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Sanitary and Storm Sewer Rehabilitation**

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## GENERAL CONDITIONS

**BID NO.: 2022-020**  
**PROJECT NO.: 71-21-005**  
**Sanitary and Storm Sewer Rehabilitation**

### 1. DEFINITIONS

The following words and expressions, shall, wherever they appear in the Contract Documents, be construed as follows, unless a different meaning is clear from the context in which they are used:

For purposes of the Contract Documents, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural.

**Addendum/ Addenda:** A written and or graphic document issued by the City prior to the opening of the Bid, which modifies or interprets the Bid documents by additions, deletions, clarifications, or corrections or other type of modifications. Addenda will become part of the Contract Documents when the Contract is executed. Bidders are instructed to acknowledge each Addenda in their Bid response.

**Amendment:** A written order, executed by the Owner and Contractor, authorizing an addition, deletion or revision to a Work Order.

**Bid:** A complete and properly signed offer to do the Work, or designated portion thereof, for the sums stipulated therein, submitted in accordance with the Bid documents.

**Bidder:** One who submits a Bid directly to the City.

**Bid Security:** A form of risk insurance, typically in the form of bonds.

**City or Owner:** The City of Boca Raton, Florida.

**Completion Date:** The date on which all Work in a Work Order is complete in all respects, including cleanup, other than guarantee and maintenance Work defined in the specifications. The Completion Date shall be as noted in the Work Order and the Notice to Proceed.

**Contractor:** The person or entity who is identified in the Contract and is referred to throughout the Contract Documents. Contractor may mean the Contractor or his authorized representatives, as the context requires.

**Contract:** The agreement between the Contractor and the City for the completion of the Work.

**Contract Documents:** The documents that pertain to the Work and the Contract, consisting of, but not limited to, the following documents:

1. The Contract and forms;
2. Work Order
3. Instructions to Bidders;
4. Bid Form and Attachments 1 through 7;

5. Special Provisions;
6. General Conditions;
7. Technical Specifications;
8. Addenda;
9. Drawings/Exhibits/Appendix;
10. Notice of Award;
11. Notice(s) to Proceed;
12. Documentation submitted by Owner and/or Engineer following the Notice to Proceed;
13. Project Forms;
14. Close Out Forms;
15. Amendments, Field Orders, Construction Change Directives;
16. All provisions required by law to be inserted in this Contract, whether actually inserted or not;
17. Written Instructions from the Owner and/or Engineer; and
18. Any additional documents the submission of which is required by this Project.

**Contract Price:** The amount agreed by the Contractor and Owner as the compensation to be paid to the Contractor by Owner for completing the Work in each individual Work Order (sometimes referred to as the "Not to Exceed Amount").

**Contract Time:** The number of Days stated in each individual Work Order and the Notice to Proceed to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and/ or (iii) achieve Final Completion of such Work Order.

**Construction Change Directive (CCD):** A written order from the Owner to the Contractor authorizing an addition, deletion, or revision to the Work after the date a Work Order was issued which may also be referred to as a Work Directive Change (WDC).

**Critical Path:** The sequence of events and activities (each of a particular duration) that must be completed on schedule for the entire Work Order to be completed on schedule.

**Day or Days:** A calendar day or calendar days. A calendar day begins at 12:00:00 midnight and ends 24 hours later at 11:59:59 p.m.

**Drawings:** The drawings, or reproductions thereof, prepared by the Owner and/or Engineer, which show the locations, character, dimensions, and details of the Work to be done for each Work Order under this Contract. All working drawings submitted by the Contractor and approved by the Engineer become part of the Drawings.

**Engineer:** For the purpose of the bid process, Engineer shall mean Alexandra Fisher, P.E., Hazen & Sawyer, 2101 Corporate Blvd. Suite 301, Boca Raton, FL 33431, for all other purposes, Engineer shall be synonymous with Owner.

**Final Completion:** The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents for each individual Work Order. Final Completion for each individual Work Order includes, and is the result of, performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

**Final Completion Date:** The date on which all Work under each individual Work Order is complete in all respects and no Work remains, including completion of all guarantee Work, all maintenance Work, and all service contract Work; and the Work under each individual Work Order is fully accepted by the City.

**Notice of Award:** The written notice by City to the Successful Bidder stating that upon compliance by the Successful Bidder with the conditions precedent enumerated therein, within the time period specified, the City will sign and deliver the Contract.

**Notice to Proceed:** A written notice executed by the Owner, or their agent, which shall designate the date upon which each Individual Work Order shall commence and be completed.

**Project:** The total construction of the Work to be provided as defined in the Contract Documents and each individual Work Order.

**Site:** The area upon which, or in which, the Contractor's operations are carried on for each individual Work Order, and such other areas adjacent thereto, or not adjacent thereto, as may be designated as such by the Owner and/or Engineer.

**Specifications:** The portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work under each individual Work Order and performance of related services, of which may also be referred to as Technical Specifications.

**Subcontractor:** Any individual, partnership, or corporation other than actual employees of the Contractor, who or which contracts with the Contractor to furnish, or actually furnishes labor, materials, and/or equipment at the Site.

**Substantial Completion:** The time at which the Work (or specified part thereof) to be performed under each individual Work Order has progressed to the point where, in the opinion of Owner and/or Engineer, the Work (or specified portion 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 in a Work Order refer to Substantial Completion thereof.

**Substantial Completion Date:** The date on which the Work (or specified part thereof) to be performed under each individual Work Order, in the opinion of the Owner and/or /Engineer, is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified portion thereof) can be utilized for the purpose for which it was intended.

**Successful Bidder:** The Bidder to whom City awards or expects to award the Contract.

**Surety/Sureties:** Any corporation that executes, the Contractor's Payment Bond and Performance Bond or Public Construction Bond securing the payment and performance for a Work Order under this Contract.

**Work:** The construction and services required by the Contract Documents and includes all labor, materials, equipment, and services provided by the Contractor to fulfill the Contractor's

obligations. Collectively, the Work shall include all the labor, materials, equipment, and services performed for each Work Order.

**Work Order:** Shall mean a document executed the Owner and the Contractor that includes a description of the work task, location of the Work to be performed, quantity of items to be utilized to perform the Work, unit prices utilized to determine the price of the Work to be performed, the total not to exceed amount to be paid by the Owner to the Contractor for the Work to be performed under Work Order and the schedule of Work in accordance with the Contract Documents (as defined in the Contract herein) through the use of the form in Exhibit "A", Work Order.

## 2. CONTRACTOR'S RESPONSIBILITY

A. The Contractor expressly undertakes at their own expense:

1. Contractor shall so conduct its operations as not to damage any other property. If facilities are closed, obstructed, damaged, or rendered unsafe by Contractor's operations, Contractor shall, at its own expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and as will be acceptable to Owner;
2. To store their apparatus, materials, supplies and equipment in such orderly fashion at the Site of the Work so that they will not interfere with the progress of the Contractor's Work, the work of any other contractors, or the use or operation of areas adjoining the Site;
3. To place upon the Site, or any part thereof, only such materials and equipment necessary to Contractor's Work, so as to maintain the safety of the Site;
4. To frequently clean up all refuse, rubbish, scrap materials, and debris caused by operations of the Contractor or Subcontractors, so that at all times the Site shall present a neat, orderly, and workmanlike appearance;
5. To effect all curing, repair, fitting or patching or replacement of the Work required to make the same conform to the Drawings and Specifications and, except with the consent of the Owner and/or Engineer and the Owner, not to alter the work of any other contractor;
6. To adhere to, and abide by, Florida Statutes, Title XXXIII Regulation of Trade, Commerce, Investments, And Solicitation – Chapter 556 Underground Facility Damage Prevention and Safety Act. The Contractor must also keep abreast of any changes, modifications, and amendments that are made to this and related statutes;
7. To assure that their personnel, and personnel of all Subcontractors, conform with and adhere to all Owner required security procedures and protocols during construction; and
8. To, at all times, safely guard the Owner's property from injury or loss caused by Contractor's Work in connection with this Contract.

