BID DOCUMENTS for ITB #19-05

US 27 North
Water Main and Force Main Utility Extension
Revised Per Addendum #4
8/23/2019

THE CITY OF AVON PARK, FLORIDA
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INVITATION TO BID #19-05

Sealed bids will be received by the Director of Infrastructure, City of Avon Park Public Works, 2301 US 27 South, Avon Park, FL 33825 until August 28, 2019 no later than 2:00 p.m., at which time and place, bids received will be publicly opened in the conference room of the Director of Infrastructure and read aloud for the following: US Highway 27 North Water Main and Force Main Utility Extension.

MANDATORY PRE-BID CONFERENCE Due to the complexity of this utility project and the involvement of FDOT and CSX Rail Road a mandatory pre-bid meeting is scheduled for 2:00 P.M., August 09, 2019. LOCATION: Avon Park Department of Public Works Conference Room 2301 US 27 South Avon Park, FL 33825. Contact Person: Ronnie Jones 863-452-4400 rjones@avonpark.cc
The City of Avon Park will not accept bids from bidders who arrive after 2:00 P.M. or do not attend the entire meeting. A site review by potential bidders prior to the pre-bid meeting is highly recommended.

BID DOCUMENTS Bid Documents may be requested by visiting the City of Avon Park website at: http://www.avonpark.cc/services/bids.php or by contacting the City of Avon Park, Director of Infrastructure, Ronnie Jones, City of Avon Park Public Works Office 2301 U S 27 South, Avon Park, FL 33825, rjones@avonpark.cc 863-452-4400, ext. 406. Bid Documents are required for bid submittal.

ADDENDA It is the Bidders responsibility to check the Website at http://www.avonpark.cc/services/bids.php or contact the City of Avon Park Director of Infrastructure – Ronnie Jones, 863-452-4400 ext. 406 prior to submitting a bid to ascertain if any addenda have been issued, to obtain all such addenda and acknowledge the addenda with the submitted bid. All questions shall be directed to the Director of Infrastructure in writing and will be accepted for addenda until Wednesday, August 14, 2019 at 4PM in order to provide sufficient time for City to respond appropriately to addenda. The failure of a Bidder to submit acknowledgement of any addenda that affects the bid price(s) may be considered an irregularity and may be cause for rejection of the bid.

INSURANCE & SAFETY REQUIREMENTS All insurance shall be secured from or countersigned by an agent or Surety Company recognized in good standing and authorized to do business in the State of Florida. The Contractor shall, within ten (10) days of notification of award and prior to commencement of work, take out and maintain in full force and effect minimum insurance coverage as stated in the specifications. This insurance shall remain in effect throughout the duration of the contract. A certificate of existing insurance coverage should be submitted with the bid as proof of insurability; if the current coverage does not meet the bid requirements, then the Bidder should request an affidavit of insurability from the Bidder’s insurance agent that certifies the requirements can and will be met. Failure to provide adequate insurance coverage may be cause for disqualification as non-responsive to the bid requirements. All insurance policies shall be issued by responsible companies authorized to do business under the laws of the state, have at least an "A" policyholder's rating, have a financial rating of at least class VIII in accordance with the most current Best's Key Rating Guide, and shall be satisfactory to the city.

BONDS A (5%) five percent bid bond or security will be required as well as a (100%) one hundred percent payment and performance bond(s).
EMPLOYMENT ELIGIBILITY VERIFICATION:

The Contractor shall utilize the U.S. Department of Homeland Security’s E-Verify system (https://www.e-verify.gov/) to verify the employment eligibility of all new employees the Contractor hired during the term of this Agreement. The Contractor shall include in all subcontracts under this Agreement, the requirement that subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees subcontractor hired during the term of the subcontract.

The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274 A (e) of the Immigration and Naturalization Act (8U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the City. As part of the response to this solicitation (bid), the successful contractor will complete and submit the attached form “Affidavit Certification Immigration laws”.

Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet based system operated by the U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automatic link to Federal databases to help employers verify employment eligibility of new hires, existing employees and the validity of their Social Security numbers.

If your company wishes to avail itself of this program, you can register online for E-Verify at https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES
Which provides instructions for completing the registration process. At the end of the registration process you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as employer, the SSA and the DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best methods by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit www.dhs.gov/e-verify or contact the USCIS at 1-888-464-4218
AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

BID NO.: #19-05 PROJECT NAME: US 27 North Water Main and Force Main Utility Extension

The CITY OF AVON PARK will not intentionally award city contracts to any contractor who knowingly employs unauthorized alien workers constituting a violation of the employment provisions contained in Section 274A (e) of the Immigration and Naturalization Act (INA) (8 U.S.C. 1324a).

The City of Avon Park may consider the employment by any 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 the unilateral cancellation of the contract by the City of Avon Park.

The bidder attests that they are fully compliant with all applicable immigration laws (Specifically to the 1986 Immigration Act and subsequent amendments).

Company Name: ____________________________________________

Signature: __________________________ Title: ________________ Date: ______

State of: ________________________________ County of: ________________

The forgoing instrument was signed and acknowledged before me this ____________ day of ______________, 20 _______, by _________________________________ who has produced __________________________________________________ as identification Type of Identification and Number

Notary Public Signature: ________________________________

Printed name of Notary Public: ________________________________

Notary Commission Number/Expiration: __________________________
DRUG-FREE WORKPLACE FORM

The undersigned bidder in accordance with section 287.087, Florida Statutes, hereby certifies

that ___________________________________________ does:

(Name of Business)

1. Publish a statement (“Published 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 violation.

3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the Published Statement specified in section 1, above.

4. In the Published Statement, notify the employees that, as a condition of working on the commodities or contractual services that are under bid, 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 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 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 requirements of section 287.087, Florida Statutes, including the above requirements.

_______________________________________
Bidder’s Signature

_______________________________________
Date
SWORN STATEMENT PURSUANT TO 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 OFFICIAL 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 ______________________________________
   ______________________________________

   and (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: _________________.)

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 of the United States, including, but not limited to,
any bid or contract for goods or services to be provided to any public entity or an agency or
political subdivision of 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 an “affiliate” as defined in Paragraph 287.133(1) (a), Florida Statutes,
   means:
   1. A predecessor or successor of a person convicted of a public entity crime; or
   2. 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 officers, directors, executives, partners, shareholders, employees, members, and agents
      who are active in the management of an 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 for fair market value under an arm’s length agreement, shall be a
      prima 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.

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 into 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 an entity.

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

    _____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has 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, members, or agents who are active in the 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.

    _____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the 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 a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative hearings 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 THE FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. 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 OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

______________________________
[signature]

Sworn to and subscribed before me this ______day of ___________________________, 20____.

Personally known_______________________       __________________________________

Or Produced identification_________       Notary Public – State of ________________

______________________________       My commission expires__________________

(Type of Identification)

______________________________
(Printed, typed or stamped
commission name of notary public)

Form PUR 7068 (Rev 6/11/92)
TRENCH SAFETY AFFIDAVIT

Trench excavations on this Project are expected to be in excess of 5 feet deep. The Occupational Safety and Health Administration Excavation Safety Standards, 29 CFR 1926.650 Subpart P, Trench Safety Standards, will be in effect during the period of construction of the Project.

Bidder acknowledges that included in the various items of the Bid and in the Total Bid Price, are costs complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990, and hereby gives assurance that, if awarded the Contract, the Contractor of Subcontractor performing trench excavation work on the Project, will comply with the applicable trench safety standards. The Bidder further identifies the costs as follows:

**BID ITEMS:**

<table>
<thead>
<tr>
<th>Trench Safety Item (Description)</th>
<th>Units Quantity</th>
<th>Measure (LF, SY)</th>
<th>Unit Cost</th>
<th>Extended Cost</th>
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<td>B:_____________________________</td>
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**TOTAL:** $______________________

Failure to complete the above shall results in the bid being declared non-responsive. The costs indicated above are provided to comply with the Act and shall not constitute grounds for any additional compensation to the listed for the separate line items of the Bid Form.

**BIDDER**

COMPANY NAME: ________________________________

BY: ________________________________ TITLE: ______________________________

DATE: ________________________________
INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT

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 are to be issued, and which registers plan holders.

ARTICLE 2—BIDDING DOCUMENTS

2.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder’s responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.

2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.

2.03 Owner has established a Bidding Documents Website as indicated in the Advertisement or invitation to bid. Owner recommends that bidders obtain a complete set of the Bidding Documents from such website. Bidders may rely that sets of Bidding Documents obtained from the Bidding Documents Website are complete, unless an omission is blatant. It is the bidders responsibility to check the website regularly for updates and addendums.

2.04 Electronic Documents

A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to the Bidders as Electronic Documents in the manner specified.

   1. Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf) that is readable by Adobe Acrobat Reader Version 9.0 or later. It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor the Contractor’s means of reproduction of such documents, the Owner and Engineer cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.

B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.04.A above. However, Bidder assumes all risks associated with differences
arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder’s reliance upon such derived information.

ARTICLE 3—QUALIFICATIONS OF BIDDERS

3.01 Bidder is to submit the following information with its Bid to demonstrate Bidder’s qualifications to perform the Work:

A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments.

B. A written statement that Bidder is authorized to do business in the state where the Project is located, or a written certification that Bidder will obtain such authority prior to the Effective Date of the Contract.

C. Bidder’s state or other contractor license number, if applicable.

D. Subcontractor and Supplier qualification information.

E. Other required information regarding qualifications.

3.02 A Bidder’s failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.

3.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder’s qualifications.

ARTICLE 4—PRE-BID CONFERENCE

4.01 A mandatory pre-bid conference will be held at the Avon Park Public Works Office located at 2301 US 27 South, Avon Park, Florida 33825; Representing the owner Ronnie Jones, City of Avon Park, Director of Infrastructure, 863-452-4400 extension 406, rjones@avonpark.cc, and Representatives of the Engineer will be present to discuss the Project. Proposals will not be accepted from Bidders who do not attend the conference. It is each Bidder’s responsibility to sign in at the pre-bid conference to verify its participation. Bidders must sign in using the name of the organization that will be submitting a Bid. A list of qualified Bidders that attended the pre-bid conference and are eligible to submit a Bid for this Project will be issued in an Addendum.

4.02 Information presented at the pre-Bid conference does not alter the Contract Documents. Owner will issue Addenda to make any changes to the Contract Documents that result from discussions at the pre-Bid conference. Information presented, and statements made at the pre-bid conference will not be binding or legally effective unless incorporated in an Addendum.

ARTICLE 5—SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER’S SAFETY PROGRAM; OTHER WORK AT THE SITE

5.01 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.

5.02 Existing Site Conditions

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. There are other utilities in the right of way. The plans reflect the conditions to the best of the engineer's knowledge, but it is the responsibility of the contractor to examine the conditions prior to bidding the work and to call 811 for Sunshine State One Call of Florida, Inc. prior to digging for flagging of the utilities within the work area.

2. The only known Underground Facilities or improvement in the project area would be the existing utilities as noted above. The engineer has not done any subsurface testing of the work area. 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.

3. There are no known Hazardous Environmental Conditions.

5.03 Site Visit and Testing by Bidders

A. Bidder is required to visit the Site and conduct a thorough visual examination of the Site and adjacent areas. During the visit the Bidder must not disturb any ongoing operations at the Site.

B. Bidders visiting the Site are required to arrange their own transportation to the Site.

C. All access to the Site other than during a regularly scheduled Site visit must be coordinated through the following Owner or Engineer contact for visiting the Site: Ronnie Jones, City of Avon Park, Director of Infrastructure, Avon Park Public Works Office located at 2301 US 27 South, Avon Park, Florida 33825, 863-452-4400 extension 406, rjones@avonpark.cc. Bidder must conduct the required Site visit during normal working hours.

D. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

E. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder general 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. 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. Bidder is responsible for establishing access needed to reach specific selected test sites.

F. Bidder must 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.

G. Bidder must fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.
5.04 **Owner’s Safety Program**

A. Site visits and work at the Site may be governed by an Owner safety program. If an Owner safety program exists, it will be noted in the Supplementary Conditions.

5.05 **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 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS

6.01 **Express Representations and Certifications in Bid Form, Agreement**

A. The Bid Form that each Bidder will submit contains express representations regarding the Bidder’s examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications, and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.

B. If Bidder is awarded the Contract, Bidder (as Contractor) will make similar express representations and certifications when it executes the Agreement.

ARTICLE 7—INTERPRETATIONS AND ADDENDA

7.01 Owner on its own initiative may issue Addenda to clarify, correct, supplement, or change the Bidding Documents.

7.02 Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Owner in writing. Contact information and submittal procedures for such questions are as follows:

A. **Ronnie Jones, City of Avon Park, Director of Infrastructure, Avon Park Public Works Office located at 2301 US 27 South, Avon Park, Florida 33825, 863-452-4400 extension 406, rjones@avonpark.cc.**

7.03 Interpretations or clarifications considered necessary by Owner or Engineer in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received less than seven days prior to the date for opening of Bids may not be answered.

7.04 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

ARTICLE 8—BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 (five) percent of Bidder’s maximum Bid price (determined by adding the base bid and all alternates) and
in the form of a Bid bond issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions. Such Bid bond will be issued in the form included in the Bidding Documents.

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, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Owner’s damages in the case of a damages-form bond. Such forfeiture will 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 7 days after the Effective Date of the Contract or 61 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 within 7 days after the Bid opening.

ARTICLE 9—CONTRACT TIMES

9.01 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any) are to be achieved, are set forth in the Agreement.

9.02 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 10—SUBSTITUTE AND “OR EQUAL” ITEMS

10.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those “or-equal” or substitute or materials and equipment subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an “or-equal” or substitute unless written request for approval has been submitted by Bidder and has been received by Engineer within 10 days of the issuance of the Advertisement for Bids or invitation to Bidders. Each such request must comply with the requirements of Paragraphs 7.05 and 7.06 of the General Conditions, and the review of the request will be governed by the principles in those paragraphs. The burden of proof of the merit of the proposed item is upon Bidder. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all registered Bidders. Bidders cannot rely upon approvals made in any other manner.

10.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as
supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

ARTICLE 11—SUBCONTRACTORS, SUPPLIERS, AND OTHERS

11.01 The apparent Successful Bidder, and any other Bidder so requested, must submit to Owner a list of the Subcontractors or Suppliers proposed for the all portions of the Work within five days after Bid opening:

11.02 If requested by Owner, such list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor or Supplier, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder will 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.

11.03 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 and Suppliers. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor or Supplier, so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.07 of the General Conditions.

ARTICLE 12—PREPARATION OF BID

12.01 The Bid Form is included with the Bidding Documents.

A. All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must 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 enter the words “No Bid” or “Not Applicable.”

12.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8½ inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.

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

12.05 A Bid by a limited liability company must 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 must be shown.

12.06 A Bid by an individual must show the Bidder’s name and official address.

12.07 A Bid by a joint venture must be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.

12.08 All names must be printed in ink below the signatures.

12.09 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.

12.10 Postal and e-mail addresses and telephone number for communications regarding the Bid must be shown.

12.11 The Bid must contain evidence of Bidder’s authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.

12.12 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder’s licensure, or Bidder must certify in writing that it will obtain such licensure within the time for acceptance of Bids and attach such certification to the Bid. Bidder’s state contractor license number, if any, must also be shown on the Bid Form.

