BUT25111JM</u>
LOCATION:	_____	DATE:	_____
OWNER:	_____	DRAWING NO.:	_____
CONTRACTOR:	_____	SPECIFICATION	
		SECTION:	_____

REFERENCE:	Work Directive No. _____	RFP No. _____
	Field Order No. _____	Other _____

DESCRIPTION: _____

PRICING INFORMATION

1.	DIRECT LABOR	Skill/Trade	Manhours	Rate	Cost
1.A	Production Labor	_____	_____	_____	_____
1.B.	Supervision		_____	_____	_____
[]	Foreman				
[]	Superintendent				
1.C	Field Engineering		_____	_____	_____
1.D	Expenses		_____	_____	_____
					Subtotal(1)

SECTION 00863

CHANGE PROPOSAL SUMMARY FORM

2. MATERIALS & EQUIPMENT

	Description	Quantity	Unit Price	Cost
2.A	Incorporated in Work			
2.B	Consumed in Performance			
2.D	Direct Costs			
2.E	Bonds, Insurance			
				Subtotal(2)

3. TOTAL LABOR, MATERIALS & EQUIPMENT

	+		=	
Subtotal (1)		Subtotal (2)		Total

END OF SECTION

SECTION 00864

REQUEST FOR PROPOSAL FOR PROPOSED CHANGE FORM

<input checked="" type="checkbox"/>	OWNER:	<u>City of Cape Coral</u>	No. Copies _____	REQUEST FOR PROPOSAL FOR PROPOSED CHANGE (RFP) NO. _____
<input checked="" type="checkbox"/>	ENGINEER:	_____	No. Copies _____	
<input type="checkbox"/>	ARCHITECT:	_____	No. Copies _____	
<input checked="" type="checkbox"/>	CONTRACTOR:	_____	No. Copies _____	
<input checked="" type="checkbox"/>	FIELD:	_____	No. Copies _____	
<input type="checkbox"/>	OTHER:	_____	No. Copies _____	

PROJECT DATA:

CONTRACT DATA

NAME:	_____	NUMBER:	<u>BUT25111JM</u>
LOCATION:	<u>Cape Coral</u>	DATE:	_____
OWNER:	<u>City of Cape Coral</u>	DRAWING NO.:	_____
CONTRACTOR:	_____	SPECIFICATION	_____
		SECTION:	_____

TO: (Contractor) _____

Provide the undersigned a proposal for the following change in the work within seven (7) calendar days after receipt of this request. The written proposal must clearly delineate the scope of the proposed change in work providing an itemized estimate of time and all material and labor (by trade), subcontract and overhead costs and fees. Any amount claimed for subcontracts must be similarly supported.

Description of change in work:

SECTION 00864

REQUEST FOR PROPOSAL FOR PROPOSED CHANGE FORM

Change Order Type: (Deletion) (Addition) (Revision)

Constraints of Change: _____

Initiated by: _____

Proposal must be received by: _____ (7 days from date below)

Attachments (listing of attached documents that support description):

1. Contractor Request for Information No.: _____
2. _____
3. _____
4. _____
5. _____

(Engineer's Name) PROJECT NO.: _____

DATE: _____

END OF SECTION

CONSENT OF SURETY TO FINAL PAYMENT

TO OWNER:

OWNER'S PROJECT NO.: BUT25111JM

City of Cape Coral

P.O. Box 150027

Cape Coral Florida 33915-0027

CONTRACT FOR:

BOND NO.:

CONTRACT DATE:

PROJECT: US 41 NE RESERVOIR PUMP
STATION & TRANSMISSION MAIN

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the *(insert name and address of Surety)*

, SURETY

on bond of *(insert name and address of Contractor)*

, CONTRACTOR

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of any of its obligations to

City of Cape Coral

P.O. Box 150027

Cape Coral Florida 33915-0027

, OWNER

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this

date: *(Insert in writing the month followed by the numeric date and year.)*

(Surety)

Attest:

(Seal): _____

(Signature of authorized representative)

(Printed Name and title)

Surety Phone No.: _____



WARRANTY – GUARANTY

THE UNDERSIGNED party/parties do hereby warrant and/or guaranty all work executed by the Contractor, Contract No.: **BUT25111JM**, Dated _____ of to be free from defects in material and workmanship for a period of one (1) year from (enter date) _____, the date of Final Acceptance by the City of Cape Coral. The undersigned party/parties further agree that they will, at their own expense, repair and replace all such defective work and all other work damaged by said defective work under this Warranty-Guaranty

It is furthermore understood that the consideration for the giving of this warranty and/or guaranty is the requirement by the General Conditions and Specifications under which the Contract, Contract No.: **BUT25111JM**, Dated _____, was let that such warranty and/or guaranty would be given.

(Contractor/Company Name)

BY: _____
(Signature)

(Authorized Representative, Title)

STATE OF: _____

COUNTY OF: _____

Personally appeared before me this _____ day of _____ 20 _____,
_____ (name) known (or made known) to me to be the
_____ (title) of _____
_____ (company name) who subscribed and swore to the above
instrument in my presence.

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____

(Notary Seal & Commission Number)

CERTIFICATION OF CONTRACTOR

According to the best of my knowledge and belief, I certify that all items and amounts shown on Application for Payment No. _____ are correct, that all work has been performed and/or materials supplied in full accordance with the terms and conditions of this Contract, dated _____, between the City of Cape Coral (OWNER) and _____ (CONTRACTOR).

I further certify that all just and lawful bills against the undersigned and his subcontractor(s) and suppliers of labor, material and equipment employed in the performance of the Contract have been paid in full accordance with their terms and conditions, that all taxes imposed by Chapter 212, F.S. (Sales and Use Tax Act), as amended, have been paid and discharged; and that there are no Vendor's, Mechanic's or other Liens or conditional sales contracts which should be satisfied or discharged before such payment is made.

Date: _____

CONTRACTOR:

Company Name

Signature

Printed Name & Title

STATE OF: _____

COUNTY OF: _____

Personally appeared before me this _____ day of _____ 20 _____,
_____ (name) known (or made known) to me to be the
_____ (title) of _____
_____ (company name) who subscribed and swore to the above
instrument in my presence.

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____

The CONTRACTOR must execute this Certificate and attach to each Application for Payment