B. Contractor shall accept full responsibility for the Work until Final Completion. Contractor shall protect the Work against all loss or damage sustained during the progress of the Work, and promptly repair any damage done and replace any loss from any cause whatsoever.

C. Weather Conditions. In the event of a temporary suspension of Work due to inclement weather, or whenever the Owner and/or Engineer shall direct, the Contractor will, and will cause his Subcontractor(s) to, carefully protect the Work and all materials from damage due to the weather. If the Owner and/or Engineer determines, in his/her sole discretion, that any Work or materials was damaged by Contractor's (or any of his Subcontractors) actions or inactions, such Work or materials shall be removed, if necessary, and replaced at the sole expense of Contractor.

D. Upon the occurrence of an emergency affecting the safety or protection of; persons, the Work, property at the Site, or property adjacent thereto, Contractor, without special instruction or authorization from the Owner, is obligated to act to prevent damage, injury, or loss. Contractor shall give the Owner and/or Engineer and Owner prompt written notice of any changes in the Work or deviations from the Contract Documents caused thereby.

Where Contractor has not taken action but has notified the Owner and/or Engineer of an emergency or damage to the Work or any adjoining property, Contractor shall act as instructed or authorized by the Owner and/or Engineer.

The amount of reimbursement claimed by Contractor resulting from any emergency action shall be determined in the manner provided in Article 38, Extra Work.

E. Site Restoration: The Contractor shall remove all excess material and shall clean up and restore the Site to its original condition or better. All damage, as a result of Work under this Contract, done to; existing structures, paved or graveled areas, driveways, curbs and gutters, sidewalks, shrubbery, grass, trees, utility poles, utility pipelines, conduits, drains, catch basins, and including all features and improvements not specifically named herein, shall be repaired and restored to a condition acceptable to the Owner and/or Engineer.

F. Liability of Contractor: All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner and/or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable).

G. The Contractor shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion, or family status with respect to the Work and all individual Work Orders, which shall also include the selection and retention of subcontractors and the procurement of materials and lease of equipment.

H. Any Work performed by Contractor without proper authorization is performed at Contractor's own risk, and Owner shall have no obligation to compensate Contractor for such work.

### **3. AUTHORIZED REPRESENTATIVES / SUPERINTENDENT**

At the preconstruction conference for a Work Order, Contractor shall provide the names and resumes of key personnel for the Work, including an Authorized Representative as defined

below, to Owner for review and approval. Contractor shall replace any personnel deemed to be unacceptable by the Owner. Contractor shall keep Owner informed of any subsequent changes in the staffing of the foregoing.

- A. Contractor Authorized Representative. Contractor shall designate a competent, authorized representative, to represent and act for Contractor and shall inform Owner in writing, of the name and address of such representative together with a clear definition of the scope of his/her authority to represent and act for Contractor and shall specify any and all limitations of such authority. Such representative shall be present or duly represented at the Site of Work at all times when work is actually in progress.

When the Contractor's Authorized Representative is not present on the Site, the Contractor shall notify the Owner no less than 12 hours in advance and orders will be given to the foremen/forewomen or superintendents who may have immediate charge of the Work and shall be by them received and strictly obeyed.

During periods when Work is suspended, arrangements for an authorized representative acceptable to Owner shall be made for any emergency work which may be required. All notices, determinations, instructions, and other communications given to the Authorized Representatives of the Contractor shall be binding upon Contractor. Nothing contained herein shall be construed as modifying the Contractor's duty of supervision and fiscal management as provided for by Florida law.

- B. Approval of Owner and/or Engineer. Contractor's Authorized Representative, Qualifying Agents, Project Managers, Superintendents and Supervisors are all subject to prior and continuous approval of the Owner and/or Engineer. If, at any time during the term of the Contract, any individual performing any of the positions named above, is, for any reason, unacceptable to the Owner and/or Engineer, Contractor shall replace the unacceptable personnel with personnel acceptable to the Owner and/or Engineer.
- C. Owner Authorized Representative. Owner shall designate an authorized representative who will have limited authority to act for Owner. Owner will notify Contractor in writing of the name of such representative(s).

Owner has the right to assign various responsibilities of the Owner to the Engineer (if available) and can do so at any time during the duration of the Contract with written notice to Contractor. The Owner and/or Engineer will provide answers to Requests for Information ("RFIs"), questions regarding the Drawings and Specifications, issue Field Orders and Construction Change Directives and other related duties. Contractor agrees to cooperate with the Engineer.

#### **4. SUBCONTRACTORS**

- A. Contractor may utilize the services of Subcontractors, provided however, Contractor shall perform the minimum percentage of Work as identified in the Special Provisions and/or Technical Specifications. Contractor shall give close attention to the Work completed by Subcontractors.
- B. Contractor, as soon as practicable after the award of the Bid and before the Owner shall make any partial payments to Contractor, shall furnish to the Engineer (if

available) in writing for acceptance by the Owner and/or Engineer, a list of the names of the subcontractors proposed for the principal portions of the Work Order. The Owner and/or Engineer shall promptly notify Contractor in writing if either the Owner and/or Engineer, after due investigation, has an objection to any Subcontractor on such list and does not accept that Subcontractor. Failure of the Owner and/or Engineer to make objection to any Subcontractor on the list within two weeks of the date when the written list of subcontractors was received by the Owner and/or Engineer shall constitute acceptance of such subcontractor(s). After acceptance, no Subcontractor shall be changed without the written approval of the Owner and/or Engineer.

- C. Contractor shall be as fully responsible to the Owner for the acts and omissions of his/her Subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by Contractor.
- D. Contractor shall cause appropriate provisions to be inserted in all subcontracts, to bind Subcontractors to the Contractor for and under the terms of the General Conditions and other Contract Documents, as applicable to the Work of Subcontractors, and to give the Contractor the same power to terminate any subcontract that the Owner may exercise over the Contractor under the provisions of the Contract Documents.
- E. Contractor shall ensure that all Subcontractors have and maintain proper insurance for the portion of the Work that they will be completing, as well as all workers' compensation and other insurance.

## **5. EMPLOYEES**

All employees of Contractor shall have; the necessary knowledge and skills, and the required certifications or license for the tasks that they perform.

Any employee of Contractor on the Site who appears to the Owner and/or Engineer to be disorderly, insubordinate, unfaithful, or incompetent, shall upon the order of Owner and/or Engineer, be at once removed from the Site and not again employed on any part of the Work. Any interference with, or abusive or threatening conduct toward the Owner and/or Engineer, Engineer's employees, Owner, or Owners employees by the Contractor or Contractor's employees, subcontractors, or agents, shall be grounds and authority for the Owner to terminate the Contract.

No employees (or independent contractors) of the Contractor or Subcontractor shall be considered to be employees of the Owner. Contractor understands and agrees that their employees (and independent contractors) shall have no claim against the Owner as to pension, workers' compensation, unemployment compensation, federal income withholding, insurance, salary, wages or other employees' rights or privileges granted by operation of law.

## **6. PROTECTION OF WORK AND MATERIALS**

Facilities for handling of material and inspecting the Work shall at all times be furnished by the Contractor, and all costs due to delays in handling of materials, equipment, or supplies, and resulting loss or damage, shall be at the expense of the Contractor. Contractor shall provide suitable and adequate storage for materials and equipment during the progress of the Work and be responsible for any loss or damage to the materials, equipment, and supplies furnished under other contracts, as well as those furnished by Contractor, until Final

Completion. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final inspection and acceptance, Contractor shall replace same without cost to the Owner.