ARTICLE 13—BASIS OF BID

13.01 Lump Sum
   A. Bidders must submit a Bid on a lump sum basis as set forth in the Bid Form.
   B. All quantities shown in the bid documents are engineer estimates only and included only for reference. It is the responsibility of each bidder/contractor to verify the quantities, materials and lengths of each phase of the utility construction or installation. The quantities and unit prices are for reference only and are needed for bid review and pay approval purposes. This is to be considered basically a lump sum bid, payment will not be on unit price basis. Each bidder should bid on their own calculated or estimated quantities.

ARTICLE 14—SUBMITTAL OF BID

14.01 A copy of the Bid Form is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 2 of the Bid Form.

14.02 A Bid must be received no later than the date and time prescribed and at the place indicated in the Advertisement or invitation to bid and must be enclosed in a plainly marked package with the Project title, and, if applicable, the designated portion of the Project for which the Bid is submitted, the name and address of Bidder, and must be accompanied by the Bid security and
other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope
containing the Bid must be enclosed in a separate package plainly marked on the outside with the
notation “BID ENCLOSED.” A mailed Bid must be addressed to the location designated in the
Advertisement. Emailed bids are not acceptable, only bids physically delivered and marked as
-described shall be considered.

14.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the
correct location or in the designated manner, will not be accepted and will be returned to the
Bidder unopened.

ARTICLE 15—MODIFICATION AND WITHDRAWAL OF BID

15.01 An unopened Bid may be withdrawn by an appropriate document duly executed in the same
manner that a Bid must be executed and delivered to the place where Bids are to be submitted
prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid
will be returned to the Bidder.

15.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the
manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the
opening of Bids.

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

ARTICLE 16—OPENING OF BIDS

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

ARTICLE 17—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

17.01 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 18—EVALUATION OF BIDS AND AWARD OF CONTRACT

18.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming,
nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor
Bid informalities not involving price, time, or changes in the Work.

18.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation,
to not be responsible.

18.03 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, whether in the Bid itself or in a separate communication to Owner or Engineer, then Owner will reject the Bid as nonresponsive.

18.04 If Owner awards the contract for the Work, such award will be to the responsible Bidder submitting the lowest responsive Bid.

18.05 **Evaluation of Bids**

A. In evaluating Bids, Owner will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

18.06 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.

18.07 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.

**ARTICLE 19—BONDS AND INSURANCE**

19.01 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, other required bonds (if any), and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by required bonds and insurance documentation.

19.02 Article 8, Bid Security, of these Instructions, addresses any requirements for providing bid bonds as part of the bidding process.

**ARTICLE 20—SIGNING OF AGREEMENT**

20.01 When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 5 (five) days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required to be delivered by the Contract Documents to Owner. Within 10 days thereafter, Owner will deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.
BID BOND (PENAL SUM FORM)

Bidder
Name:
Address *(principal place of business)*:

Surety
Name:
Address *(principal place of business)*:

Owner
Name:
Address *(principal place of business)*:

Bid
Project *(name and location)*:
Bid Due Date:

Bond
Penal Sum:
Date of Bond:

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

<table>
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<th>Surety</th>
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<tr>
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<td>By:</td>
<td>By:</td>
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<td>(Full formal name of Bidder)</td>
<td>(Full formal name of Surety) <em>(corporate seal)</em></td>
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<tr>
<td>(Signature)</td>
<td>(Signature) <em>(Attach Power of Attorney)</em></td>
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Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.
1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder’s and Surety’s liability. Recovery of such penal sum under the terms of this Bond will be Owner’s sole and exclusive remedy upon default of Bidder.

2. Default of Bidder occurs upon the failure of Bidder to deliver 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.

3. This obligation will be null and void if:
   
   3.1. 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, or
   
   3.2. All Bids are rejected by Owner, or
   
   3.3. 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).

4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by 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.

5. 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, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety’s written consent.

6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.

7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder must 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 Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.

9. 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.

10. 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 will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.

11. The term “Bid” as used herein includes a Bid, offer, or proposal as applicable.
SCOPE OF WORK
&
OFFICIAL BID FORM

BID #19-05

US 27 North Water Main and Force Main Utility Extension

THE CITY OF AVON PARK, FLORIDA
SCOPE OF WORK

GENERAL DESCRIPTION OF THE WORK:

The City of Avon Park is seeking to procure the construction of:

An approximate 6,050-foot extension of an existing 8-inch force main along County and FDOT rights-of-ways from Lanier Blvd. to the intersection of West Sunpure Road and Lemon Street as shown on the plans, specifications and bid documents.

An approximate 7,800-foot extension of an existing 12-inch potable water distribution line along County and FDOT rights-of-ways from Stratford Road to the intersection of West Sunpure Road and Lemon Street as shown on the plans, specifications and bid documents.

A new lift station and associated work on an utility site located on the southerly side of the intersection of West Sunpure Road and Lemon Street as shown on the plans, specifications and bid documents.

All other associated work, including maintenance of the work area and restoration of the construction disturbed right of way.

The plans, specifications and bid documents are available at the City of Avon Park website www.avonpark.cc under “open bids”, and shall be adhered as part of the construction.

All quantities shown in the bid documents are engineer estimates only and included only for reference. It is the responsibility of each bidder/contractor to verify the quantities, materials and lengths of each phase of the utility construction or installation. The quantities and unit prices are for reference only and are needed for bid review and pay approval purposes, shown for reference. This is to be considered basically a lump sum bid, payment will not be on unit price basis. Each bidder should bid on their own calculated or estimated quantities.

All joints MJ Sleeves PVC to SDR 11 HDPE will require S.S. Stiffeners and EBAA mega lug restraints.

GENERAL SCOPE OF WORK / 12" & 14" WATER LINE:

1. The contractor will install approximately 7,800 feet of water main by means of open ditch, directional bore method and steel jack and bore under the CSX railroad. The contractor will furnish all materials including but not limited to: all water line, fire hydrant assemblies, valves, valve boxes, sample points/ blow offs/ manual air release valves, EBAA mega lug restraints, locator wire, warning tape, all fittings, tapping saddles, wet taps, steel jacking casing pipe, carrier pipe with all restraint / spacers, steel pipe end caps, equipment, labor, sub-contractors, pressure testing, bacteriological test including lab fees, etc.

2. The contractor will be responsible for all construction layout and as-builts by hiring a licensed professional land surveyor to also supply six (6) hard copies of a certified as-builts along with one (1) AutoCAD as-builts on disc.
3. The contractor will be required to furnish all safety equipment and signage including any needed detour routes (plans) submitted to Highlands County and or the State of Florida Department of Transportation.

4. All work must be coordinated with the engineer of record, the City of Avon Park and the Florida Department of Transportation prior to any construction.

5. All fittings will be mj & mega lug (EBAA) style as per the City of Avon Park requirements.

6. The contractor will refer to the City of Avon Park "Water Materials Specification" list for approved product brands and models.

7. All approvals and submissions shall be to the engineer and the City of Avon Park, with final authority resting with the City of Avon Park.

8. All disturbed areas will be completely restored to the original condition and sodded.

9. This project will be a turn key, 100% completed project.

10. Water main construction will be from Stratford Road (starting point) northerly to the intersection of West Sunpure Road and Lemon Street (end point). A steel jack and bore will be required under the CSX railroad as per plans. Project is located in Sections 4 & 9, Township 33S, Range 28E, Highlands County, Florida.

Please see materials bid sheet for additional information. All MJ fittings will require EBAA mega-lug restraints.

**GENERAL SCOPE OF WORK / 8" & 10" FORCE MAIN:**

**Force Main Installation Scope of Work**

1. The contractor will install approximately 6,050 feet of force main by means of open ditch, directional bore method and steel jack and bore under the CSX railroad. The contractor will furnish all materials including but not limited to: all force main pipe, valves, valve boxes, air release valves, EBAA mega lug restraints, locator wire, warning tape, all fittings, tapping saddles, wet taps, steel jacking casing pipe, carrier pipe with all restraint / spacers, steel pipe end caps, equipment, labor, sub-contractors, pressure testing, etc.

2. The contractor will be responsible for all construction layout and as-builts by hiring a licensed professional land surveyor to also supply six (6) hard copies of a certified as-builts along with one (1) AutoCAD as-builts on disc.

3. The contractor will be required to furnish all safety equipment and signage including any needed detour routes (plans) submitted to Highlands County and or the State of Florida Department of Transportation.

4. All work must be coordinated with the engineer of record, the City of Avon Park and the Florida Department of Transportation prior to any construction.

5. All fittings will be MJ & mega lug (EBAA) style as per the City of Avon Park requirements.

6. The contractor will refer to the City of Avon Park "Waste Water Materials Specification" list for approved product brands and models.
7. All approvals and submissions shall be to the engineer and the City of Avon Park, with final authority resting with the City of Avon Park.

8. All disturbed areas will be completely restored to the original condition and sodded.

9. This project will be a turn key, 100% completed project.

10. The force main construction will be from Lanier Blvd. (starting point) northerly to the intersection of West Sunpure Road and Lemon Street (end point), a steel jack and bore will be required under the CSX railroad as per plans. Project is located in Section 4, Township 33S, Range 28E, Highlands County, Florida.

GENERAL SCOPE OF WORK / LIFT STATION:

1. The contractor will construct the lift station. The contractor will supply the pumps, base flanges, discharge pipes, rails, lifting chain (if needed), control panel, electrical components, junction box, "dataflow" telemetry and antenna, valve box, piping, valves, flanges, floats, lift station wet well w/ Agru Sure-Grip HDPE liner, etc. The contractor will be required to supply all supplies, materials and equipment for a fully operational lift station, also including the lift station compound, including a water service with hose-bib with a back flow preventor, (to be coordinated with the Avon Park Utilities Dept.), crushed concrete area, drain field stone area, concrete pads, 6 foot high chain-link fence with gates, concrete driveway, landscaping/irrigation, manholes, gravity sewer, open cut road and patching road, etc. as per site plan.

2. The contractor will need the services of a licensed electrician. the engineer of record must be notified on any changes or modifications for approval.

3. All work must be coordinated with the engineer of record and the City of Avon Park prior to any construction.

4. The contractor will construct the proposed force main and connect it into the existing 8" force main within the northerly r/w of Lanier Blvd.

5. Test lift station for proper operation.

6. The contractor will restore the rights-of-ways to existing grade and all disturbed areas are to be sodded with the same type of grass.

7. All fittings will be MJ& mega lug (EBAA) style as per the City of Avon Park requirements.

8. The contractor will be required to contact and coordinate with Duke Energy to provide the appropriate power requirements into the site for this project.

9. The contractor will be responsible for purchasing, installation and connection of the generator to provide a complete functioning lift station powered by Duke Energy and the generator.

10. Junction box and control panel will be stainless steel.

11. Survey property lines and survey as-built of utility site consisting of six (6) certified hard copies and one (1) AutoCAD disc.


NOTES:
1. The site will be graded away from the lift station.

2. Refer to the City of Avon Park "Waste Water Materials Specification" list for approved product brands and models.

3. Concrete shall be 4000 psi concrete with Type II cement. Concrete surfaces shall receive a liner as stated.

4. All reinforced concrete structures shall be in accordance with ACI code 318. Steel yield strength shall be 60,000 psi (grade 60). Wet well wall shall conform to either:
   a. cast in place #5 re-bar@12" o.c.b.w. in the center 1/3
   or  b. pre cast sections: ASTM C478

5. Upper slabs shall be positively joined to wet well wall.

6. Cast iron saddle in the discharge piping shall support a tee w/ 1/2" S.S. lever valve and a 2.5" minimum size liquid filled pressure gauge installed where indicated.

7. By-pass connection to be brass quick-disconnect type, part "D" Female Coupler and Part "W" Plug.

8. Non-shrink grout shall seal around all pipe unless specified otherwise by the City of Avon Park.

9. Grounding shall be two 5/8" copper-clad grounding rods, minimum 8 feet long and 6 feet apart, connected 12" below ground level. Conductors shall be #4 solid copper and connectors shall be Cadweld, bolt clamp or split clamp.

10. Top of slab to be a minimum of 6" above finish grade, and drainage shall be away from the lift station.

11. Pump base anchor bolt location and size shall be per manufacturer's shop drawing.

12. Face and top of power panel and are to be flush.

13. Conduits (all 2") shall have a minimum 24" of cover, with the exception of power supply conduit, in which case the cover shall be minimum 42".

14. Conduit shall be as follows:
   above grade- rigid aluminum
   below grade- rigid aluminum or Sch 80 pvc

15. All anchors shall be Hilti type 316 SS or approved equal with type 316 SS fasteners.

16. All approvals and submissions shall be to the engineer and the City of Avon Park, with final authority resting with the City of Avon Park.

Please see materials bid sheet for additional information. All MJ fittings will require EBAA mega-lug restraints.

-ALL UTILITIES ARE TO BE LOCATED BY THE UNDERGROUND UTILITY CONTRACTOR AND THE CONTRACTOR IS TO COORDINATE ALL UTILITY RELOCATIONS REQUIRED TO CONSTRUCT THE IMPROVEMENTS.