## **7. ROYALTIES, PATENTS AND INDEMNITY**

- A. If the Contractor uses any design, device, or materials, covered by letters, patent or copyright, Contractor shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device, or material. Without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the Work.
- B. License and/or Royalty Fees for the use of a process, which is authorized and incorporated into the Project, must be paid to the holder of the patent, or the authorized licensee, directly by Contractor and the cost for such fees shall be included in Contract Price.
- C. Contractor and/or its Surety shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.
- D. Contractor and/or its Sureties shall defend, indemnify and save harmless the Owner, its officials and those working on the project on the Owner's behalf from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with Work agreed to be performed under this Contract and shall indemnify the Owner for any cost, expense or damage, including attorneys and appellate fees, which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work. This provision shall continue indefinitely and survive the cancellation, termination, expiration, lapse, or suspension of the Contract.

## **8. INSURANCE**

Contractor (and Subcontractors) shall procure and maintain all insurance as set out in, and as required by, the Contract Documents.

## **9. SALES TAX**

Contractor shall understand the requirements of the State of Florida pertaining to the exemption from state sales tax as it may apply to the Owner and apply the exemption of sales tax to the procurement of materials only as appropriate.

## **10. CONTINUING OBLIGATION**

Contractor's obligation to perform and complete the Work in accordance with a Work Order and the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the Owner and/or Engineer, nor the issuance of a Certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any

use of the Work or any part thereof by the Owner, nor any act of acceptance by the Owner, nor any failure to do so, nor any correction of defective Work by the Owner shall constitute an acceptance of Work not in accordance with a Work Order and the Contract Documents or a release of the Contractor's obligation to perform the Work in accordance with a Work Order and the Contract Documents.

#### **11. TIMES/DAYS OF WORK**

- A. Unless otherwise provided for in a Work Order or the Contract Documents, or approved by the Owner and/ or Engineer, Work may be only prosecuted between the hours of 7:00 A.M. and 5:00 P.M., Monday through Friday.
- B. Weekends, Owner Observed Holidays, or hours outside the approved work hours (7am-5pm).

If Contractor wishes to perform any portion of the Work on a Weekend or Owner Observed Holiday, Contractor shall first obtain written permission from the Owner and/or Engineer and shall notify him/her each time in advance, giving him/her ample time in which to procure an Owner and/or Engineer and/or Inspector for the Work, if necessary. Contractor is fully responsible for reimbursement of the Owner and/or Engineer's cost for inspection time beyond eight hours per day or forty hours per week.

#### **12. TIME OF STARTING WORK**

The Work shall be actively begun within the timeframe identified in an individual Work Order, once the Notice to Proceed for an individual Work Order has been issued. The Work under the Work Order shall be carried on regularly and uninterruptedly with sufficient force to ensure its completion within the time limit set out in the Work Order.

#### **13. PROJECT SCHEDULE/SCHEDULE OF VALUES (Not Used)**

#### **14. CONTRACT TIME / EXTENSION OF TIME/ NO DAMAGES FOR DELAY**

Time is an essential condition of the Contract. All Work for each Work Order shall be completed as specified in the Work Order on or prior to the Completion Date set forth in each Work Order.

- A. Contract Time for Work Orders

The Contract Time for each individual Work Order shall be computed to exclude the first day and include the Completion Date. If the Completion Date, or other period of time included in the Work Order, falls on a Saturday or Sunday or on an Owner-observed holiday, such day will be omitted from the computation. Contract time shall be calculated based on days.

- B. Change of Contract Time/Extension of Time

The Contract Time for a Work Order may only be changed by a Amendment executed by Contractor and the Owner.

If the Contractor's performance of this Contract is delayed, which delay is beyond the reasonable control and without the fault or negligence of the Contractor or its Subcontractors, or by changes ordered in the Work, and in either event where such delay or change in the Work impacts, schedule, then the Contract Time may be extended by Amendment as determined by the Owner.

Any claim for an adjustment in the Contract Time shall be based on written notice submitted by the Contractor to the Owner and/or Engineer in accordance with the provisions contained within the Section 01035 – Change Order Procedures in the Technical Specifications.

Such claim shall be submitted by the Contractor to the Owner within seven (7) days of the occurrence of the event giving rise to the claim and shall include the amount of time caused by the hindrance or delay and shall specify the reason for the delay or hindrance. The Contractor's failure to provide such information shall constitute a waiver of the claim by the Contractor and a denial of any time extension for change in the Work. Further, upon execution by the Owner of any Change Order, that Change Order shall constitute a complete waiver by Contractor of all claims for additional money beyond what is contained in the Change Order, if any, or for any greater extension of time beyond what is contained in the Change Order, if any, related to the Work, or any Work impacted by the change.

Contractor shall not be entitled to an adjustment Contract Time for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or supplier shall be deemed to be delays within the control of Contractor.

Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

C. No Damage for Delays/Exclusive Remedy

1. The Contractor shall not be entitled to any claim for damages for any hindrances or delay from any cause whatsoever, but such hindrance or delay may entitle Contractor to an extension of the Contract Time.
2. The Contractor shall not be entitled to, and hereby waives, any claim for any direct or indirect financial damages or losses for any delay in the completion of the Work for any reason, whether such delay be avoidable or unavoidable, including, but not limited to, extended corporate overhead impact, extended project overhead impacts, insurance costs, loss of bonding capacity, project support services, mobilization or demobilization, loss of profits on alternate or unperformed contracts, or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature for any delay for any reason. Contractor hereby waives any right to make any such claim or claims.
3. The Contractor hereby acknowledges and agrees that the Contractor's sole and exclusive remedy for any delays not caused by the Contractor shall be an extension in the Contract Time, as described above. For such delays as; fire, flood, epidemic, abnormal weather conditions, acts of God, acts of others (including Owner) the Contractor shall only be entitled to an equitable adjustment in Contract

Time and only if such adjustment is essential to Contractor's ability to complete the Work within the Contract Time.

## **15. WORK ORDERS**

The Work under the Contract Documents will be authorized and initiated through individual Work Orders as follows:

- A. An on-site meeting shall take place between the Owner and the Contractor. Following the on-site meeting, the Contractor shall develop a quote (based on the Contract bid items) and submit the quote to the Owner for review;
- B. Upon City review and approval of the quote, the Contractor will provide, within 7 days deliver a signed electronic version Work Order containing information such as the location, project overview, scope of work, assumptions, special instructions, and project completion in the City approved Work Order format (Exhibit A);
- C. After the Owner's review, and if the Work Order is acceptable to the Owner, the Owner will deliver a completed electronic version of the Work Order to the Contractor;
- D. Subject to approval pursuant to the City Code of Ordinances, the Owner may execute and, if so, shall deliver the fully executed Work Order together with a Notice to Proceed to the Contractor. The Contractor's receipt of both of these documents shall constitute authorization to start work; and
- E. Time being an essential condition as it pertains to each Work Order, the Work shall be fully operational and be completed on or before the Completion Date set forth in the Work Order.

In accordance with Florida Statute 218.735(7), the list of items to be completed or corrected will be submitted to the Contractor within 5 days after the list of items has been developed by the Owner and/or Engineer and reviewed to the Owner.

## **16. PROJECT CLOSEOUT**

Contractor shall comply with Section 01700 – Contract Closeout, and all related Sections of the Technical Specifications.

## **17. REIMBURSEMENT OF ENGINEERING EXPENSES**

Should the Final Completion and acceptance of the Work under a Work Order, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that, aside from any other damage per day for such delay, from such time until the same is completed and accepted as herein provided, all costs of Engineering, Inspection and other project costs on behalf of Owner will be charged to Contractor hereunder, and deducted from any estimate or payment otherwise due and payable to Contractor from time to time.

## **18. SUSPENSION OF WORK DUE TO WEATHER**

During inclement weather, all Work under a Work Order which might be damaged or rendered inferior by such weather conditions, shall be suspended. The orders and decisions of the

Owner and/or Engineer as to suspensions shall be final and binding. During the suspension of the Work from any cause, it shall be suitably covered and protected so as to preserve it from injury by the weather or otherwise; and, if the Owner and/or Engineer shall so direct, the rubbish and surplus material shall be removed. If, in the opinion of the Owner and/or Engineer, any of the Work or any materials shall have been damaged or injured by reason of failure on the part of the Contractor, or any of his subcontractors, to so protect Contractor's work, such material shall be removed and replaced at the expense of Contractor.