-THE UNDERGROUND UTILITY CONTRACTOR IS RESPONSIBLE FOR REMOVAL/RELOCATION OF ANY LANDSCAPE OR PLANTINGS THAT CONFLICT WITH NEW CONSTRUCTION. UNLESS OTHERWISE NOTED BY THE CITY.
-ALL DISTURBED AREAS IN THE RIGHT OF WAYS, BOTH COUNTY AND STATE ARE TO BE REPAIRED AND SODDED.
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<td>Includes 12&quot;x12&quot;x6&quot; meg-a-lug tee</td>
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<tr>
<td>Locator Tape</td>
<td>2&quot;</td>
<td>6500</td>
<td>FT</td>
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<td>Locator Wire</td>
<td>12 gauge</td>
<td>9200</td>
<td>FT</td>
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<td>Water Tees</td>
<td>12&quot; / meg-a-lug</td>
<td>6</td>
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<tr>
<td>Manual Air Release Valve / Sample Point with fittings</td>
<td>12&quot; x 2&quot; Tapping Saddle</td>
<td>8</td>
<td>EA</td>
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<td>Water 90's</td>
<td>12&quot; / meg-a-lug</td>
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<td>EA</td>
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<td>Water 45's</td>
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<td>12</td>
<td>EA</td>
<td></td>
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<td>Water 22.5's</td>
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<td>4</td>
<td>EA</td>
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<td></td>
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<td>Sewer Force Main 8&quot; DR 18 C-900</td>
<td>Including 16&quot; Steel Casing</td>
<td>200</td>
<td>FT</td>
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<td>Excavation, storage of fill material, re-filling pit with compaction &amp; sodding for Jack &amp; Bore</td>
<td>Estimated</td>
<td>7600</td>
<td>CY</td>
<td></td>
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<tr>
<td>Excavation Shoring</td>
<td>Shoring</td>
<td>1</td>
<td>LS</td>
<td></td>
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<tr>
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<td>1</td>
<td>LS</td>
<td></td>
<td></td>
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<td>1</td>
<td>LS</td>
<td></td>
<td></td>
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<td>Tree removal</td>
<td></td>
<td></td>
<td></td>
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<td>SUB-TOTAL</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Lift Station</td>
<td>1</td>
<td>LS</td>
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<tr>
<td>Wet well</td>
<td></td>
<td></td>
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<tr>
<td>8' Ø, 22' deep, Agru Sure-Grip HDPE lined / rails / chain / vent / lid / hooks</td>
<td></td>
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<td>Electronics</td>
<td></td>
<td></td>
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<tr>
<td>Control panel sized for future lift station</td>
<td>1</td>
<td>LS</td>
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<td>Junction box</td>
<td>1</td>
<td>LS</td>
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<td>Dual 35hp 460V, 3ph 2 PUMPS</td>
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<td>Floats</td>
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<td>Valves above ground</td>
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<tr>
<td>6&quot; gate valve</td>
<td>3</td>
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<td>6&quot; weighted arm check valve</td>
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<td>By-pass connection</td>
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<td>Pressure gauge &amp; air release valve</td>
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<td>6&quot; manifold</td>
<td>1</td>
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<td>8'x8'x6&quot; concrete slab</td>
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<td>LS</td>
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<td>Misc pipe / fittings</td>
<td>80</td>
<td>LF</td>
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<td>Antenna / slab / controls</td>
<td>1</td>
<td>LS</td>
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<td>Water</td>
<td></td>
<td></td>
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<tr>
<td>Potable/landscaping</td>
<td>1</td>
<td>LS</td>
<td></td>
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<tr>
<td>Generator</td>
<td></td>
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<td>200kW - 48 hr runtime</td>
<td>1</td>
<td>LS</td>
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<tr>
<td>18'x6'x12&quot; concrete slab</td>
<td>1</td>
<td>LS</td>
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<tr>
<td>Interior yard area</td>
<td></td>
<td></td>
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<tr>
<td>47'x18'x12&quot; compacted crushed concrete</td>
<td>32</td>
<td>CU.YD.</td>
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<td>47'x19'x6&quot; clean drain field stone</td>
<td>17</td>
<td>CU.YD.</td>
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<td>Perimeter fencing</td>
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<td>180 lf of 6' chain link including 16' wide gate</td>
<td>1</td>
<td>LS</td>
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<td>Landscaping</td>
<td></td>
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<td>plants</td>
<td>40</td>
<td>SHRUB</td>
<td></td>
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<tr>
<td>mulch</td>
<td>4</td>
<td>YD</td>
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<td>sod</td>
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<td>SQ.FT.</td>
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<td>Item Description</td>
<td>Quantity</td>
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<td>irrigation</td>
<td>1</td>
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<td>Manhole HDPE Lined</td>
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<tr>
<td>6' dia. x ±8' deep - Nucor surge</td>
<td>1</td>
<td>LS</td>
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<tr>
<td>6' dia. x ±8' deep - City of Avon Park Surge</td>
<td>1</td>
<td>LS</td>
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<tr>
<td>Gravity sewer</td>
<td></td>
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<tr>
<td>12&quot; SDR 35</td>
<td>82</td>
<td>LF</td>
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<td>14&quot; SDR 11</td>
<td>60</td>
<td>LF</td>
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<tr>
<td>Steel Bollards</td>
<td>3</td>
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<tr>
<td>Paved access</td>
<td>Concrete driveway</td>
<td>600</td>
<td>SQ.FT.</td>
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<tr>
<td>Electricity/Electrician</td>
<td>1</td>
<td>LS</td>
<td></td>
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<tr>
<td>Misc</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>6'x6'x6&quot; concrete slab</td>
<td>1</td>
<td>LS</td>
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</tbody>
</table>

Note: All fittings to be mechanical Joint type with EBAA Mega Lug. All HDPE connections will require stainless steel stiffeners. The Underground Contractor will verify all quantities and add any missing materials to his bid for a 100% complete project. All staking will be under the direct supervision of a Licensed Professional Land Surveyor. Force mains and water lines will need to be staked in the Florida Department of Transportation and County R/W's and verified by Florida Department of Transportation or Highlands County prior to installation, dependent of jurisdiction. The Licensed Professional Land Surveyor will issue 6 signed and sealed As-Built Survey's along with an AutoCAD format As-Built drawing on CD showing all utility improvements to the Engineer of Record after completion of the project.

This “Official Bid Form” MUST BE USED AND COMPLETED in submitting bids.

BID SUBMITTED BY:________________________________________________________

Name of Company Address

__________________________________________

Signature Title City State Zip

Name as above printed or typed Date bid Submitted

The City reserves the right to accept or reject any or all bids or any parts thereof that may be considered to be in the best interest of the City of Avon Park.
REFERENCE FORM

INSTRUCTIONS: Please provide a minimum of five applicable projects which demonstrate the contractor’s ability and experience on projects of similar scope and size.

Project Owner: _______________________________________________________

Contact Person: _______________________________________________________

Phone: _______________________________________________________

Cost of Project: _______________________________________________________

Project Scope of Services: _______________________________________________________

Project Owner: _______________________________________________________

Contact Person: _______________________________________________________

Phone: _______________________________________________________

Cost of Project: _______________________________________________________

Project Scope of Services: _______________________________________________________

...
Project Owner: _______________________________________________________

Contact Person: _______________________________________________________

Phone: ______________________________________________________________

Cost of Project: _______________________________________________________

Project Scope of Services: ______________________________________________

Project Owner: _______________________________________________________

Contact Person: _______________________________________________________

Phone: ______________________________________________________________

Cost of Project: _______________________________________________________

Project Scope of Services: ______________________________________________
AGREEMENT BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between City of Avon Park, Florida ("Owner") and
_______________________________________________________________________ ("Contractor").

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

Owner and Contractor hereby agree as follows:
ARTICLE 1—WORK

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

City of Avon Park ITB#19-05 North Water Main and Force Main Utility Extension

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

An approximate 6,050-foot extension of an existing 8-inch force main along County and FDOT rights-of-ways from Lanier Blvd. to the intersection of West Sunpure Road and Lemon Street as shown on the plans, specifications and bid documents.

An approximate 7,800-foot extension of an existing 12-inch potable water distribution line from force main along County and FDOT rights-of-ways from Stratford Road to the intersection of West Sunpure Road and Lemon Street as shown on the plans, specifications and bid documents.

A new lift station and associated work on an easement located on the southerly side of the intersection of West Sunpure Road and Lemon Street as shown on the plans, specifications and bid documents.

All other associated work, including maintenance of the work area and restoration of the construction disturbed right of way.

ARTICLE 3—ENGINEER

3.01 The Owner has retained

Cool and Cobb Engineering Company
James Mason Cobb, P.E., President, Carl E. Cool, P.E., Vice President
203 W. Main Street
Avon Park, FL 33825
863-657-2323, fax 863-657-2324

(“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by

Polston Engineering Inc
Roger Dale Polston, PE 33222, President
2925 Kenilworth Blvd.
Sebring, FL 33870
863-385-5564, fax 863-385-2462, dale@polstonengineering.com
ARTICLE 4—CONTRACT TIMES

4.01 Time is of the Essence

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

4.02 Contract Times: Dates

A. The Work will begin no later than September 27, 2019 and be substantially complete on or before January 31, 2020, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before February 29, 2020.

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 Contract Times, as duly modified. 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 $500.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified 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 Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $500.00 for each day that expires after such time until the Work is completed and ready for final payment.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner’s sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.04 Special Damages

A. 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 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 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.
C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

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 prices stated in Contractor’s Bid, attached hereto as an exhibit.

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 the basis of Contractor’s Applications for Payment on or about the [15th] day of each month during performance of the Work 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. 90 (ninety) percent of the value of the Work completed (with the balance being retainage).

      1) If 50 percent or more of 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. [50 (fifty)] percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 (one hundred) percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 (two hundred) percent of Engineer’s estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
6.03  Final Payment
A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04  Consent of Surety
A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05  Interest
A. All amounts not paid when due will bear interest at the rate of 5.0 (five) percent per annum.

ARTICLE 7—CONTRACT DOCUMENTS

7.01  Contents
A. The Contract Documents consist of all of the following:
   1. This Agreement.
   2. Bonds:
      a. Performance bond (together with power of attorney).
      b. Payment bond (together with power of attorney).
   3. General Conditions.
   4. Supplementary Conditions.
   6. Florida Job Growth Infrastructure Grant Agreement, agreement number G0061.
   7. Specifications as listed in the table of contents of the project manual (copy of list attached).
   8. Drawings (not attached but incorporated by reference) consisting of [number] sheets with each sheet bearing the following general title: [title on Drawings].
   9. Addenda (numbers [number] to [number], inclusive).
   10. Exhibits to this Agreement (enumerated as follows):
      a. [list exhibits]
   11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
      a. Notice to Proceed.
      b. Work Change Directives.
      c. Change Orders.
      d. Field Orders.
      e. Warranty Bond, if any.
B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor’s Representations

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

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. 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 Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor’s safety precautions and programs.

5. 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.

6. 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.

7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Enginee is acceptable to Contractor.

8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. 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.

8.02 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 8.02:

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.
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:  
(typed or printed name of organization)  
By:  
(individual’s signature)  
Date:  
(date signed)  
Name:  
(typed or printed)  
Title:  
(typed or printed)  
Attest:  
(individual’s signature)  
Title:  
(typed or printed)  
Address for giving notices:  

Contractor:  
(typed or printed name of organization)  
By:  
(individual’s signature)  
Date:  
(date signed)  
Name:  
(typed or printed)  
Title:  
(typed or printed)  
Attest:  
(individual’s signature)  
Title:  
(typed or printed)  
Address for giving notices:  

Designated Representative:  
Name:  
(typed or printed)  
Title:  
(typed or printed)  
Address:  

Phone:  
Email:  

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)
DEO Agreement No.: G0061

FLORIDA JOB GROWTH INFRASTRUCTURE GRANT AGREEMENT
STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

THIS FLORIDA JOB GROWTH INFRASTRUCTURE GRANT AGREEMENT (this “Agreement”) is made and entered into by and between the State of Florida, Department of Economic Opportunity (“DEO”), and the City of Avon Park (“Grantee”). DEO and Grantee are sometimes referred to herein individually as a “Party” and collectively as “the Parties.”

RECITALS

WHEREAS, Pursuant to section 288.101, Florida Statutes (“F.S.”) Grantee submitted a proposal for funds;

WHEREAS, based on Grantee’s submitted proposal and any amendments thereto (collectively, the “Proposal”), DEO has determined that the project described in Exhibit A, Scope of Work, attached and incorporated in this Agreement (the “Project”) is necessary to facilitate the economic development and growth of the State;

WHEREAS, DEO has determined that Grantee’s commitments satisfy the requirements necessary to recommend the proposed project described in the Proposal to the Governor of the State of Florida for an award from the Florida Job Growth Grant Fund (the “Grant Fund”) pursuant to Section 288.101, F.S.;

WHEREAS, DEO is authorized to enter into this Agreement pursuant to section 288.101, F.S. Grantee has authorized its officers to execute this Agreement on Grantee’s behalf by Resolution or, alternatively, by other DEO-approved form of official authorization, a copy of which is attached as Exhibit E and made a part of this Agreement;

WHEREAS, the following Exhibits are attached hereto and incorporated herein as an integral part of this Agreement:

- Exhibit A: Scope of Work
- Exhibit B: Audit Requirements
- Exhibit C: Audit Compliance Certification
- Exhibit D: Intentionally Left Blank
- Exhibit E: Grantee’s Resolution;

WHEREAS, this Agreement and its Exhibits are hereinafter collectively referred to as the “Agreement”, and if any inconsistencies or conflict between the language of this Agreement and its Exhibits arise, then the language of the Exhibits shall control, but only to the extent of the conflict or inconsistency;

NOW, THEREFORE, for and in consideration of the agreements, covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENT

1. TERM. This Agreement is effective as of the date on which DEO executes this Agreement (such date, the “Effective Date”) and shall continue until the earlier to occur of (a) December 31, 2035 (such date, the “Expiration Date”) unless an extension of the time period is requested by Grantee and granted in writing by DEO prior to the expiration of this Agreement or (b) the date on which this Agreement is terminated.
pursuant to Section 27. Notwithstanding the foregoing, the provisions of Sections 2, 7-11, 15, 16, 19, 26-31, 37, and Sections 5 and 11 of Exhibit A, Scope of Work shall survive the termination or expiration of this Agreement; provided, however, that the record-keeping and audit-related obligations set forth in Section 11 shall terminate in accordance with the requirements of Section 11. Expiration of this Agreement will be considered termination of the Project. Notwithstanding the foregoing, in the event that Grantee fully satisfies its obligations set forth in Exhibit A, Scope of Work, as determined by DEO in its reasonable discretion, prior to the date set forth in the preceding sentence, then the “Expiration Date” shall be the date of such determination.

2. PERFORMANCE REQUIREMENTS: Grantee shall perform the services specified herein in accordance with the terms and conditions of this Agreement and all attachments and exhibits attached hereto and incorporated herein.

3. TYPE OF AGREEMENT: This Agreement is a cost reimbursement agreement.

4. RELEASE OF FUNDS: DEO shall pay Grantee up to Nine Hundred Seventy-One Thousand Five Hundred Dollars ($971,500) in consideration for Grantee’s performance and services pursuant to this Agreement. In accordance with s. 287.0582, F.S., the State of Florida and DEO’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. DEO has final authority as to both the availability of funds and what constitutes an “annual appropriation” of funds. The lack of appropriation or availability of funds shall not constitute a default by DEO. Grantee shall not use funds provided pursuant to s. 288.101, F.S., for the exclusive benefit of any single company, corporation, or business entity. DEO has final authority as to what may constitute an “exclusive benefit of any single company, corporation, or business entity” under this Agreement. Use of funds provided pursuant to s. 288.101, F.S., for the exclusive benefit of any single company, corporation, or business entity is strictly prohibited, and DEO may, in its sole discretion, terminate this Agreement and demand immediate repayment of all funds, plus reasonable interest thereon, if DEO determines that Grantee used funds provided pursuant to this Agreement for the exclusive benefit of any single company, corporation, or business entity. Grantee is liable for all costs in excess of the amount paid by DEO.

5. PAYMENTS TO GRANTEE:
   a. Grantee shall provide DEO’s Agreement Manager invoices in accordance with the requirements of the State of Florida Reference Guide for State Expenditures (http://www.myfloridalcf.com/aadir/reference_guide/) and with detail sufficient for a proper pre-audit and post-audit thereof. Invoices must also comply with the following:
      1) Invoices must be legible and must clearly reflect the goods/services that were provided in accordance with the terms of this Agreement for the invoicing period. Payment does not become due under this Agreement until DEO accepts and approves the invoiced deliverable(s) and any required report(s).
      2) Invoices must contain Grantee’s name, address, federal employer identification number or other applicable Grantee identification number, this Agreement number, the invoice number, and the invoice period. DEO or the State may require any additional information from Grantee that DEO or the State deems necessary to process an invoice in their sole and absolute discretion.
      3) Invoices must be submitted in accordance with the time requirements specified in Exhibit A, SCOPE OF WORK.
   b. At DEO’s or the State’s option, Grantee may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Grantee supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to DEO’s Agreement Manager through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, eXML, or web-based invoice entry within the ASN.
   c. Payment shall be made in accordance with s. 215.422, F.S., governing time limits for payment of invoices. The SCOPE OF WORK may specify conditions for retainage. Invoices returned to a Grantee due
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to preparation errors will result in a delay of payment. DEO is responsible for all payments under this Agreement.

d. Section 55.03(1), F.S., identifies the process applicable to the determination of the rate of interest payable on judgments and decrees, and pursuant to s. 215.422(3)(b), F.S., this same process applies to the determination of the rate of interest applicable to late payments to vendors for goods and services purchased by the State and for contracts which do not specify a rate of interest. The applicable rate of interest is published at: http://www.myfloridacfo.com/aadir/interest.htm.

e. If authorized and approved, Grantee may be provided an advance as part of this Agreement.

f. VENDOR OMBUDSMAN: In accordance with s. 215.422(5), F.S., a Vendor Ombudsman, within the Department of Financial Services, advocates for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Chief Financial Officer’s Hotline, (800) 342-2762.