If Contractor is delayed in the performance or progress of the Work under a Work Order by abnormal weather conditions, Contractor shall be entitled to an equitable adjustment in Contract Time, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Time, in accordance with Article 14. Such an adjustment in Contract Time shall be Contractor's sole and exclusive remedy for any delay caused by weather.

## **19. FORCE MAJEURE**

No Party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of either party or that could not have been reasonably foreseen and prevented. For this purpose, such acts or circumstances shall include, but not be limited to, weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protest demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties arising therefrom and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.

Inclement weather, continuous rain for less than three consecutive (3) days or the acts or omissions of subcontractors, third-party contractors, material men, suppliers, or their subcontractors, **shall not be considered** acts of force majeure.

No Party shall be liable for its failure to carry out its obligations under a Work Order or the Contract during a period when such Party is rendered unable by force majeure to carry out its obligation, but the obligation of the Party or Parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the force majeure event.

Contractor further agrees and stipulates that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice to the Owner with copy to the Engineer (if applicable) of its assertion that a Force Majeure delay has commenced. Such notice shall be made within 5 days of the start of the asserted force majeure occurrence. Contractor shall use its reasonable efforts to minimize such delays. Contractor shall promptly provide an estimate of the anticipated additional time required to complete the Work under a Work Order to Owner and/or Engineer. The Owner and/or Engineer will make the determination if a Force Majeure has occurred and if a time extension will be granted at the time of the request.

## **20. INTERPRETATION OF DRAWINGS AND SPECIFICATIONS**

The Owner and/or Engineer shall decide all questions concerning the interpretation of the Drawings and Specifications pertaining to the character, quality, amount, and value of any Work done and materials furnished for a Work Order and/or under, or by reason of, this

Contract and the Owner and/or Engineer's estimate and decisions shall be final and conclusive.

## **21. CONTROL OF THE WORK**

- A. The Owner, and/or the Engineer (if one has been retained) under authority and direction of the Owner, shall have full control and direction of the Work in all respects. All explanations, directions, working drawings, sketches, etc., necessary to carry out and complete the Work in a manner satisfactory to the Owner shall be given by the Owner and/or Engineer. The Owner and/or Engineer, and employees, agents and authorized assistants, shall at all times have the right to inspect the Work and materials. Contractor shall furnish all reasonable facilities for obtaining such information as the Owner and/or Engineer may require, respecting the quality of the Work and materials and the manner of conducting the Work. Should the Contractor be directed or permitted to perform night work, or to vary the period which work is ordinarily carried on in the daytime, in accordance with Article 11, Times/Days of Work, Contractor shall give ample notice to the Owner and/or Engineer, so that proper and adequate inspection may be provided. Such work shall be done only under such instructions as are furnished in writing by the Owner and/or Engineer, and no extra compensation shall be allowed the Contractor. In the event of night work, Contractor shall furnish such lights, which are satisfactory to the Owner and/or Engineer and will permit proper inspection. Nothing herein contained shall relieve Contractor from compliance with any and all City of Boca Raton ordinances relating to noise or work during prohibited hours.
- B. The words "supervise" and "inspect" wherever used herein in connection with the duties or activity of the Owner and/or Engineer shall in no way, expressed or implied, relieve the Contractor from his/her responsibilities for the safety of the workers, the preservation of the Work or proper performance under this Contract. The Owner and/or Engineer shall not be responsible for the safety of the workers, the safeguarding of the Work, or the proper performance of the Contractor.
- C. Copies of the Specifications will be used by the Owner and/or Engineer and inspectors employed on the Work, to enforce each and every requirement of the Contract Documents.

## **22. LAYOUT SURVEY AND AS-BUILT RECORD DRAWINGS**

The Owner and/or Engineer will furnish Contractor with all necessary information relating to lines, grades, benchmarks, control points, and location of the Work. Contractor shall furnish all necessary labor equipment and supplies to layout the Work and for the establishment of all lines and grades. All layout Work may be checked and verified by the Owner and/or Engineer, and Contractor shall furnish all such necessary material, equipment, labor, and assistance as the Owner and/or Engineer may require. Contractor shall keep an accurate record of the nature, location, and dimensions of all Work, especially such Work as may subsequently become concealed or inaccessible, and transmit this information, properly marked on a set of reproducible construction plans, to the Owner and/or Engineer when the Work is complete. Contractor shall reference and reset all property corners, benchmarks, centerline control points, and section corners, in accordance with the Florida Department of Transportation Location Survey Manual, which may be disturbed during construction. A Land Surveyor registered in the State of Florida must perform all construction layout Work and

prepare As-Built Record Drawings in accordance with FAC Chapter 5J-17, Professional Surveyors and Mappers.

The cost of all such field layout and surveying Work shall be included in the Contract Price for the appropriate items and shall not result in any additional or separate cost to the Owner.

## **23. INSPECTION**

No Inspector shall have the power to waive the obligations resting upon the Contractor to furnish good material and do good work as herein prescribed. Any failure or omission on the part of any Inspector or the Owner and/or Engineer to condemn any defective material or Work shall not release the Contractor from the obligation to at once tear out, remove, and properly replace or rebuild the same at any time upon discovery of the defect and upon notice from the Owner and/or Engineer to do so. All Work, all materials, and all methods of construction shall be at all times and places subject to the inspection of the Owner and/or Engineer who shall be the final judge of the quality and suitability of the Work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should any Work fail to meet the Owner's and/or Engineer's approval, they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at the Contractor's own expense. Rejected material shall immediately be removed from the Site. If, in the opinion of the Owner and/or Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work injured or not performed in accordance with the Contract Documents, the compensation to be paid to Contractor hereunder shall be reduced by such amount as in the judgment of the Owner and/or Engineer shall be equitable.

## **24. NO WAIVER OF LEGAL RIGHTS**

- A. Inspection by the Owner and/or Engineer, or by any of the Owner's and/or Engineers duly authorized representatives, any order, measurement, or certificate by the Owner and/or Engineer, any order by the Owner for the payment of money, any payment for or acceptance of any Work or any extension of time, or any possession taken by the Owner shall not operate as a waiver of any provision of the Contract or any power therein reserved to the Owner or any right to damages therein provided. Any waiver of any breach of the Contract shall not be held to be a waiver of subsequent breach.
- B. The Owner reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet requirements of the Contract. The Owner further reserves the right, should conclusive proof of defective Work on the part of the Contractor be discovered after the final payment has been made, to claim and recover by process of the law from CONTRACTOR such sums as may be sufficient to correct the error or make good the defects in the Work.
- C. Any waiver of any provision in a Work Order or in the Contract Documents made by Owner and/or Engineer shall be approved in advance by Owner in writing and shall be specific, in that it shall apply only to the particular item or matter concerned and shall not apply to other similar or dissimilar items or matters. Such waiver shall not be effective unless and until a written approval of the waiver by Owner is presented to Contractor.

## **25. CONTRACTOR TO CHECK DRAWINGS, DATA, AND CONDITIONS**

- A. Contractor shall verify all dimensions, quantities and details shown on the Drawings, supplementary drawings, schedules, or other data received from the Owner and/or Engineer, and shall notify the Owner and/or Engineer of all errors, omissions, conflicts and discrepancies found therein. Failure to discover or correct errors, omissions, conflicts, or discrepancies shall not relieve the Contractor of full responsibility for unsatisfactory Work, faulty construction, or improper operation resulting therefrom nor from rectifying such condition at Contractor's own expense. Contractor will not be allowed to take advantage of any error or omissions, as the Owner or Engineer will furnish instructions, should any error or omission be discovered. All instructions are given for the convenience of Contractor and are not guaranteed to be complete.
- B. Should Contractor encounter sub-surface and/or latent conditions at the Site materially differing from those shown on the plans or indicated in the Specifications, Contractor shall immediately give notice to the Owner and/or Engineer of such conditions before they are disturbed. The Engineer will thereupon promptly investigate the conditions, and if Owner and/or Engineer finds that they materially differ from those shown on the Drawings and/or Technical Specifications, the Owner or Engineer will at once make such changes in the Drawings and/or Technical Specifications as the Owner and/or Engineer may find necessary, and any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Article 36, Changes, Extra and Omitted Work, and Article 38, Extra Work.