6. REQUIREMENTS OF SECTION 287.058(1)(A) THROUGH (I), FLORIDA STATUTES:

a. Grantee shall submit bills for fees or other compensation for services or expenses in detail sufficient for a proper pre-audit and post-audit thereof.

b. Travel expenses are not authorized under this Agreement.

c. DEO shall have the right to unilaterally cancel this Agreement for Grantee’s refusal to allow public access to all documents, papers, letters or other materials made or received by Grantee in conjunction with this Agreement, unless the records are exempt from s. 24(a) of Article I of the State Constitution and s. 119.07(1), F.S.

d. Grantee shall perform all tasks contained in Exhibit A, SCOPE OF WORK, attached hereto and incorporated herein.

e. DEO shall not pay Grantee until DEO: (1) determines satisfactory completion of each Deliverable described in the SCOPE OF WORK in accordance with the “Minimum Level of Service” and (2) gives Grantee written notice of same.

f. Grantee shall comply with all criteria stated in Exhibit A, SCOPE OF WORK, and final date by which such criteria must be met for completion of this Agreement.

g. This Agreement may not be renewed.

h. If Grantee fails to perform in accordance with this Agreement, DEO shall apply the financial consequences specified in Exhibit A, SCOPE OF WORK, of this Agreement.

i. Unless otherwise agreed upon in a separate writing, Grantee shall own all intellectual property rights preexisting the starting date of this Agreement, and the State of Florida through DEO shall own all intellectual property rights Grantee or Grantee’s agent or contractor created or otherwise developed in performance of this Agreement after the starting date of this Agreement; provided, further, that proceeds derived from the sale, licensing, marketing, or other authorization related to any such state-owned intellectual property right shall be handled in the manner specified by applicable state statute.

7. REPRESENTATIONS AND WARRANTIES. Grantee hereby makes the following representations and warranties to DEO, each of which shall be deemed to be a separate representation and warranty, all of which have been made for the purpose of inducing DEO to enter into this Agreement, and in reliance on which DEO has entered into this Agreement, as of the Effective Date, the dates on which Grantee submits each request for reimbursement under this Agreement, and the dates on which Grantee receives any reimbursement:

a. Grantee has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary actions on the part of Grantee. After Grantee’s execution and delivery and upon DEO’s execution and delivery of this Agreement, this Agreement constitutes the legal, valid, and binding obligation of Grantee, enforceable against Grantee in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies).

b. Grantee’s execution and delivery of this Agreement and Grantee’s performance of the transactions contemplated hereby do not: (i) conflict with or result in a breach of any provision of Grantee’s
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charter or similar constitutive document, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of Grantee's indentures, material agreements or other material instruments; or (iii) violate any applicable law or regulation. Grantee has not been convicted of a "public entity crime" (as such term is defined in Section 287.133 of the Florida Statutes) nor has Grantee been placed on the "discriminatory vendor list" (as such term is defined in Section 287.134 of the Florida Statutes). None of Grantee's elected or appointed officers, agents, employees, or other persons acting on its behalf has taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business from any person or entity in violation of applicable law.

c. No event, change or condition has occurred that has had, or would reasonably be expected to have, a material adverse effect on the financial condition of Grantee or the Project, in each case, since the date of the Proposal. No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of Grantee, threatened by or against Grantee or against any of its properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the financial condition of Grantee, the Project, or Grantee's ability to perform its obligations under this Agreement. No state or federal criminal investigation, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, the United States Department of Justice, or any other prosecutorial or law enforcement authority is pending or, to the knowledge of Grantee, threatened by or against Grantee or any of its elected officials.

d. DEO shall be deemed to have relied upon the express representations and warranties set forth herein notwithstanding any knowledge on the part of DEO of any untruth of any such representation or warranty of Grantee expressly set forth in this Agreement, regardless of whether such knowledge was obtained through DEO’s own investigation or otherwise, and regardless of whether such knowledge was obtained before or after the execution and delivery of this Agreement. No information, report, financial statement, exhibit or schedule furnished by Grantee to DEO or Enterprise Florida, Inc., in connection with the negotiation of this Agreement (including, without limitation, the Proposal) or delivered pursuant to this Agreement when taken together, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

8. LAWS APPLICABLE TO THIS AGREEMENT:

a. The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction without limiting the provisions of the DISPUTE RESOLUTION Section of this Agreement, the exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Leon. The Parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Leon County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. Should any term of this Agreement conflict with any applicable law, rule, or regulation, the applicable law, rule, or regulation shall control over the provisions of this Agreement. IN ANY LEGAL OR EQUITABLE ACTION BETWEEN THE PARTIES, THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW.

b. If applicable, Grantee is in compliance with the rules for e-procurement as directed by rule 60A.1033, F.A.C., and that it will maintain eligibility for this Agreement through the MyFloridaMarketplace.com system.

c. Grantee shall not expend any funds provided under this Agreement for the purpose of lobbying the Legislature, the judicial branch, or any state agency. DEO shall ensure compliance with s. 11.062,
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F.S., and s. 216.347, F.S. Grantee shall not, in connection with this or any other agreement with the State, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of DEO's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. Grantee shall retain such records in accordance with the record retention requirements of Part V of Exhibit B, AUDIT REQUIREMENTS.

d. Grantee shall reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of Grantee's compliance with the terms of this or any other agreement between Grantee and the State which results in the suspension or debarment of Grantee. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Grantee shall not be responsible for any costs of investigations that do not result in Grantee's suspension or debarment. Grantee understands and will comply with the requirements of s. 20.055(5), F.S., including but not necessarily limited to, the duty of Grantee and any of Grantee's subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to s. 20.055, F.S.

c. Public Entity Crime: Grantee is aware of and understands the provisions of s. 287.133(2)(a), F.S. pursuant to which a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on an agreement to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on an agreement with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor or consultant under an agreement with any public entity and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, F.S., for Category Two ($35,000 in 2017) for a period of 36 months from the date of being placed on the convicted vendor list. Grantee shall disclose to DEO if Grantee, or any of Grantee's affiliates, as defined in s. 287.133(1)(a) of the Florida Statutes, is on the convicted vendor list or on any similar list maintained by any other state or the federal government.

d. Limitations on Advertising of Agreement: Subject to chapter 119, F.S., Grantee shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Grantee's name and either a description of this Agreement or the name of DEO or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual employees, agents, representatives, or subcontractors with the professional skills necessary to perform the work services this Agreement requires.

e. Disclosure of Sponsorship: As required by s. 286.25, F.S., if Grantee is a nongovernmental organization that sponsors a program financed wholly or in part by state funds, including any funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Grantee's name) and the State of Florida, Department of Economic Opportunity." If the sponsorship reference is in written material, the words "State of Florida, Department of Economic Opportunity" shall appear in the same size letters or type as the name of the organization.

h. Mandatory Disclosure Requirements:

1) Conflict of Interest: This Agreement is subject to chapter 112, F.S. Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a 5 percent interest in Grantee or Grantee's affiliates.

2) Vendors on Scrutinized Companies Lists: Grantee is aware of and understands the provisions of s. 287.134(2)(a), F.S. As required by s. 287.135(5), Grantee certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, F.S.; (2) engaged in a
boycott of Israel; (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, F.S.; (4) engaged in business operations in Cuba or Syria; or (5) engaged in business operations with the government of Venezuela or in any company doing business with the government of Venezuela.

a) Pursuant to s. 287.135(5), F.S., DEO may immediately terminate this Agreement if Grantee submits a false certification as to the above, or if Grantee is placed on the Scrutinized Companies that Boycott Israel List, engages in a boycott of Israel, is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has engaged in business operations in Cuba, Syria, or Venezuela.

b) If DEO determines that Grantee has submitted a false certification, DEO will provide written notice to Grantee. Unless Grantee demonstrates in writing, within 90 calendar days of receipt of the notice, that DEO’s determination of false certification was made in error, DEO shall bring a civil action against Grantee. If DEO’s determination is upheld, a civil penalty equal to the greater of $2 million or twice the amount of this Agreement shall be imposed on Grantee, and Grantee will be ineligible to bid on any Agreement with any agency or local governmental entity for three years after the date of DEO’s determination of false certification by Grantee.

c) If federal law ceases to authorize the states to adopt and enforce the contracting prohibition identified herein, this provision shall be null and void.

3) Discriminatory Vendors: Grantee shall disclose to DEO if it or any of its affiliates, as defined by s. 287.134(1) (a), F.S., appears on the discriminatory vendor list. An entity or affiliate placed on the discriminatory vendor list pursuant to s. 287.134, F.S., may not: (1) submit a bid, proposal, or reply on a contract or agreement to provide any goods or services to a public entity; (2) submit a bid, proposal, or reply on a contract or agreement with a public entity for the construction or repair of a public building or public work; (3) submit bids, proposals, or replies on leases of real property to a public entity; (4) be awarded or perform work as a contractor, subcontractor, Grantee, supplier, subgrantee, or consultant under a contract or agreement with any public entity; or (5) transact business with any public entity.

4) Abuse, Neglect, and Exploitation Incident Reporting: In compliance with ss. 39.201 and 415.1034, F.S., an employee of Grantee who knows or has reasonable cause to suspect that a child, aged person, or disabled adult is or has been abused, neglected, or exploited shall immediately report such knowledge or suspicion to the Florida Abuse Hotline by calling 1-800-96ABUSE, or via the web reporting option at www.myflfamilies.com/service-programs/abuse-hotline, or via fax at 1-800-914-0004.

5) Information Release:

a) Grantee shall keep and maintain public records required by DEO to perform Grantee’s responsibilities hereunder. Grantee shall, upon request from DEO’s custodian of public records, provide DEO with a copy of the requested records or allow the records to be inspected or copied within a reasonable time per the cost structure provided in chapter 119, F.S., and in accordance with all other requirements of chapter 119, F.S., or as otherwise provided by law. Upon expiration or termination of this Agreement, Grantee shall transfer, at no cost, to DEO all public records in possession of Grantee or keep and maintain public records required by DEO to perform the service. If Grantee keeps and maintains public records upon completion of this Agreement, Grantee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to DEO, upon request from the DEO’s custodian of records, in a format that is compatible with the information technology systems of DEO.

b) If DEO does not possess a record requested through a public records request, DEO shall notify Grantee of the request as soon as practicable, and Grantee must provide the records to DEO or allow the records to be inspected or copied within a reasonable time. If Grantee does not comply with DEO’s request for records, DEO shall enforce the provisions set forth in this Agreement. A Grantee who fails to provide public records to DEO within a reasonable time may be subject to penalties under s. 119.10, F.S.

c) Grantee acknowledges that DEO is subject to the provisions of chapter 119, F.S., relating to public records and that reports, invoices, and other documents Grantee submits to DEO under this Agreement may constitute public records under Florida Statutes. Grantee shall cooperate with DEO regarding DEO’s efforts to comply with the requirements of chapter 119, F.S.
d) If Grantee submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by Grantee prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of chapter 119, F.S., prior to submittal of the record to DEO may serve as a waiver of a claim of exemption. Grantee shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if Grantee does not transfer the records to DEO upon termination of this Agreement.

e) Grantee shall allow public access to all records made or received by Grantee in conjunction with this Agreement, unless the records are exempt from s. 24(a) of Article I of the State Constitution and s. 119.07(1), F.S. For records made or received by Grantee in conjunction with this Agreement, Grantee shall respond to requests to inspect or copy such records in accordance with chapter 119, F.S.

f) In addition to Grantee's responsibility to directly respond to each request it receives for records made or received by Grantee in conjunction with this Agreement and to provide the applicable public records in response to such request, Grantee shall notify DEO of the receipt and content of such request by sending an e-mail to PRRequest@deo.myflorida.com within one business day from receipt of such request.

g) Grantee shall notify DEO verbally within 24 chronological hours and in writing within 72 chronological hours if any data in Grantee's possession related to this Agreement is subpoenaed or improperly used, copied, or removed (except in the ordinary course of business) by anyone except an authorized representative of DEO. Grantee shall cooperate with DEO in taking all steps as DEO deems advisable to prevent misuse, regain possession, and/or otherwise protect the State's rights and the data subject's privacy.

h) IF GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 850-245-7140, via e-mail at PRRequest@deo.myflorida.com, or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.

6) Funding Requirements of s. 215.971(1), F.S.:
   a) Grantee and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the term of this Agreement. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures (http://www.myfloridagfo.com/audir/reference_guide/).
   b) Grantee shall refund to DEO any balance of unobligated funds which has been advanced or paid to Grantee.
   c) Grantee shall refund to DEO all funds paid in excess of the amount to which Grantee or its subcontractors are entitled under the terms and conditions of this Agreement.

7) Section 288.101, F.S.: Grantee shall: (a) construct or repair the state or local public infrastructure that is the subject of this Agreement, as described in Exhibit A, SCOPE OF WORK, in a manner that meets and complies with all federal, state, and local laws, rules, and regulations, including but not limited to, the requirements of s. 288.101, F.S.; (b) not use funds provided under this Agreement for the exclusive benefit of any single company, corporation, or business entity; (c) use funds provided under this Agreement to promote economic recovery in specific regions of the state, economic diversification, or economic enhancement in a targeted industry via the construction or repair of the public infrastructure; and (d) the public
infrastructure must be: (i) owned by the public, and be for public use or predominately benefit the public; and (ii) if the public infrastructure is leased or sold, it must be leased or sold at fair market rates or value.

9. **FINAL INVOICE:** Grantee shall submit the final invoice for payment to DEO no later than 60 calendar days after this Agreement ends or is terminated. If Grantee fails to do so, DEO, in its sole and absolute discretion, may refuse to honor any requests submitted after this time period and may consider Grantee to have forfeited any and all rights to payment under this Agreement.