## **26. DISPUTED WORK**

If the Contractor is of the opinion that any Work required, necessitated, or ordered is not within the terms and provisions of the Contract or a Work Order, the Contractor must promptly notify the Owner and/or Engineer, in writing, of the Contractor's contentions with respect thereto and request a final determination thereon. If the Owner and/or Engineer determines that the Work in question is part of the Work or Work Order and not extra Work, the Owner and/or Engineer will direct the Contractor to proceed, and the Contractor must promptly comply.

## **27. MATERIALS AND MANUFACTURED ARTICLES**

- A. Whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturer's or vendor's names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable, provided the material, article, or equipment so proposed, is, in the opinion of the Owner and/or Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Owner's and/or Engineer's written approval or approved shop drawings. Section 01300, Submittals, of the Technical Specifications regarding "or equal" or substitute materials or manufactured articles shall be applicable.
- B. If two or more brands, makes of material, manufactured articles, devices, or equipment are shown or specified, each should be regarded as the equal of the other. Any other brand, makes of material, manufactured article, device, or equipment which, in the opinion of the Owner and/or Engineer, is the recognized equal of that specified considering quality, workmanship and economy of operation, and is suitable for the purpose intended, may be accepted in accordance with subparagraph A, above.

- C. All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The Owner shall select the laboratory or inspection agency.
- D. Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.
- E. All material and workmanship shall in every respect, be in accordance with what, in the opinion of the Owner and/or Engineer, is in conformity with approved modern practice.
- F. Wherever A Work Order, the Drawings, Technical Specifications or other Contract Documents, or the directions of the Owner and/or Engineer, are unclear as to what is permissible and/or fail to note the quality of any Work, that interpretation will be made by the Owner and/or Engineer, which is in accordance with approved modern practice, to meet the particular requirements of the Contract.
- G. In all cases, new materials shall be used, unless this provision is waived by notice from the Owner or the Engineer in writing. Any materials or equipment, which, in the opinion of the Owner and/or Engineer, have become excessively weathered or damaged since manufacture, shall not be considered as new.

**28. ITEMS SPECIFIED ON DRAWINGS**

Items of material, equipment, machinery, and the like may be specified on the Drawings and not in the Technical Specifications. Such items shall be provided by the Contractor in accordance with the specifications on the Drawings.

**29. SHOP DRAWINGS, SUBSTITUTIONS AND LIST OF MATERIALS**

Contractor shall comply with Section 01300, Submittals of the Technical Specifications.

**30. SUPPLEMENTARY DRAWINGS**

- A. When, in the opinion of the Owner and/or Engineer, it becomes necessary to explain more fully the Work to be done, or to illustrate the Work further, or to show any changes which may be required, supplementary drawings, with specifications pertaining thereto shall be prepared by the Owner and/or Engineer.
- B. The supplementary drawings shall be binding upon the Contractor with the same force as the Drawings. Where such supplementary drawings require either less or more than the estimated quantities or Work, credit to the Owner, or compensation therefore to the Contractor, shall be subject to the terms of the Contract.

**31. PAYMENTS**

- A. The Owner will make Payments to the Contractor, based on periodic estimates in accordance with F.S. 218.735. The Owner will withhold from each progress payment a percentage of the payment determined as retainage in accordance with F.S. 218.735.

- B. The Contract Price for each Work Order shall be a price obtained by applying fixed unit prices (established from the Bid) to estimated quantities that are subject to adjustment at completion of the Work Order to reflect the actual quantities used/involved. The Contractor shall measure the Work already in place and shall at once report to the Owner and/or Engineer any discrepancy between the executed Work, Drawings and Work Order.

Wherever the unit of measure is listed as a lump sum, the Contractor is responsible for the determination of the quantities for those items constructed within the authorized plan limits or dimensions. The Owner does not assume any responsibility for any incidental information in a Work Order or in the Contract Documents that may be construed as a quantity of Work and/or materials.

Wherever the estimated quantities of Work to be done and materials to be furnished under a Work Order and/or the Contract are shown in any of the documents including the bid form, they are given for use in comparing bids and the right is especially reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the Owner to complete the Work contemplated by a Work Order or the Contract and such increase or diminution shall in no way vitiate a Work Order or the Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

Progress payments on the Contract Price for the value of Work completed and component material on Site will be made upon request at intervals no more frequently than monthly. The request must be made through the Owner or Engineer on an approved estimate payment form, provided by the Owner or Engineer, showing the component breakdown of the Work Order, and the amount of Work for each item completed at the time of the request.

- C. All material and Work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of a Work Order and the Contract.
- D. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the Work have been paid, discharged, or waived. If the Contractor fails so to do, then the Owner may, after having served written notice on the Contractor, either pay unpaid bills, of which the Owner has written notice, or withhold from the Contractor as unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished by Contractor that all obligations have been fully paid, discharged, or waived, as provided above. Thereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract or a Work Order, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or the Contractor's Surety.
- E. In the event the Owner determines, in its sole discretion, to pay any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner, shall be considered as a payment made under the Contract or

a Work Order by the Owner to the Contractor, and the Owner shall not be liable to the Contractor for any such payment.

- F. Before commencing the Work under a Work Order, the Contractor shall provide to the Owner a certified copy of the recorded bond. The Owner will not make any payment to the Contractor until the Contractor has complied with this requirement for bonded projects.

Payment will be made by the Owner after commodities/services have been received, accepted, and properly invoiced as indicated in a Work Order or in the Contract Documents.

The Owner or Engineer will, within twenty (20) working days after receipt of each application for payment, either indicate in writing a recommendation of payment or return the application to the Contractor indicating in writing the Owner or Engineer reasons for refusing to recommend payment. In the latter case, the Contractor shall make all necessary corrections and resubmit the application.

- G. Each application for payment shall be accompanied by the following:

1. A notarized Affidavit of Disbursement of Previous Periodic Payments to "Subcontractors from the Contractor for the portion of Work up to the date of that particular pay application, if required by the Owner or Engineer;
2. An Owner approved construction schedule update, if required by the Owner or Engineer;
3. A letter from the Surety acknowledging Partial Release for Bonded Work, if required by the Owner or Engineer;
4. Project photographs for the period of Work completed, if required by the Owner or Engineer; and
5. Updated red-lined drawings, if required by the Owner or Engineer.

- H. The Owner may, in its sole discretion, withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to protect the Owner from loss on account of:

1. Any claims made against the Contractor by the Owner or third parties, or if reasonable evidence indicates the probability of the making of any such claim;
2. The Contractor's default of, or noncompliance with, any Work Order or Contract condition;
3. A reasonable doubt that this Contract will be able to be completed within the time specified or for the balance then unpaid;
4. Defective Work or material not yet remedied;
5. The Contractor's failure to carry out the Work in accordance with a Work Order or the Contract Documents;

6. The Contractor's failure to submit the information required by a Work Order or by this Contract; or
7. The Contractor's failure to submit an owner approved updated Schedule with each Application for Payment.

If claims or liens filed against the Contractor or the Owner connected with performance under A Work Order or this Contract are not promptly removed by the Contractor after receipt of written notice from the Owner to do so, the Owner may remove such claims or liens and all costs in connection with such removal shall be deducted from withheld payments or other monies due to the Contractor under a Work Order or the Contract. If the funds due to the Contractor are insufficient to meet such cost, or if any claim or lien against the Contractor is discharged by the Owner after final payment is made, the Contractor and its Surety or Sureties shall promptly pay the Owner all costs (including attorney's fees) incurred thereby regardless of when such claim or lien arose.