10. **RECOUPMENT OF FUNDS:**
   a. Grantee shall refund to DEO any overpayment of funds due to unearned or disallowed funds under this Agreement as follows: (a) if Grantee or an independent auditor discovers an overpayment, Grantee shall repay to DEO such overpayment no later than 30 calendar days after discovery or notification of each such overpayment; or (b) if DEO first discovers an overpayment, DEO shall notify Grantee in writing, and Grantee shall repay to DEO each such overpayment no later than 30 calendar days after receiving DEO’s notification. Refunds should be sent to DEO’s Agreement Manager, and made payable to the “Department of Economic Opportunity.” DEO may charge interest at the lawful rate of interest on the outstanding balance beginning on the 31st calendar day after the date of notification or discovery. DEO is the final authority as to what may constitute an “overpayment” under this Agreement.
   b. Notwithstanding any other provisions of this Agreement, including but not limited to the damages limitations of the LAWS APPLICABLE TO THIS AGREEMENT Section herein, if Grantee is non-compliant with any provision of this Agreement or applicable law, or if DEO imposes financial consequences on Grantee pursuant to the terms of this Agreement, DEO has the right to recoup all resulting cost, monetary loss and/or funds owed to DEO or the State of Florida, from monies owed to Grantee under this Agreement or any other Agreement between Grantee and any State entity. If the discovery of such noncompliance or imposition of financial consequences and resulting cost, loss, and/or debt to DEO or the State of Florida arises when no monies are owed to Grantee under this Agreement or any other Agreement between Grantee and any State entity, Grantee shall pay DEO in full such cost, loss, and/or funds owed to DEO or the State of Florida with non-State funds within 30 calendar days of the date of notice of the amount owed, unless DEO agrees, in writing, to an alternative timeframe. DEO, in DEO’s sole and absolute discretion, shall determine the resulting cost, loss and/or funds owed to DEO or the State of Florida under this Agreement.

11. **AUDITS AND RECORDS:**
   a. Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the federal government and their duly authorized representatives shall have access to any of Grantee’s books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
   b. Grantee shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds DEO provided under this Agreement.
   c. Grantee shall comply with all applicable requirements of s. 215.97, F.S., and Exhibit B, AUDIT REQUIREMENTS; and, if an audit is required thereunder, Grantee shall disclose all related party transactions to the auditor.
   d. Grantee shall retain all Grantee’s records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement in accordance with the record retention requirements of Part V of Exhibit B, AUDIT REQUIREMENTS. Upon DEO’s request, Grantee shall cooperate with DEO to facilitate the duplication and transfer of such records or documents.
   e. Grantee shall include the aforementioned audit and record keeping requirements in all approved subrecipient subcontracts and assignments.
   f. Within 60 calendar days of the close of Grantee’s fiscal year, on a yearly basis, Grantee shall electronically submit a completed AUDIT COMPLIANCE CERTIFICATION (a version of this certification
is attached hereto as Exhibit C) to audit@deo.myflorida.com. Grantee's timely submittal of one completed AUDIT COMPLIANCE CERTIFICATION for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and Grantee.

g. Grantee shall (i) maintain all funds Grantee received pursuant to this Agreement in bank accounts separate from its other operating or other special purposes accounts, or (ii) expressly designate in Grantee’s business records and accounting system, maintained in good faith and in the regular course of business, that such funds originated from this Agreement. Grantee shall not commingle the funds provided under this Agreement with any other funds, projects, or programs. DEO may, in its sole and absolute discretion, disallow costs that result from purchases made with commingled funds.

12. EMPLOYMENT ELIGIBILITY VERIFICATION: Grantee shall utilize the U.S. Department of Homeland Security’s E-Verify system (https://www.e-verify.gov/) to verify the employment eligibility of all new employees Grantee hired during the term of this Agreement. Grantee shall include in all subcontracts under this Agreement, the requirement that subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees subcontractor hired during the term of the subcontract.

13. DUTY OF CONTINUING DISCLOSURE OF LEGAL PROCEEDINGS:

a. Prior to execution of this Agreement, Grantee must disclose in a written statement to DEO’s Agreement Manager all prior or on-going civil or criminal litigation, investigations, arbitration or administrative proceedings (collectively “Proceedings”) involving Grantee (and each subcontractor of Grantee). Thereafter, Grantee has a continuing duty to promptly disclose all Proceedings upon occurrence.

b. This duty of disclosure applies to Grantee’s or Grantee’s subcontractor’s officers and directors when any Proceeding relates to the officer or director’s business or financial activities. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated as such.

c. Grantee shall promptly notify DEO’s Agreement Manager of any Proceeding relating to or affecting Grantee’s or Grantee’s subcontractor’s business. If the existence of such Proceeding causes the State concern about Grantee’s ability or willingness to perform this Agreement, then upon DEO’s request, Grantee shall provide to DEO’s Agreement Manager all reasonable assurances that: (i) Grantee will be able to perform this Agreement in accordance with its terms and conditions; and (ii) Grantee and/or its employees, agents, or subcontractor(s) have not and will not engage in conduct in performing services for DEO which is similar in nature to the conduct alleged in such Proceeding.

14. ASSIGNMENTS AND SUBCONTRACTS:

a. Grantee shall not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of DEO, which consent may be withheld in DEO’s sole and absolute discretion. Any Grantee’s attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void ab initio. DEO will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity in the State of Florida upon giving prior written notice of same to Grantee.

b. Grantee shall be responsible for all work performed and all expenses incurred in fulfilling the obligations of this Agreement. If DEO permits Grantee to subcontract all or part of the work contemplated under this Agreement, including entering into subcontracts with vendors for services, Grantee shall formalize all such subcontracts in documents containing all provisions appropriate and necessary to ensure subcontractor’s compliance with this Agreement and applicable state and federal law. Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under each subcontract. If the State of Florida approves transfer of Grantee’s obligations, Grantee remains responsible for all work performed and all expenses incurred in connection with this Agreement. Grantee, at Grantee’s expense, shall defend DEO against all Grantee’s subcontractors’ claims of expenses or liabilities incurred under subcontracts.

c. Grantee shall only use properly trained persons who meet or exceed any specified training qualifications as employees, subcontractors, or agents performing work under this Agreement. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All Grantee’s employees,
subcontractors, or agents performing work under this Agreement shall comply with all DEO security and administrative requirements detailed herein. DEO may conduct, and Grantee shall cooperate with all security background checks or other assessments of Grantee’s employees, subcontractors, or agents. DEO may refuse access to or require replacement of any of Grantee’s employees, subcontractors, or agents for cause, including, but not limited to: technical or training qualifications, quality of work, change in security status, or non-compliance with DEO’s security or administrative requirements. Such refusal shall not relieve Grantee of its obligation to perform all work in compliance with this Agreement. For cause, DEO may reject and bar any of Grantee’s employees, subcontractors, or agents from any facility.

d. This Agreement shall bind the successors, assigns, and legal representatives of Grantee and of any legal entity that succeeds to the obligations of the State of Florida. The State of Florida may assign or transfer its rights, duties, or obligations under this Agreement to another governmental Grantee in the State of Florida.

e. In accordance with s. 287.0585, F.S., and unless otherwise agreed upon in writing between Grantee and subcontractor, Grantee shall pay each Grantee’s subcontractor within seven working days of receiving DEO’s full or partial payments. Grantee’s failure to comply with the immediately preceding sentence shall result in a penalty charged against Grantee and paid to the subcontractor in the amount of one-half of one percent of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed 15 percent of the outstanding balance due.

f. Monthly, Grantee shall provide to DEO a Minority and Service-Disabled Veteran Business Enterprise Report for each invoice period summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors/material suppliers for that period and the project to date. This report shall include the names, addresses and compensation dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant and shall be sent to DEO’s Agreement Manager. The Office of Supplier Diversity at (850) 487-0915 is available to provide information re: qualified minority. DEO’s Minority Coordinator can be reached at (850) 245-7260 to answer concerns and questions.

g. This Agreement is for the sole benefit of the Parties and their permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give any person or entity, other than the Parties and such permitted successors and assigns, any legal or equitable rights hereunder.

15. NONEXPENDABLE PROPERTY:

a. For purposes of this Agreement, “nonexpendable property” is the same as “property” as defined in s. 273.02, F.S., (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature, with a value or cost of $1,000 or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of $25 or more; and hardback-covered bound books, with a value or cost of $250 or more).

b. All nonexpendable property, purchased under this Agreement, shall be listed on the property records of Grantee. Grantee shall inventory annually and maintain accounting records for all nonexpendable property purchased and submit an inventory report to DEO with the final expenditure report. The records shall include, at a minimum, the following information: property tag identification number, description of the item(s), physical location, name, make or manufacturer, year, and/or model, manufacturer’s serial number(s), date of acquisition, and the current condition of the item.

c. At no time shall Grantee dispose of nonexpendable property purchased under this Agreement without DEO’s written permission; provided further that Grantee shall, at all times, follow DEO’s instructions regarding such disposition.

d. Immediately upon discovery, Grantee shall notify DEO, in writing, of any property loss with the date and reason(s) for the loss.

e. Grantee shall be responsible for the correct use of all nonexpendable property Grantee purchases or DEO furnishes under this Agreement.

f. A formal Agreement amendment is required prior to the purchase of any item of nonexpendable property not specifically listed in the approved Agreement budget.
Title (ownership) to all nonexpendable property acquired with funds from this Agreement shall be vested in DEO and said property shall be transferred to DEO upon completion or termination of this Agreement unless otherwise authorized in writing by DEO.

16. **REQUIREMENTS APPLICABLE TO THE PURCHASE OF OR IMPROVEMENTS TO REAL PROPERTY:** In accordance with s. 287.05805, F.S., if funding provided under this Agreement is used for the purchase of or improvements to real property, Grantee shall grant DEO a security interest in the property in the amount of the funding provided by this Agreement for the purchase of or improvements to the real property for five years from the date of purchase or the completion of the improvements or as further required by law.

17. **INFORMATION RESOURCE ACQUISITION:** Grantee shall obtain prior written approval from the appropriate DEO authority before purchasing any Information Technology Resource (ITR) or conducting any activity that will impact DEO's electronic information technology equipment or software, as both terms are defined in DEO Policy Number 5.01, in any way. ITR includes computer hardware, software, networks, devices, connections, applications, and data. Grantee shall contact the DEO Agreement Manager listed herein for the contact information of the appropriate DEO authority for any such ITR purchase approval.

18. **INSURANCE:** During this Agreement, including the initial Agreement term, renewal(s), and extensions, Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with this Agreement and further described below. Providing and maintaining adequate insurance coverage is a material obligation of Grantee, and failure to maintain such coverage may void this Agreement, at DEO's sole and absolute discretion, after DEO's review of Grantee's insurance coverage when Grantee is unable to comply with DEO's requests re: additional appropriate and necessary insurance coverage. The limits of coverage under each policy maintained by Grantee shall not be interpreted as limiting Grantee's liability and obligations under this Agreement. All insurance policies shall be through insurers licensed and authorized to write policies in Florida.

a. Upon execution of this Agreement, Grantee shall provide DEO written verification of the existence and amount for each type of applicable insurance coverage. Within thirty (30) calendar days of the Effective Date, Grantee shall furnish DEO proof of applicable insurance coverage by standard ACORD form certificates of insurance. If an insurer cancels any applicable coverage for any reason, Grantee shall immediately notify DEO of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage. The insurance certificate must name DEO as an additional insured and identify DEO's Agreement Number. Copies of new insurance certificates must be provided to DEO's Agreement Manager with each insurance renewal.

b. DEO shall not pay for any insurance policy deductible. The payment of each such deductible shall be Grantee's sole responsibility. Grantee shall obtain the following types of insurance policies.

1) **Commercial General Liability Insurance:** Unless Grantee is a state agency or subdivision as defined by s. 768.28(2), F.S., Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during this Agreement. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.

2) **Workers’ Compensation and Employer’s Liability Insurance:** Grantee, at all times during the term of this Agreement, at its sole expense, shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with this Agreement, which, as a minimum, shall be: workers’ compensation and employer’s liability insurance in accordance with chapter 440, F.S., with minimum employer’s liability limits of $100,000 per accident, $100,000 per person, and $500,000 policy aggregate. Such policy shall cover all employees engaged in any Agreement work.

3) **Other Insurance:** During the term of this Agreement, Grantee shall maintain any other insurance as required in Exhibit A, SCOPE OF WORK.

19. **CONFIDENTIALITY AND SAFEGUARDING INFORMATION:**
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a. Each Party may have access to confidential information made available by the other. The provisions of the Florida Public Records Act, Chapter 119, F.S., and other applicable state and federal laws will govern disclosure of any confidential information received by the State of Florida.

b. Grantee must implement procedures to ensure the appropriate protection and confidentiality of all data, files, and records involved with this Agreement.

c. Except as necessary to fulfill the terms of this Agreement and with the written permission of DEO, Grantee shall not divulge to third parties any confidential information obtained by Grantee or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Agreement work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or DEO.

d. Grantee shall not use or disclose any information concerning a recipient of services under this Agreement for any purpose in conformity with state and federal law or regulations except upon written consent of the recipient, or his responsible parent or guardian when authorized by law, if applicable.

e. When Grantee has access to DEO's network and/or applications, in order to fulfill Grantee's obligations under this Agreement, Grantee shall abide by all applicable DEO Information Technology Security procedures and policies. Grantee (including its employees, subcontractors, agents, or any other individuals to whom Grantee exposes confidential information obtained under this Agreement) shall not store, or allow to be stored, any confidential information on any portable storage media (e.g., laptops, thumb drives, hard drives, etc.) or peripheral device with the capacity to hold information. Failure to strictly comply with this provision shall constitute a breach of Agreement.

f. Grantee shall immediately notify DEO in writing when Grantee, its employees, agents, or representatives become aware of an inadvertent disclosure of DEO's unsecured confidential information in violation of the terms of this Agreement. Grantee shall report to DEO any Security Incidents of which it becomes aware, including incidents sub-contractors or agents reported to Grantee. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of DEO information in Grantee's possession or electronic interference with DEO operations; provided, however, that random attempts at access shall not be considered a security incident. Grantee shall make a report to DEO not more than seven business days after Grantee learns of such use or disclosure. Grantee's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Grantee has done or shall do to mitigate any detrimental effect of the unauthorized use or disclosure, and (v) what corrective action Grantee has taken or shall take to prevent future similar unauthorized use or disclosure. Grantee shall provide such other information, including a written report, as DEO's Information Security Manager requests.

g. If a breach of security concerning confidential personal information involved with this Agreement occurs, Grantee shall comply with s. 501.171, F.S., as applicable. When notification to affected persons is required under this section of the statute, Grantee shall provide that notification, but only after receipt of DEO's written approval of the contents of the notice. For purposes of this Agreement, "breach of security" or "breach" means the unauthorized access of data in electronic form containing personal information, as defined in s. 501.171, (1)(a), F.S.. Good faith acquisition of personal information by an employee or agent of Grantee is not a breach, provided the information is not used for a purpose unrelated to Grantee's obligations under this Agreement or is not subject to further unauthorized use.

20. WARRANTY OF ABILITY TO PERFORM: Grantee warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish Grantee's ability to satisfy its Agreement obligations. Grantee shall immediately notify DEO in writing if its ability to perform is compromised in any manner during the term of this Agreement.