In the event any dispute with respect to any payment or pay request cannot be resolved between the Contractor and the Owner, the Contractor may, in accordance with the alternative dispute resolution requirements of the Local Government Prompt Payment Act. (Sections 218.76, et. seq, Florida Statutes), demand in writing a meeting with and review by the Utilities Department Director (Department Director"). The Department Director or their designee will conduct the meeting and review. Such meeting and review shall occur within ten (10) business days of receipt by the Owner of Contractor's written demand. The Department Director, or designee, shall issue a written decision on the dispute within ten (10) business days of such meeting. This decision shall be deemed the Owner's final decision for the purposes of the Local Government Prompt Payment Act.

### **32. FINAL BILL OF MATERIALS**

The Contractor shall be required to submit a final bill of materials with unit costs for each bid item requiring materials only. This shall be an itemized list of all materials with a unit cost for each material and the total shall be consistent with unit costs established for each Work Order item under the Contract.

### **33. FINAL PAYMENT**

When all Work embraced in a Work Order under this Contract shall have been fully completed consistent with the Specifications and stipulations herein and in the Work Order, and to the satisfaction of the Engineer (if available) and the Owner, the Contractor shall cause a final estimate to be made of the amount and value of said Work according to the prices and terms of this Contract and the Work Order. The Contractor shall certify the final estimate to the Owner and/or the Engineer. From the sum total so found shall be deducted, firstly, all previous payments made to the Contractor and secondly, all damages and proper charges under a Work Order, the Contract and the Contract Documents. The Contractor shall execute a final receipt and release on the form attached in the Contract, upon the Owner making the final settlement and payment as aforesaid. The acceptance by the Contractor of final payment shall be and shall operate as a release of the Owner for all claims and all liability to the Contractor arising from all things done or furnished in connection with the Work and for every act and neglect of the Owner and others relating to or arising out of this Work. No payment, however, final or otherwise, shall operate to release the Contractor or the Contractor's Sureties from

any obligations under a Work Order or this Contract, including, but not limited to, warranties or pursuant to the Performance and Payment Bond or Public Construction Bond.

**34. INVOICES FOR MATERIAL ON SITE**

To receive approval for progress payment on component material for a Work Order, the Contractor is required to submit to the Owner and/or Engineer copies of the original paid invoices with the monthly estimate for all material to be approved for payment. This requirement applies to both lump sum and unit price items.

**35. SALVAGE**

Any existing equipment or material, including but not limited to, valves, pipes, fittings, couplings, etc., which is removed or replaced as a result of construction under a Work Order may be designated as salvage by the Owner and/or Engineer and if so, shall be excavated, if necessary, and delivered to the Owner at a location directed by the Owner and/or Engineer. Any equipment or material not worthy of salvaging shall be disposed of by the Contractor at a suitable location offsite at no additional cost to the Owner.

**36. CHANGES, EXTRA AND OMITTED WORK**

- A. It is mutually agreed that no change involving a material change in cost, either to the Owner or the Contractor, shall be made except upon written permission of the Owner as further detailed in Section 01053, Change Order Procedures, of the Technical Specifications. Extra work shall be paid for as set forth in Article 38, Extra Work. Omitted Work shall be credited against the money due the Contractor by one of the methods described in Article 39, Omitted Work. The Contractor shall make no claim for extra Work unless the Owner, in advance of the Work, has approved it in writing, except that the Contractor may proceed to meet an emergency condition if the Owner's representative is not available.
- B. The Owner and/or Engineer shall, in all cases of dispute, determine the amount or quantity of the several kinds of Work which are to be paid for under this Contract, and shall decide all questions relative to the execution of the same, and such estimates and decisions shall be final and binding.
- C. Any Work not herein specified, which may be fairly implied as included in the Contract, of which the Owner and/or Engineer shall judge, shall be done by the Contractor without extra charge.

**37. EXTRA QUANTITIES /REDUCTION TO QUANTITIES**

- A. Should it be determined by the Owner and/or Engineer that it is necessary to increase the quantities of materials above those required to complete the Work as shown on the Drawings or specified herein due to changes in the design or layout of the Work, the Contractor shall furnish and install such additional materials or make such additional excavation (as ordered by the Owner and/or Engineer). The Contractor will be paid for the extra quantities at the Contract unit price. Any Contract Price and/or Contract Time adjustment will be by written Amendment.

- B. If such changes of plan result in a decrease in quantities, the Contractor shall allow a credit against the Contract Price in accordance with the prices bid for the extra quantities.

### **38. EXTRA WORK**

- A. The Owner may, at any time, by a written Amendment and without notice to the Sureties, require the performance of such extra Work as it may find necessary or desirable arising out of the modification of the Technical Specifications or Drawings. All Work so ordered must be performed by the Contractor. The amount of compensation to be paid to the Contractor for any Work so ordered shall be determined as follows:

1. By such applicable unit prices, if any, as are set forth in the Contract;
2. If no such prices are so set forth, then by a lump sum or other unit prices mutually agreed upon by the Owner and the Contractor; or
3. If no such unit prices are so set forth in the Contract and if the parties cannot agree upon a lump sum or other unit prices, then by the actual net cost in money to the Contractor of the extra Work performed. The cost shall be determined as follows and a proposal submitted to the Owner for review:

- (a) For all labor and foremen/forewomen in direct charge of the authorized operations, the Contractor shall receive the current local rate of wages, to be agreed upon in writing before starting such Work, for each hour that said labor and foremen/forewomen are actually engaged thereon, to which shall be added an amount equal to 15 percent (15%) of the sum thereof which shall be considered and accepted as full compensation for general supervision and the furnishing of small tools and miscellaneous equipment used, such as picks, shovels, hand tools, work trucks, small pumps, and similar items.
- (b) For all materials used, the Contractor shall receive the actual cost of such materials delivered at the Site or previously approved delivery point as established by original receipt bills. No percentage shall be added to this cost.
- (c) For special equipment and machinery such as power-driven pumps, concrete mixers, trucks, and tractors, or other equipment, required for the economical performance of the authorized Work, the Contractor shall receive payment based on the agreed rental price for each item of equipment and the actual time of its use on the work. No percentage shall be added to this sum.
- (d) For Work to be performed by a Subcontractor retained by the Contractor, the Owner and the Contractor shall agree on the cost of the Work to be performed by that Subcontractor and the Contractor shall receive that agreed-upon amount, together with an amount equal to 5 percent (5%) of the agreed-upon amount (which shall be considered and accepted as full compensation for coordination and Contractor profit).

- (e) The Contractor's profit shall be computed by taking ten percent (10%) of the sum of items 3(a) and 3(b) above.
  - (f) The total cost of performing this extra Work shall then be the sum of items 3(a), 3(b), 3(c), 3(d), and 3(e).
- B. Records of extra Work done, if any, shall be reviewed at end of each day by the Contractor or his representative and the Owner and/or Engineer, duplicate copies of accepted records shall be made and signed by both the Contractor and the Owner and/or Engineer, and one copy retained by each.
- C. A claim of payment for extra Work shall be submitted by the Contractor upon a certified statement supported by receipt bills. Such statements shall be submitted for payment in the month in which the Work was done. No claim for extra Work shall be allowed unless the same was ordered, in writing.
- D. Any request for a Time extension, if applicable, shall be submitted at time of the proposed Amendment. Further, upon execution by the Owner of any Amendment where no time extension has been requested and/or granted, that Amendment shall constitute a complete waiver of all claims for dollars or for any extension of time related to that Work or for any Work impacted by the change.