21. PATENTS, COPYRIGHTS, AND ROYALTIES:

a. All legal title and every right, interest, claim or demand of any kind, in and to any patent, trademark or copyright, or application for the same, or any other intellectual property right to, the work developed or produced under or in connection with this Agreement, is the exclusive property of DEO to be
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granted to and vested in the Florida Department of State for the use and benefit of the state; and no person, firm or corporation shall be entitled to use the same without the written consent of the Florida Department of State. Any contribution by Grantee or its employees, agents or contractors to the creation of such works shall be considered works made for hire by Grantee for DEO and, upon creation, shall be owned exclusively by DEO. To the extent that any such works may not be considered works made for hire for DEO under applicable law, Grantee agrees, upon creation of such works, to automatically assign to DEO ownership, including copyright interests and any other intellectual property rights therein, without the necessity of any further consideration.

b. If any discovery or invention arises or is developed in the course or as a result of work or services performed with funds from this Agreement, Grantee shall refer the discovery or invention to DEO who will refer it to the Department of State to determine whether patent protection will be sought in the name of the State of Florida.

c. Where activities supported by this Agreement produce original writings, sound recordings, pictorial reproductions, drawings or other graphic representations and works of any similar nature, DEO has the right to use, duplicate, and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to allow others acting on behalf of DEO to do so. Grantee shall give DEO written notice when any books, manuals, films, websites, web elements, electronic information, or other copyrightable materials are produced.

d. Notwithstanding any other provisions herein, in accordance with s. 1004.23, F.S., a state university is authorized in its own name to perform all things necessary to secure letters of patent, copyrights, and trademarks on any works it produces. Within 30 calendar days of same, the president of a state university shall report to the Department of State any such university’s action taken to secure or exploit such trademarks, copyrights, or patents in accordance with s. 1004.23(6), F.S..

22. INDEPENDENT CONTRACTOR STATUS: In Grantee’s performance of its duties and responsibilities under this Agreement, it is mutually understood and agreed that Grantee is at all times acting and performing as an independent contractor. DEO shall neither have nor exercise any control or direction over the methods by which Grantee shall perform its work and functions other than as provided herein.

a. Nothing in this Agreement is intended to or shall be deemed to constitute a partnership or joint venture between the Parties.

b. Except where Grantee is a state agency, Grantee, its officers, agents, employees, subcontractors, or assignees, in performance of this Agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State of Florida. Nor shall Grantee represent to others that, as Grantee, it has the authority to bind DEO unless specifically authorized to do so.

c. Except where Grantee is a state agency, neither Grantee, nor its officers, agents, employees, subcontractors, or assignees are entitled to state retirement or state leave benefits, or to any other compensation of state employment as a result of performing the duties and obligations of this Agreement.

d. Grantee shall take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, employee, joint venturer, or partner of the State of Florida.

e. Unless justified by Grantee, and agreed to by DEO in Exhibit A, SCOPE OF WORK, DEO will not furnish services of support (e.g., office space, office supplies, telephone service, secretarial, or clerical support) to Grantee or its subcontractor or assignee.

f. DEO shall not be responsible for withholding taxes with respect to Grantee’s compensation hereunder. Grantee shall have no claim against DEO for vacation pay, sick leave, retirement benefits, social security, workers’ compensation, health or disability benefits, reemployment assistance benefits, or employee benefits of any kind. Grantee shall ensure that its employees, subcontractors, and other agents, receive benefits and necessary insurance (health, workers’ compensation, reemployment assistance benefits) from an employer other than the State of Florida.

g. At all times during this Agreement, Grantee shall comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.
23. **ELECTRONIC FUNDS TRANSFER:** Within 30 calendar days of the date the last Party has signed this Agreement, Grantee shall enroll in Electronic Funds Transfer (EFT) from the State’s Chief Financial Officer. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at: [https://www.myfloridacfo.com/Division/AA/Vendors/](https://www.myfloridacfo.com/Division/AA/Vendors/). Questions should be directed to the EFT Section at (850) 413-5517. Once enrolled, EFT shall make invoice payments.

24. **MODIFICATION:** If, in DEO’s sole and absolute determination, changes to this Agreement are necessitated by law or otherwise, DEO may at any time, with written notice of all such changes to Grantee, modify this Agreement within its original scope and purpose. Grantee shall be responsible for any due diligence necessary to determine the impact of the modification. Any modification of this Agreement Grantee requested must be in writing and duly signed by all Parties in order to be enforceable.

25. **TIME IS OF THE ESSENCE:** Time is of the essence regarding Grantee’s performance of obligations set forth in this Agreement. Any additional deadlines for performance for Grantee’s obligation to timely provide deliverables under this Agreement including but not limited to timely submittal of reports, are contained in Exhibit A, SCOPE OF WORK, and shall be strictly construed.

26. **CONSTRUCTION; INTERPRETATION:** The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term “this Agreement” means this Agreement together with all Exhibits hereto, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. The use in this Agreement of the term “including” and other words of similar import mean “including, without limitation” and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word “or” is not exclusive and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole, including any Exhibits, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. The use herein of terms importing the singular shall also include the plural, and vice versa. The reference to an agreement, instrument or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and the reference to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. All references to “§” shall mean United States dollars. The recitals of this Agreement are incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the Parties. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring any Party by virtue of the authorship of any of the provisions of this Agreement.

27. **TERMINATION:** DEO may terminate this Agreement if:
   a. DEO determines in its sole and absolute discretion that it is in the State’s interest to do so;
   b. Grantee breaches any of its representations, warranties, covenants, or other obligations in this Agreement in any material respect;
   c. Grantee or any of its employees or agents commits fraud or willful misconduct in connection with this Agreement, the Proposal, or the transactions contemplated hereby and thereby;
   d. Funds to finance this Agreement become unavailable or if federal or state funds upon which this Agreement is dependent are withdrawn or redirected, DEO may terminate this Agreement upon no less than 24-hour written notice to Grantee. DEO shall be the final authority as to the availability of funds. If this Agreement is terminated pursuant to this provision, Grantee will be paid for any work satisfactorily completed prior to notification of termination;
   e. Grantee institutes or consents to the institution of any bankruptcy or insolvency proceeding, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer for it or for all or any material
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part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer is appointed without the application or consent of such person or entity and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any bankruptcy or insolvency proceeding relating to Grantee or to all or any material part of its property is instituted without the consent of Grantee and Grantee fails to challenge such proceeding or such proceeding is challenged but continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding;

f. Grantee becomes unable to or admits in writing its inability to or fails generally to pay its debts as they become due, or any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of Grantee or Grantee otherwise becomes insolvent; or

g. A preponderance of evidence that Grantee is not proceeding with the Project, including, without limitation, a decision by Grantee not to proceed with the Project, including upon receipt by DEO of Grantee’s written request to terminate this Agreement (a. through g. collectively, the “Termination Events”).

h. Notwithstanding anything in this Agreement to the contrary, if DEO exercises its right to terminate this Agreement as the result of the occurrence of a Termination Event, any reimbursement payments that have not been disbursed to Grantee, including any payment that has been authorized and not yet disbursed, shall be immediately forfeited and Grantee shall return funds within thirty (30) days of the termination of this Agreement. All work in progress on Florida Department of Transportation right-of-way will become the property of the Florida Department of Transportation and will be turned over promptly by Grantee. The rights and remedies of DEO in this clause are in addition to any other rights and remedies provided by law or under this Agreement. Grantee shall not furnish any product after it receives the notice of termination, except as DEO specifically instructs Grantee in writing. Grantee shall not be entitled to recover any cancellation charges or lost profits.

28. DISPUTE RESOLUTION: Unless otherwise stated in Exhibit A, SCOPE OF WORK, DEO shall decide disputes concerning the performance of this Agreement, and DEO shall serve written notice of same to Grantee. DEO’s decision shall be final and conclusive unless within 21 calendar days from the date of receipt, Grantee files with DEO a petition for administrative hearing. DEO’s final order on the petition shall be final, subject to any right of Grantee to judicial review pursuant to chapter 120.68, F.S. Exhaustion of administrative remedies is an absolute condition precedent to Grantee’s ability to pursue any other form of dispute resolution; provided however, that the Parties may employ the alternative dispute resolution procedures outlined in chapter 120, F.S.,

29. INDEMNIFICATION: (NOTE: If Grantee is a state agency or subdivision, as defined in s. 768.28(2), F.S., pursuant to s. 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party’s negligence.)

a. Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys’ fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees for that portion of any loss or damages the negligent act or omission of DEO or the State proximately caused.

b. Further, Grantee shall fully indemnify, defend, and hold harmless the State and DEO from any suits, actions, damages, and costs of every name and description, including attorneys’ fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to DEO’s misuse or modification of Grantee’s products or DEO’s operation or use of Grantee’s products in a manner not contemplated by this Agreement. If any product is the subject of an infringement suit, or in Grantee’s opinion is likely to become the subject of such a suit, Grantee may, at Grantee’s sole expense, procure for DEO the right to continue using the product or to modify it to become non-infringing. If Grantee is not reasonably able to modify or otherwise secure for DEO the right to continue using the product, Grantee shall remove the product and refund DEO the amounts
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paid in excess of a reasonable fee, as determined by DEO in its sole and absolute discretion, for past use. DEO shall not be liable for any royalties.

c. Grantee’s obligations under the two immediately preceding paragraphs above, with respect to any legal action are contingent upon the State or DEO giving Grantee (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Grantee’s sole expense, and (3) assistance in defending the action at Grantee’s sole expense. Grantee shall not be liable for any cost, expense, or compromise incurred or made by the State or DEO in any legal action without Grantee’s prior written consent, which shall not be unreasonably withheld.

d. Grantee expressly assumes any and all liability for payment to its agents, employees, contractors, subcontractors, consultants, and subconsultants, as applicable, and shall indemnify and hold DEO harmless from any suits, actions, damages, and costs of every name and description, including attorneys’ fees, arising from or relating to any denial or reduction of any invoice submitted by Grantee to DEO for reimbursement for costs under this Agreement where DEO is imposing the financial consequences stated herein.

e. Grantee shall carry or cause its contractor/subcontractor/consultant/subconsultant to carry and keep in force Worker’s Compensation insurance as required for the State of Florida under the Worker’s Compensation Law.

f. Grantee shall include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

“The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless the Florida Department of Economic Opportunity and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/subcontractor/consultant/subconsultant, its officers, agents or employees.”]

30. LIMITATION OF LIABILITY: For all claims against Grantee under this Agreement, and regardless of the basis on which the claim is made, Grantee’s liability under this Agreement for direct damages shall be limited to the greater of $100,000 or the dollar amount of this Agreement. This limitation shall not apply to claims arising under the INDEMNIFICATION Section of this Agreement. Unless otherwise specifically enumerated in this Agreement or in the purchase order, no Party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless this Agreement or purchase order requires Grantee to back-up data or records), even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and DEO may, in addition to other remedies available to them at law or equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of Grantee or its affiliates to the State against any payments due Grantee under any Agreement with the State.

31. PRESERVATION OF REMEDIES; SEVERABILITY; RIGHT TO SET-OFF. No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power, or remedy of either Party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default. If any term or provision of this Agreement is found to be illegal, invalid, or unenforceable, such term or provision will be deemed stricken, and the remainder of this Agreement will remain in full force and effect. DEO and the State shall have all of its common law, equitable and statutory rights of set-off, including, without limitation, the State’s option to withhold for the purposes of set-off any moneys due to Grantee under this Agreement up to any amounts due and owing to DEO with respect to this Agreement, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State or its representatives.
32. **FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE:** Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party’s control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, if a delay results from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party’s performance obligation under this Agreement. If the delay is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section, the delay will not result in any additional charge or cost under this Agreement to either Party. In the case of any delay, Grantee believes is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section, Grantee shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within 10 calendar days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) within five calendar days after the date Grantee first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE GRANTEE’S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section and will notify Grantee of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against DEO. Grantee shall not be entitled to an increase in this Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE Section, after the causes have ceased to exist, Grantee shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of this Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from Grantee; provided, that Grantee grants preferential treatment to DEO with respect to products or services subject to allocation; (2) purchase from other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from this Agreement quantity; or (3) terminate this Agreement in whole or in part.

33. **ATTORNEYS’ FEES; EXPENSES:** Except as set forth otherwise herein, each of the Parties shall pay its own attorneys’ fees and costs in connection with the execution and delivery of this Agreement and the transactions contemplated hereby.

34. **ENTIRE AGREEMENT; AMENDMENT; WAIVER.** This Agreement embodies the entire agreement of the Parties with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties. Excluding the specific provisions of Section 24, MODIFICATIONS, hereinabove allowing DEO in DEO’s sole and absolute determination to make unilateral changes to this Agreement, no amendment will be effective unless reduced to writing and signed by an authorized officer of Grantee and the authorized agent of DEO. No waiver by a Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
35. **AUTHORITY OF GRANTEE’S SIGNATORY:** Upon execution, Grantee shall return the executed copies of this Agreement in accordance with the instructions DEO provided along with documentation confirming and certifying that the below signatory has authority to bind Grantee to this Agreement as of the date of execution. Such documentation may be in the form of a legal opinion from Grantee’s attorney, Grantee’s Certificate of Status, Grantee’s resolutions specifically authorizing the below signatory to execute this Agreement, Grantee’s certificates of incumbency, and any other reliable documentation demonstrating such authority, which shall be incorporated by reference into this Agreement. DEO may, at its sole and absolute discretion, request additional documentation related to the below signatory’s authority to bind Grantee to this Agreement.

36. **COUNTERPARTS:** This Agreement and amendments to this Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

37. **CONTACT INFORMATION AND NOTICES:**
   a. Except as otherwise specifically provided in this Agreement, the contact information provided in accordance with this section shall be used by the Parties for all communications under this Agreement. Where the term “written notice” is used to specify a notice requirement herein, said notice shall be deemed to have been given (i) when personally delivered; (ii) when transmitted via facsimile with confirmation of receipt or email with confirmation of receipt if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid); (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a recognized overnight delivery service; or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.
   b. If any information provided herein changes, including the designation of a new Agreement Manager, after the execution of this Agreement, the Party making such change will notify all other Parties in writing of such change. Such changes shall not require a formal amendment to this Agreement.

<table>
<thead>
<tr>
<th>Grantee’s Payee:</th>
<th>Grantee’s Agreement Manager:</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Avon Park</td>
<td>Manuel Cortazal</td>
</tr>
<tr>
<td>110 E. Main Street</td>
<td>110 E. Main Street</td>
</tr>
<tr>
<td>Avon Park, Florida 33825</td>
<td>Avon Park, Florida 33825</td>
</tr>
<tr>
<td>(863) 452-4400</td>
<td>(863) 452-4400</td>
</tr>
<tr>
<td>mrcortazal@avonparkcc</td>
<td>mrcortazal@avonparkcc</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DEO’s Agreement Manager:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridgett Jackson</td>
</tr>
<tr>
<td>107 East Madison Street</td>
</tr>
<tr>
<td>Tallahassee, Florida 32399</td>
</tr>
<tr>
<td>(850) 245-7459</td>
</tr>
<tr>
<td>(850) 245-7470</td>
</tr>
<tr>
<td><a href="mailto:Bridgett.Jackson@deo.myflorida.com">Bridgett.Jackson@deo.myflorida.com</a></td>
</tr>
</tbody>
</table>

[The remainder of this page has been intentionally left blank.]
IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth above and in the exhibits attached hereto and incorporated herein, the Parties’ duly-authorized officials sign this Agreement.

<table>
<thead>
<tr>
<th>DEPARTMENT OF ECONOMIC OPPORTUNITY</th>
<th>CITY OF AVON PARK</th>
</tr>
</thead>
<tbody>
<tr>
<td>By</td>
<td>By</td>
</tr>
<tr>
<td>Signature</td>
<td>Signature</td>
</tr>
<tr>
<td>Title</td>
<td>Title</td>
</tr>
<tr>
<td>Brian McManus, Chief of Staff</td>
<td>Garrett Anderson, Mayor</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
</tr>
<tr>
<td>6/13/19</td>
<td>3/14/19</td>
</tr>
</tbody>
</table>

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

OFFICE OF GENERAL COUNSEL
DEPARTMENT OF ECONOMIC OPPORTUNITY

By: [Signature]

Approved Date: 5/23/19
DEO Agreement No.: G0061

Exhibit A

SCOPE OF WORK

1. PROJECT DESCRIPTION: Section 288.101, Florida Statutes ("F.S.") established the Florida Job Growth Grant Fund (the "Program") to promote economic opportunity by improving public infrastructure and enhancing workforce training. Funds provided pursuant to this Agreement must be used to support State or local public infrastructure projects that promote economic recovery in specific regions of the state, economic diversification, or economic enhancement in a targeted industry.

Grantee has been awarded $971,500.00 for the City of Avon Park infrastructure improvement project located in Highlands County. Funds will be used to extend an existing 12-inch water main located on the northerly right-of-way of Stratford Road and the westerly right-of-way of US Highway 27 northward by 1.7 miles. The funds will also be used to extend an existing forced sewer main along the route of the potable water main by 1.3 miles. The extension will spur commercial activity by providing potable water and sewer service to commercial and residential developments. The infrastructure improvements will benefit the current businesses that will be included in the service area.

2. GRANTEE'S RESPONSIBILITIES:

   a. COMMENCEMENT AND TIMELINE.

       1) The Parties' execution of this Agreement shall be deemed a Notice to Proceed to Grantee for the design phase of the Project which is further delineated in Paragraph b. immediately below. The Grantee may be eligible for reimbursement for work performed prior to the effective date, but not before January 10, 2019.

       2) Prior to commencing the construction work described in this Agreement, Grantee shall:
           - Provide to DEO's Agreement Manager one copy of the final signed and sealed design plans, signed and sealed specifications, and final bid documents; and
           - Request from DEO's Agreement Manager a Notice to Proceed.
           DEO shall not reimburse Grantee for any construction work performed prior to the issuance of the Notice to Proceed.

       3) Work on the Project shall commence on or before September 30, 2019 (the "Commencement Date"), and shall be completed on or before the fifth anniversary of the Effective Date (the "Completion Date"), unless terminated earlier. DEO shall have the immediate right to terminate this Agreement if Grantee fails to commence the construction of the Project by the Commencement Date or complete work by the Expiration Date and, in each case, provide evidence of the same to DEO upon DEO's request to DEO's satisfaction. If construction in connection with the Project does not commence within two (2) years of the date of the Effective Date, DEO may immediately terminate this Agreement.

       4) Notwithstanding anything in this Agreement to the contrary, any funds not obligated under this Agreement by June 30, 2022 shall be forfeited and shall revert back to DEO.

   b. DESIGN, PERMITS, APPROVALS, AND CONSTRUCTION STANDARDS.

       1) Grantee shall undertake the design, construction, and Consultant Construction Engineering Inspection ("CCEI") of the Project in accordance with all applicable federal, state and local statutes, rules and regulations, including any other applicable standards and specifications. A professional engineer, registered in Florida, shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Grantee.

       2) Grantee shall certify to DEO that Grantee’s design consultant and/or construction contractor has secured the necessary permits, including but not limited to, building permits. Grantee shall provide to DEO certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project have been obtained. If Grantee fails to provide each required certification to DEO on or before the Commencement Date, DEO may, in its sole and absolute discretion, terminate this Agreement.
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3) Grantee shall provide to DEO its written notification of either its intent to:
   a) Award the construction of the Project to a licensed contractor which is the lowest, responsive, and responsible bidder in accordance with applicable state and federal statutes, rules, and regulations. Grantee shall then submit a copy of the bid tally sheet(s) and awarded bid contract; or
   b) Construct the Project utilizing existing Grantee employees, whose qualifications have been reviewed and approved by DEO, if Grantee can complete said Project within the time frame delineated in Section 1 of this Agreement.

4) If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project fifty percent (50%) or more of the cost of the Project is to be paid from state-appropriated funds, then Grantee must comply with the requirements of Sections 255.0991 and 255.0992, F.S..

5) Grantee is responsible for the preparation of all design plans for the Project. Grantee shall hire a qualified consultant for the design phase of the Project using Grantee's normal procurement procedures to perform the design services for the Project.

6) Grantee shall hire a licensed contractor using Grantee's normal bid procedures to perform the construction work for the Project.

7) Grantee shall hire a qualified CCEI to perform construction oversight including the obligation to assure that all verification testing is performed in accordance with, when applicable, the 2014 Standard Specifications for Road and Bridge Construction, as amended from time to time. DEO shall have the right, but not the obligation, to perform independent assurance testing during construction of the Project. The CCEI firm may not be the same firm as that of the Engineer of Record for the Project.

8) Grantee shall require Grantee's contractor to post a payment and performance bond in accordance with Section 337.18(1), Florida Statutes.

9) Grantee shall carry or require its contractor/subcontractor/consultant/subconsultant to carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least $100,000 per person and $300,000 for each occurrence, and property damage insurance of at least $100,000 for each occurrence, for the services to be rendered in accordance with this Agreement. In addition to any other forms of insurance or bonds required under the terms of this Agreement, when it includes construction within the limits of a railroad right-of-way, Grantee must provide or cause its contractor to provide insurance coverage in accordance with Section 7-13 of DEO’s Standard Specifications for Road and Bridge Construction (2014), as amended.

10) Grantee shall be responsible for ensuring that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it meets any other applicable standards.

11) Grantee shall expend funds provided pursuant to this Agreement in a timely manner and solely for the purpose of the approved Project. Grantee shall not use the funds for the purchase or planting of any landscape, mitigation, the installation or relocation of utilities, for any legal action against the State or DEO, or costs associated with preparation of the Proposal.

12) Upon completion of the work authorized by this Agreement, Grantee shall notify DEO in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineer's Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached hereto as Exhibit F. The certification shall state that work has been constructed in compliance with the Project design plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation. All deviations shall have had prior written approval from DEO in advance of the deviation being constructed.

13) Upon completion of the Project, Grantee shall be responsible for the perpetual maintenance of the facilities on its system that are constructed under this Agreement as agreed to in Exhibit E. The terms of this provision shall survive the termination of this Agreement and may be enforced by DEO.
c. **RETURN ON INVESTMENT.** Grantee’s failure to meet the Return on Investment criteria set forth herein will result in the additional financial consequences set forth in Section 5, below.
   1) Grantee shall certify that a private capital investment (excluding the acquisition or leasing of real property) of at least $7,500,000.00 has been made and paid for by private businesses at the location of the Project or in connection with the Project, calculated as set forth in section 13 of this Scope of Work, after the Effective Date and on or before December 31st of the year on which the ten (10) year anniversary of the Completion Date falls (such date, the “Capital Investment Date”).
   2) Grantee shall certify that at least 150 New Jobs have been created as a result of the Project, calculated as set forth in Section 13 of this Scope of Work, after the Effective Date and on or before December 31st of the year on which the ten (10) year anniversary of the Completion Date falls (such date, the “Job Creation Date”).
   3) Grantee shall certify that 0 Retained Jobs have been retained as a result of the Project, calculated as set forth in Section 13 of this Scope of Work.

d. Grantee shall complete the following water and sewer activities for the City of Avon Park infrastructure improvement:
   1. Mobilization
   2. Excavation
   3. Pipe Line Installation
   4. Pipe Jacking
   5. Backfill and Compaction
   6. Stabilization
   7. Demobilization

3. **DEO’S RESPONSIBILITIES:** DEO shall monitor progress, review reports, conduct site visits, as DEO determines necessary at DEO’s sole and absolute discretion, and process payments to Grantee.

4. **DELIVERABLES:** Grantee shall provide the following services as specified:

<table>
<thead>
<tr>
<th>Deliverable No. 1: Design and Construction</th>
<th>Minimum Level of Service</th>
<th>Financial Consequences</th>
</tr>
</thead>
</table>
| Grantee shall provide a copy of the final design plans, specifications, and bid documents, in accordance with section 2. Scope of Work. | Grantee may be allowed reimbursement upon 30%, 60%, and 100% completion of the deliverable as evidence by submission of the following:  
  - 30% - Copy of the final signed and scaled design plans  
  - 60% - Copy of the signed and scaled specifications  
  - 100% - Copies of the final bid documents. | Failure to complete the minimum level of service will result in non-payment of this deliverable. |
DEO Agreement No.: G0061

<table>
<thead>
<tr>
<th>Task No. 2</th>
<th>Minimum Level of Service</th>
<th>Financial Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete construction in accordance with Section 2 of Scope of Work.</td>
<td>Grantee may request reimbursement upon completion of construction in the following increments: 10%, 20%, 30%, 40%, 50%, 60%, 70%, 80%, 90% and 100%, evidenced by the following documentation: a. Completed AIA Forms G702 and G703 or their substantive equivalents, signed by a licensed professional certifying to the percentage of project completion; b. Photographs of project in progress; and c. Invoice package in accordance with Section 7 of the Scope of Work.</td>
<td>Failure to complete the minimum level of service will result in non-payment. DEO shall withhold 10% of the total Agreement amount until Grantee provides proof to DEO, and DEO accepts that the project is 100% complete.</td>
</tr>
</tbody>
</table>

TOTAL AMOUNT NOT TO EXCEED $971,500.00

5. Additional Financial Consequences: The following financial consequences apply under the following circumstances:

a. RETURN ON INVESTMENT. If Grantee does not satisfy the requirements set forth in Section 2(c)(1) of this Scope of Work, then DEO may demand, and Grantee shall repay to the State, a prorated amount of forty percent (40%) of the total award under this Agreement. If Grantee does not satisfy the requirements set forth in Section 2(c)(2) and (3) of this Scope of Work, then DEO may demand, and Grantee shall repay to the State, a prorated amount of one hundred percent (100%) of the total award under this Agreement. If Grantee has not received reimbursement for the total amount of funds available under this Agreement, then DEO will reduce the total award amount under this Agreement by an amount equal to such sanction, and Grantee shall only be required to repay out of Grantee’s funds the difference thereon. DEO has the right, in its sole discretion, to demand repayment of all funds provided to Grantee under this Agreement if Grantee has not met all the performance requirements set forth herein as of the Expiration Date or the date this Agreement is otherwise terminated. If DEO makes such a demand for repayment, Grantee shall remit funds to DEO within twenty-four (24) months of such demand. In addition to any other remedies available to DEO, in the event that Grantee fails to remit such funds to DEO within twenty-four (24) months of such demand, then the amounts due from Grantee will accumulate interest from the date of such demand until the repayment. DEO will calculate interest based on a 365-day year using a fixed annual rate equal to 500 basis points over the “Prime Rate” as reported in The Wall Street Journal on the Effective Date. DEO shall calculate interest based on the number of days elapsed after the 24th month and until the day Grantee makes repayment. Notwithstanding anything in Sections 4 and 5 of this Scope of Work to the contrary, in no event shall the aggregate sanctions imposed pursuant to Sections 4 and 5 of this Scope of Work exceed the total award under this Agreement plus interest, if any, as determined pursuant to this Section 5.

b. Notwithstanding anything in this Scope of Work to the contrary, subject to the terms and conditions of this Section 5(c), DEO hereby grants to Grantee the one-time right, privilege, and option (the
DEO Agreement No.: G0061

"Option") to extend the Expiration Date, the Completion Date, the Job Creation Date, and the Capital Investment Date by twelve (12) months. In the event that Grantee exercises the Option, within ten (10) business days of exercising the Option, Grantee shall pay to DEO a sanction equal to ten percent (10%) of the total award under this Agreement. The Option shall be exercisable in whole but not in part at any time from and after the Effective Date. Grantee may exercise the Option by delivering to DEO written notice of Grantee’s intention to exercise the Option (an “Exercise Notice”). Upon DEO’s receipt of an Exercise Notice, the exercise of the Option shall be irrevocable.

c. The Parties acknowledge and agree that the remedies set forth in this Section 5 constitute liquidated damages and that in the event of a breach of this Scope of Work, the actual damages suffered by DEO would be unreasonably difficult to determine and that the Parties would not have a convenient and adequate alternative to the liquidated damages set forth in Sections 4 and 5 of this Scope of Work. Each of the Parties further acknowledges and agrees that the liquidated damages provided in Sections 4 and 5 of this Scope of Work bear a reasonable relationship to the anticipated harm that would be caused by any such breach, is a genuine pre-estimate of the damages that DEO will suffer or incur as a result of any such breach, and is not a penalty. Grantee irrevocably waives any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive. The Parties acknowledge that the provisions contained in Sections 4 and 5 of this Scope of Work are an integral part of the transactions contemplated by this Agreement and that without these provisions DEO would not enter into this Agreement.

6. REPORTING:
   a. Quarterly: Grantee shall report on a quarterly basis all progress relating to the tasks identified in Section 4. Quarterly reports are due to DEO no later than 30 calendar days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are: September 30, December 31, March 31, and June 30. The quarterly report shall include a summary of project progress, indicating percentage of completion of each task identified in Section 4, and the Minority and Service-Disabled Veteran Business Enterprise Report required in this Agreement. The summary shall also include any issues or events occurring which affect the ability of Grantee to meet the terms of this Agreement.
   b. Close-out Report: No later than 60 calendar days after this Agreement ends or is terminated, Grantee shall provide copies of all paid invoices to document completed work.
   c. Follow-up Reports: By no later than January 31st of the year immediately following the year on which the ten (10) year anniversary of the Completion Date falls, Grantee shall provide DEO with a written certification of the actual number of New Jobs created by each business as a result of the Project (including the name of each business), Retained Jobs retained by each business as a result of the Project (including the name of each business) (if applicable), and the amount of private capital investment made and paid for by private businesses at the location of the Project or in connection with the Project after the Effective Date (including the name of each business). This paragraph will survive termination of this Agreement.

7. INVOICE SUBMITTAL AND PAYMENT SCHEDULE: DEO shall pay Grantee in accordance with the following schedule in the amount identified per deliverable in Section 4 above. The deliverable amount specified does not establish the value of the deliverable. In accordance with the Funding Requirements of s. 215.971(1), F.S. and Section 5 of this Agreement, Grantee and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during this Agreement. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures (http://www.myfloridacfo.com/sadr/reference_guide/).
   a. Grantee shall provide one invoice quarterly for all services rendered during the applicable period of time.
   b. The following documents shall be submitted with the itemized invoice:
DEO Agreement No.: G0061

1) A cover letter signed by Grantee’s Agreement Manager certifying that the costs being claimed in the invoice package: (1) are specifically for the project represented to the State in the budget appropriation; (2) are for one or more of the components as stated in Section 4, DELIVERABLES, of this SCOPE OF WORK; (3) have been paid; and (4) were incurred during this Agreement.