**39. OMITTED WORK**

The Owner may, at any time, by a written order and without notice to the Sureties, require the omission of any portion of the Work as it may find necessary or desirable. All Work so identified must be omitted by the Contractor. The amount by which the Contract price shall be reduced shall be determined as follows:

- A. By such applicable unit prices, if any, as set forth in a Work Order or the Contract;
- B. By the appropriate lump sum price set forth in a Work Order or the Contract; or
- C. By reasonable and fair estimated cost of such omitted Work as determined by the Owner and/or Engineer.

**40. PROTECTION OF PROPERTY AND PUBLIC**

- A. The Contractor shall be required to strictly obey all applicable ordinances in relation to obtaining permits for occupying, excavating or in anywise obstructing the streets and alleys. Contractor shall erect and maintain barricades and sufficient safeguards around all excavations, embankments, or obstructions.
- B. Where there are telephone, telegraph, light, or power poles; water mains, conduits, pipes, or drains; or other construction either public or private; in or on the streets or alleys; the Work shall be so conducted that no interruption or delay will be caused in the operation or use of the same.
- C. The Contractor will not be permitted to interfere with public travel and convenience by grading or tearing up streets indiscriminately, but the Work of conducting the various items of this Contract shall proceed in an orderly, systematic, and progressive manner.

#### **41. LOCATION AND PROTECTION OF UTILITIES**

It shall be the Contractor's responsibility to ascertain the exact location of all utilities prior to construction regardless of information which may be indicated on the Drawings. Utilities shall be located and marked in the field. The Contractor shall take whatever steps are necessary to protect the utilities from damage. Any damages sustained by any utility as a result of operations under a Work Order or this Contract shall be promptly repaired or replaced at the sole expense of the Contractor and no additional money shall be due for this repair or replacement Work under a Work Order or this Contract.

The Contractor will plan the Work under a Work Order and conduct the construction operations in cooperation with the various utility companies. The Contractor will use extreme caution where construction is performed in proximity to utilities, and the Owner and/or Engineer will be notified when any Work may conflict with utilities.

Any conflicts found are to be brought to the attention of the Owner and/or Engineer for resolution prior to start of Work under a Work Order. Unless otherwise directed, the Contractor is to support, or otherwise protect, all utility companies' facilities during construction. The Contractor shall protect all existing utilities throughout the construction and shall contact the offices of the various utility companies at least 48 hours prior to the start of any construction.

#### **42. OVERHEAD UTILITIES**

- A. If there are overhead utility lines in the vicinity of the construction area, Contractor shall conform to Florida Industrial Commission Regulation 185S-4-CB-1958 "Regulation for Use of Cranes, Draglines and Similar Equipment Near Power Lines.", or the most current standard.
- B. It is the responsibility of the Contractor to ensure that all utility or other poles, the stability of which may be endangered by the close proximity of excavation, are temporarily stayed in position while Work proceeds in the vicinity of the pole and that the utility or other companies concerned are given advance notice of any such excavation by the Contractor.

#### **43. COORDINATION OF WORK**

The Contractor may expect other construction to occur in the vicinity of the Site during the course of work under a Work Order or the Contract. In such instances, the Contractor will be required to cooperate fully so as to eliminate or minimize the creation of conflicts. Adjustments from time to time may be required in the Contractor's Work location and/or schedule provided a reasonable notice is given by the Owner and/or Engineer.

#### **44. SANITARY REGULATIONS**

The Contractor shall furnish necessary sanitary conveniences for the use of laborers on the Site. Sanitary facilities shall be delivered and maintained in such manner and at such points as shall be approved by the Owner and/or Engineer. Their use shall be strictly enforced. The Contractor shall supply sufficient drinking water to his employees from such sources as shall

be approved by the Owner and/or Engineer and shall obey and enforce such sanitary regulations and take such precautions against infectious disease, as the Owner and/or Engineer may deem necessary. Should any infectious disease occur among his employees, Contractor shall arrange for the immediate removal of the employee from the Work and for isolation of all persons who were potentially in contact with such employee.

#### **45. STORAGE FACILITIES**

Should the Contractor build or furnish storage facilities, or other structures for, tools, machinery, and/or supplies for a Work Order, they shall be permitted only at approved places, and their surroundings shall be maintained at all times in a sanitary and satisfactory manner. All such structures shall be removed together with all rubbish and trash on or before the completion of the Work under such Work Order and at the expense of the Contractor.

#### **46. DEFECTIVE WORK**

- A. If at any time, before final acceptance of the Work under a Work Order or materials, defects therein shall be found, the Contractor shall promptly correct such defects, remove and dispose of all defective or unsatisfactory Work or materials, and supply non defective materials and Work in accordance with the Work Order and/or the Contract Documents. Previous construction of such Work will not relieve the Contractor of the responsibility for good work or materials, although the defects may have been overlooked by the Owner, Engineer (if applicable) or Inspector, or may have been the result of damage from any cause.
- B. Should the Contractor fail or refuse to remove and renew any defective Work performed under a Work Order, or to make any necessary repairs in an acceptable manner, and in accordance with the requirements of the Work Order and the Contract within the time indicated in writing, the Owner shall have the authority to cause the unacceptable or defective Work to be removed or renewed, or such repairs as may be necessary to be made at the Contractor's expense. Any expense incurred by the Owner in making these removals, renewals, or repairs, which the Contractor has failed or refused to make, shall be paid for out of any monies due or which may become due the Contractor, or may be charged against the Sureties. Continued failure or refusal on the part of the Contractor to make any or all necessary repairs, promptly, fully, and in an acceptable manner, shall be sufficient cause for the Owner to declare the Contract in default, in which case the Owner at its option may instruct the Owner and/or Engineer to purchase materials, tools, and equipment and employ labor or may contract with any other individual, firm or corporation, or may proceed with its own forces to perform the Work.
- C. All costs and expenses incurred thereby shall be charged against the Contractor and the amount thereof deducted from any monies due, or which may become due Contractor, or shall be charged against the Work Order as a deductive Amendment. Any special Work performed as described herein, shall not relieve the Contractor in any way from the Contractor's responsibility for the Work to be performed by Contractor pursuant to the Contract Documents.
- D. At the request of the Owner and/or Engineer, the Contractor shall, at any time before Final Completion of the Work, remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the

Work to the standard required by the Work Order and/or the Contract Documents. Should the Work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be paid for by Amendment, but should the Work so exposed or examined prove unacceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be at the Contractor's expense.

- E. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect would be discovered or obligate the Owner to final acceptance.
- F. If any other Contractor or any subcontractor shall suffer loss or damage on the Work alleged to be due to acts of neglect on the part of the Contractor, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor asserts a claim against the Owner on account of any damage alleged to have been sustained due to acts of neglect on the part of the Contractor, the Owner shall notify the Contractor, who shall defend, indemnify and save harmless the Owner, its officials and employees, against any such claim. This provision shall survive termination or expiration of the Contract.

#### **47. DISTRIBUTION OF WORK**

- A. Arrangement of the Specifications in divisions, under general titles descriptive of the principal materials or trades covered, is for convenience. Under many divisions it has seemed proper to include items of other trades or types of materials, the use or the installation of which is closely related to the principal subject of that division. Such arrangement shall not render the Owner and/or Engineer as an arbitrator to establish subcontract or trade limits between Contractor and subcontractor or trades.
- B. Contractor and all subcontractors shall study all of the Drawings and Specifications in sufficient detail to assure that all required items are included. It shall be the Contractor's responsibility to arrange the distribution of the Work such that all required items are provided by the proper trades and at the proper times, without controversy as to contract obligation, or as to jurisdiction, and Contractor shall make all necessary adjustments to this end.

#### **48. SEPARATE CONTRACT**

- A. The Owner reserves the right to engage other contractors in connection with the Work. The Contractor shall afford such other contractors a reasonable opportunity for storage of their materials and the execution of their work and shall properly connect and coordinate Contractor's Work with theirs.
- B. If any part of the Contractor's Work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Owner and/or Engineer any defects in such Work that render it unsuitable for such proper execution and results. Failure of Contractor to inspect and report shall constitute Contractor's acceptance, at his/her own risk, of the other contractor's work as fit and proper for the reception of his Work.

**49. REFERENCE TO STANDARDS**

- A. Wherever reference is made to the furnishing of materials or testing thereof to conform to the standards of any technical society, organization, or body, it shall be construed to mean the latest standard, code, specification, or tentative specification adopted and published at the date of advertisement for bids, even if reference has been made to an earlier standard. The standards of the following list of technical societies, section B below, are hereby made a part of Work Orders and the Contract as if they were incorporated by reference therein and repeated in full.

In the event of any conflict between specifications, standards, codes, or tentative specifications, and the Technical Specifications, the latter shall govern. In the event of conflict with another, the decision as to which shall govern will be decided by the Owner and/or Engineer, whose judgment will be final.

- B. Reference to a technical society, organization, or body may be made in the Specifications by abbreviations, in accordance with the following list:

AASHTO	for American Association of State Highway and Transportation Officials
ACI	for American Concrete Institute
AGMA	for American Gear Manufacturers' Association
IEEE	for Institute of Electrical and Electronic Engineers
AFBMA	for Anti-friction Bearing Manufacturers' Association
AISC	for American Institute of Steel Construction
ASCE	for American Society of Civil Engineers
ASTM	for American Society for Testing Materials
ASME	for American Society of Mechanical Engineers
AWSC	for American Welding Society Code
AWWA	for American Water Works Association
AWPA	for American Wood Preservers Association
CIPRA	for Cast Iron Pipe Research Association
Fed. Spec.	for Federal Specification
Navy Spec.	for Navy Department Specification
NEC	for National Electric Code
NEMA	for National Electrical Manufacturers Association
NLMA	for National Lumber Manufacturers Association
SAE	for Society of Automotive Engineers Standards
SFBC	for South Florida Building Code
SHBI	for Steel Heating Boiler Institute
FDOT	for Florida Department of Transportation
U.L., Inc.	for Underwriters' Laboratories, Inc.
ANSI	for American National Standards Institute

- C. When no reference is made to a code, standard, or specification, the standard specifications of the ASTM, the ANSI, the ASME, the IEEE, or the NEMA shall govern.

**50. MAINTENANCE OF OPERATION**

- A. The Contractor shall fully cooperate at all times with the Owner in order to maintain the operation of the existing utilities with the least amount of interference and interruption possible. Public health and safety considerations shall exceed all others

and the Contractor's Schedule, plans and Work shall at all times be subject to alteration and revision if necessary for public health and safety considerations. The creation of a public nuisance will not be permitted.

- B. It may be necessary for the Contractor to interrupt or interfere with the operation of the Owner's utility system or a portion of the system. In all cases where the Contractor must cause an interruption, Contractor shall prepare and submit to the Owner and/or Engineer and to the Owner, 48 hours prior to commencing the Work, a complete description and Contractor's proposed procedure and a time schedule which Contractor will guarantee. At least twenty-four (24) hours prior to the time proposed for starting the Work the Contractor will be notified whether or not the Work will be permitted as proposed.
1. The Owner and/or Engineer reserve the right to require the Contractor to work 24 hours per day in all cases where, in their opinion, interference with operation of the system may result in dangerous health hazards or offensive conditions.
  2. In no case will the Contractor be permitted to interfere with the existing system until all materials, supplies, equipment, tools and incidentals necessary to complete the Work are on the Site. Back-up equipment on key equipment items shall be required on Work necessitating interference with the existing system.

## **51. SAFETY AND HEALTH REGULATIONS**

- A. Contractor shall be solely responsible for initiating and maintaining 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 or off the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent properties, of underground facilities, and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any.

- D. Contractor shall inform Owner and/or Engineer of the specific requirements of Contractor's safety program with which Owner's and/or Engineer's employees and representatives must comply with while at the Site.
- E. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work under a Work Order is completed and Owner and/or Engineer has issued a Final Completion Notice to Owner and Contractor in accordance with Article 16, Substantial/Final Completion, that the Work under the Work Order is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- F. 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.
- G. 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 all laws and regulations.
- H. 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 Owner and/or Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Work Order or the Contract Documents have been caused thereby or are required as a result thereof. If the Owner and/or 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 Construction Change Directive or Amendment will be issued.
- I. The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 9154).

**52. APPRENTICE AND TRAINEE EMPLOYMENT REQUIREMENTS-**  
**Not applicable to this contract.**

**53. GUARANTEES/WARRANTIES**

Unless otherwise provided elsewhere in a Work Order or the Contract Documents, all materials and equipment incorporated into any Work covered by the Work Order or the Contract shall be new and, where not specified, of the highest grade of quality for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner. Unless otherwise provided in the Contract or Work Order, Contractor warrants all equipment, materials, and labor furnished or performed under this Contract, against defects in design, materials and workmanship for a period of twelve months (unless longer guarantees or warranties are provided for elsewhere in the Contract or Work Order, in which case the longer periods of time shall prevail) from and after Final Completion of the Work under a Work Order, regardless of whether the same were furnished or performed by Contractor or by any of its subcontractors of any tier. In the event that the Owner assumes partial utilization of portions of the Work performed under a Work Order prior to completion of

all Work, the Warranty for that portion shall also extend for twelve months from Final Completion of that portion of the Work Order, if and only if the Owner has exclusive use of the area. If the Owner does not have exclusive use of the area, the warranty period shall extend for twelve months from Final Completion of the last portion of the Work under a Work Order.

Upon receipt of written notice from Owner and/or Engineer of any defect in any such equipment, materials, or labor during the applicable warranty period, due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Contractor at a time and in a manner acceptable to Owner.

Contractor warrants such redesigned, repaired or replaced Work against defective design, materials and workmanship for a period of twelve months from and after the date of acceptance thereof. Should Contractor fail to promptly make the necessary redesign, repair, replacement and tests, Owner may perform or cause to be performed the same at Contractor's expense. Contractor shall perform such tests as Owner may require to verify that such redesign, repairs and replacements, and tests comply with the requirements of a Work Order or the Contract. All costs incidental to such redesign, repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Contractor.

Contractor and its Surety or Sureties shall be liable for the satisfaction and full performance of the warranties as set forth herein and any damage to other parts of the Work caused by the Contractor's failure to perform pursuant to this general condition.

The Contractor is required to provide a designated telephone number for warranty-related emergencies which occur outside the normal workday. The Contractor is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the Owner agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Contractor of its responsibility.

#### **54. TESTING**

- A. All testing not otherwise called for in the Contract Documents or Work Order shall be directed by the Owner or Owner's authorized agent.
- B. Unless otherwise specifically stated in the Drawings or Specifications, all laboratory/testing expenses will be paid by the Owner.
- C. The Contractor will be required, at his expense, to provide samples of materials to be tested, or make available or prepare sites for the testing procedures and supply any necessary equipment to make these tests in the field. The Contractor will be required to pay all expenses to ensure all Work meets the minimum standards within the specified tolerances set forth in the Specifications.
- D. Any retest required or any delay in performing any test or retest by the Owner or the Owner's authorized agent due to the Contractor's improper, or failure of, performance of the Work or the Contractor's negligence, or non-conformance with specified requirements, shall be paid for by the Contractor.

**55. EQUIPMENT SHUTDOWN AND STARTUP**

The Contractor will be required to submit a request for each piece of in-service equipment to be temporarily placed out-of-service and locked out as well as each piece of new equipment to be started up, as required to complete the Work. The request must include a Work activity sequence plan and be submitted to the Owner and/or Engineer for consideration a minimum of seven (7) days in advance of the proposed Work. The Owner and/or Engineer will review the plan and provide comments as needed. Any requests for equipment startup must include Work activities for required Owner training as stated in the Technical Specifications. Only upon receipt of an approved equipment shutdown and/or startup request authorized by the Owner and/or Engineer shall the Contractor proceed with the activity sequence plan.