2) Grantee’s invoices shall include the date, period in which work was performed, amount of reimbursement, and work completed to date;

3) A certification by a licensed engineer using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete.

4) Photographs of the project in progress and completed work;

5) A copy of all supporting documentation for vendor payments;

6) A copy of the cancelled check(s) specific to the project; and

7) A copy of the bank statement that includes the cancelled check.

c. The State may require any other information from Grantee that the State deems necessary to verify that the services have been rendered under this Agreement.

d. All documentation necessary to support payment requests must be submitted with Grantee’s invoice for DEO’s review.

8. FINANCIAL CONSEQUENCES FOR FAILURE TO TIMELY AND SATISFACTORILY PERFORM: Failure to complete the deliverables and/or tasks in accordance with the requirements of this Agreement, and in particular, as specified above in Section 4, DELIVERABLES, will result in DEO’s assessment of the specified financial consequences. If appropriate, should the Parties agree in writing to a corrective action plan in lieu of the immediate imposition of financial consequences, the plan shall specify additional financial consequences to be applied after the effective date of the corrective action plan. This provision for financial consequences shall in no manner affect DEO’s rights under this Agreement, at law, or in equity, including but not limited to, DEO’s right to terminate this Agreement as provided elsewhere in this Agreement. Grantee’s payment of imposed financial consequences shall be in accordance with applicable provisions of this Agreement, and this Scope of Work.

9. NOTIFICATION OF INSTANCES OF FRAUD: Upon discovery, Grantee shall report all known or suspected instances of Grantee, or Grantee’s agents, contractors, or employees, operational fraud or criminal activities to DEO’s Agreement Manager in writing within twenty-four (24) chronological hours.

10. GRANTEES RESPONSIBILITIES UPON TERMINATION: If DEO issues a Notice of Termination to Grantee, except as otherwise specified by DEO in that notice, Grantee shall: (1) stop work under this Agreement on the date and to the extent specified in the notice; (2) complete performance of such part of the work as shall not have been terminated by DEO; (3) take such action as may be necessary, or as DEO may specify, to protect and preserve any property which is in the possession of Grantee and in which DEO has or may acquire an interest; and (4) upon the effective date of termination of this Agreement, Grantee shall transfer, assign, and make available to the DEO all property and materials belonging to DEO. No extra compensation will be paid to Grantee for its services in connection with such transfer or assignment.

11. NON-DISCRIMINATION: Grantee shall not discriminate unlawfully against any individual employed in the performance of this Agreement because of race, religion, color, gender, physical handicap unrelated to such person’s ability to engage in this work, national origin, ancestry, or age. Grantee shall provide a harassment-free workplace, with any allegation of harassment to be given priority attention and action.

12. DISPOSITION OF PROJECT PROPERTY:
DEO Agreement No.: G0061

a. Pursuant to the NONEXPENDABLE PROPERTY Section of this Agreement, upon termination of this Agreement, Grantee is authorized to retain ownership of any nonexpendable property purchased under this Agreement; however, Grantee hereby grants to DEO a right of first refusal in all such property prior to disposition of any such property during its depreciable life, in accordance with the depreciation schedule in use by Grantee, Grantee shall provide written notice of any such planned disposition and await DEO’s response prior to disposing of the property. “Disposition” as used herein, shall include, but is not limited to, Grantee no longer using the nonexpendable property for the uses authorized herein; the sale, exchange, transfer, trade-in, or disposal of any such nonexpendable property. DEO, in its sole discretion, may require Grantee to refund to DEO the fair market value of the nonexpendable property at the time of disposition rather than taking possession of the nonexpendable property.

b. Grantee shall provide advance written notification to DEO, if during the five-year period following the termination of this Agreement, Grantee proposes to take any action that will impact Grantee’s ownership of this Agreement property or modify the use of this Agreement property from the purposes authorized herein. If either of these situations arise, DEO shall have the right, in DEO’s sole discretion, to demand that Grantee reimburse DEO for part or all the funding provided to Grantee under this Agreement.

c. Upon termination of this Agreement, Grantee shall be authorized to retain ownership of the improvements to real property set forth in this Agreement in accordance with the following:
   1) Grantee is authorized to retain ownership of the improvements to real property so long as:
      (1) Grantee is not sold, merged or acquired; (2) the real property subject to the improvements is owned by Grantee; and (3) the real property subject to the improvements is used for the purposes provided in this Agreement.
   2) If within five years of the termination of this Agreement, Grantee is unable to satisfy the requirements stated above, Grantee shall notify DEO in writing of the circumstances that will result in the deficiency upon learning of it, but no later than thirty (30) calendar days prior to the deficiency occurring. In such event, DEO shall have the right, within its sole discretion, to demand reimbursement of part or all the funding provided to Grantee under this Agreement.

13. CRITERIA FOR MEASURING RETURN ON INVESTMENT:

a. Project Jobs Definitions and Determination. The following definitions and procedures will be used in determining and reporting the number of new jobs created as a result of the Project.
   1) New Job – means a full-time salaried employee, or a full-time equivalent (an “FTE”) employee who works at least 35 paid hours per week, created as a result of the Project. New Jobs may include positions obtained from a temporary employment agency or employee leasing company, through a union agreement, or co-employment under a professional employer organization agreement that result directly from the Project in this state. New Jobs may not include temporary or seasonal jobs associated with cyclical business activities, or to substitute for permanent employees on a leave of absence, or temporary construction jobs related to the Project. In tabulating hours worked, any paid leave an employee takes during the pay period, such as vacation or sick leave, may be included. Jobs only constitute New Jobs if they are created on or after the Effective Date, and only if they result in a net increase in overall employment as a result of the Project. Jobs are not considered new if they moved from another Florida location to the location of the Project, unless the relocated positions are back-filled with net new-to-Florida full-time-equivalent jobs paying at least the wage of the transferred position(s).
   2) Retained Jobs – Retained Jobs are jobs that would have been eliminated, or relocated to another Florida location or outside of the state, if the Project was not undertaken by Grantee.
DEO Agreement No.: G0061

3) **Leased Employees** – Leased employees may be counted toward Grantee’s jobs requirement if they are engaged to meet an on-going labor requirement directly resulting from the Project. Independent Contractors meeting the criteria of leased employees may also be counted towards Grantee’s job requirement so long as the actual wages paid, excluding expenses, by a business are documented on a form 1099 Miscellaneous Income to the individual person. Unless payments are in substance for individual independent contractors, payments made to limited liability companies or other business entities (identified on the 1099 with an FEIN) generally do not qualify as New Jobs as they relate to the “fee-for-service” arrangement described below. Employees of a business that has entered into a fee-for-service contract with a business benefiting from the Project in which the primary purpose of the contract is to perform services (rather than to provide individual employees) are not Project Jobs. Examples of fee-for-service contracts in which the service providers’ employees are generally not considered “New Jobs” include, but are not limited to, mail-room services, janitorial and landscaping services, food-service providers, accounting services provided by independent certified public accounting firms and legal services provided by law firms.

b. **Calculation of Project Jobs.** The following methods will be used to determine the number of Project Jobs.

1) **Monthly Head count of Salaried Project Jobs:** For salaried Project Jobs, add the monthly totals of salaried full-time jobs and divide by the number of months.

2) **Monthly Average of FTE Project Jobs:** For FTE Project Jobs, add the hours worked each month by hourly employees and divide by 151.6 hours (1,820 hours per year divided by 12 months) to calculate the number of FTE Project Jobs. If Grantee uses pay periods of less than one month, total all the reported hours worked by the FTEs during the Performance Certification Period and divide by 1,820 (35 hours x 52 weeks) to determine the average FTE employment for the Period. No individual may be considered more than one FTE regardless of the number of hours worked by such individual.

3) **New Job Calculation** – The number of New Jobs created on or after the Effective Date must equal or exceed the number of jobs in existence prior to the Effective Date. The number of New Jobs required to be created in accordance with this Scope of Work for the applicable performance period must exceed the number of existing jobs plus the number of New Jobs created in any performance period.

c. **Determination of Capital Investment.** DEO accepts as capital investment so-called “hard” costs (such as construction and renovations of buildings, and acquisition of equipment) and “soft” costs (such as eligible capitalized labor, architectural and engineering services, and document printing and mailing costs). Eligible capital investment expenditures are those that are ordered/invoiced and paid for on or after the Effective Date and before the Capital Investment Date.

- End of Exhibit A (SCOPE OF WORK) -
DEO Agreement No.: G0061

Exhibit B

AUDIT REQUIREMENTS

The administration of resources awarded by DEO to the recipient (herein otherwise referred to as “Grantee”) may be subject to audits and/or monitoring by DEO as described in this Exhibit B.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR part 200 and Section 215.97, F.S., as revised (see “AUDITS” below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by 2 CFR Part 200, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by DEO. If DEO determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by DEO staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED. This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR Part 200, as revised.

1. If the recipient expends $750,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, as revised. Attachment 1 to this indicates Federal resources awarded through DEO by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from DEO. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart F of 2 CFR Part 200, as revised.

3. If the recipient expends less than $750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200, as revised, is not required. If that the recipient expends less than $750,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from the recipient resources obtained from other than Federal entities).

4. Title 2 CFR 200, entitled Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, also known as the Super Circular, supersedes and consolidates the requirements of OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102 and A-133 and is effective for Federal awards or increments of awards issued on or after December 26, 2014. Please refer to 2 CFR 200 for revised definitions, reporting requirements and auditing thresholds referenced in this attachment and agreement accordingly.

PART II: STATE FUNDED. This part is applicable if the recipient is a non-state entity as defined by Section 215.97(2), Florida Statutes.

1. If the recipient expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida
DEO Agreement No.: G0061

Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Attachment 1 to this exhibit indicates state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than $750,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. If the recipient expends less than $750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. Additional information regarding the Florida Single Audit Act can be found at:
   http://www.myflorida.com/audgen/pages/flsaa.htm

PART III: OTHER AUDIT REQUIREMENTS.

(Note: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding Grantee must arrange for funding the full cost of such additional audits.)

N/A

PART IV: REPORT SUBMISSION.

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, as revised, and required by Part I of this agreement shall be submitted, when required by Section .512, 2 CFR Part 200, as revised, by or on behalf of the recipient directly to each of the following:

A. DEO at each of the following addresses:

   Electronic copies (preferred): Audit@deo.myflorida.com
   or Paper (hard copy):
   Department Economic Opportunity
   MSC # 130, Caldwell Building
   107 East Madison Street
   Tallahassee, FL 32399-4126

B. The Federal Audit Clearinghouse designated in 2 CFR Part 200, as revised (the number of copies required by Section .512, 2 CFR Part 200, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

   Federal Audit Clearinghouse
   Bureau of the Census
DEO Agreement No.: G0061

1201 East 10th Street
Jeffersonville, IN 47132

C. Other Federal agencies and pass-through entities in accordance with Section .512, 2 CFR Part 200, as revised.

2. Pursuant to Section .512, 2 CFR Part 200, as revised, the recipient shall submit a copy of the reporting package described in Section .512, 2 CFR Part 200, as revised, and any management letter issued by the auditor, to DEO at each of the following addresses:

Electronic copies (preferred): Audit@deo.myflorida.com or Paper (hard copy):
Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, FL 32399-4126

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

A. DEO at each of the following addresses:

Electronic copies (preferred): Audit@deo.myflorida.com or Paper (hard copy):
Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, FL 32399-4126

B. The Auditor General’s Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, FL 32399-1450

Email Address: fraudgen_localgovt@aud.state.fl.us

4. Copies of reports or the management letter required by Part III of this agreement shall be submitted by or on behalf of the recipient directly to:

A. DEO at each of the following addresses:

N/A

5. Any reports, management letter, or other information required to be submitted to DEO pursuant to this agreement shall be submitted timely in accordance with 2 CFR Part 200, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to DEO for audits done in accordance with 2 CFR Part 200 or Chapters 10.550 (local governmental entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.
PART V: RECORD RETENTION.
1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, or five (5) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

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DEO Agreement No.: G0061

Attachment 1 to Exhibit B

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

State Project **DEPARTMENT OF ECONOMIC OPPORTUNITY, CSFA NUMBER 40.043, ECONOMIC DEVELOPMENT TAX REFUND, TAX CREDIT, AND GRANT PROGRAM - $971,500**

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

1. **ACTIVITIES ARE LIMITED TO THOSE IN THE SCOPE OF WORK.**
2. **N/A**
3. **N/A**

*NOTE: List applicable compliance requirements*

NOTE: Title 2 CFR 200.331, as revised, and section 215.97(5), F.S., require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

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DEO Agreement No.: G0061

Exhibit C

AUDIT COMPLIANCE CERTIFICATION

Grantee Name: __________________________________________
FEIN: ______________________ Grantee’s Fiscal Year: ______________________
Contact Person Name and Phone Number: __________________________________________
Contact Person Email Address: __________________________________________

1. Did Grantee expend state financial assistance, during its fiscal year, that it received under any agreement (e.g., agreement, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between Grantee and the Department of Economic Opportunity (DEO)?  ____Yes  ____No

If the above answer is yes, also answer the following before proceeding to item 2:

Did Grantee expend $750,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year?  ____Yes  ____No

If yes, Grantee certifies that it will timely comply with all applicable state single or project-specific audit requirements of section 215.97, Florida Statutes, and the applicable rules of the Department of Financial Services and the Auditor General.

2. Did Grantee expend federal awards, during its fiscal year that it received under any agreement (e.g., agreement, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between Grantee and DEO?  ____Yes  ____No

If the above answer is yes, also answer the following before proceeding to execution of this certification:

Did Grantee expend $750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year?  ____Yes  ____No

If yes, Grantee certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 CFR Part 200, Subpart F, as revised.

By signing below, I certify, on behalf of Grantee, that the above representations for items 1 and 2 are true and correct.

_________________________________________   __________________________________
Signature of Authorized Representative       Date

_________________________________________   __________________________________
Printed Name of Authorized Representative       Title of Authorized Representative
EXHIBIT D

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DEO Agreement No.: G0061

EXHIBIT E

GRANTEE'S RESOLUTION
RESOLUTION NO. 18 - 06

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA, AUTHORIZING THE MAYOR, OR THE CITY MANAGER IN THE MAYOR’S ABSENCE, TO MAKE APPLICATION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY FOR APPROVAL OF THE CITY OF AVON PARK COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND AUTHORIZE LOCAL REVENUES AS CDBG LEVERAGE, PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Avon Park, Florida, in regular session this 9th day of July 2018, as follows:

WHEREAS, the City of Avon Park is experiencing a need for physical improvements to benefit low-to-moderate income households;

Now, therefore, be it resolved by the City Council of the City of Avon Park that:

Section 1. The Community Development Block Grant program is declared to be a workable program for providing needed physical improvements to benefit low-to-moderate income households indicated in the proposed Fiscal Funding Year (FFY) 2017 CDBG application.

Section 2. The City Council directs the Mayor, or City Manager in the Mayor’s absence, to sign all necessary certifications of the Community Development Block Grant application.

Section 3. The City Council directs the Mayor, or City Manager in the Mayor’s absence, to execute and submit the FFY 2017 CDBG application to the Florida Department of Economic Opportunity (FDEO) for state approval.

Section 4. The City Council authorizes the Mayor, or City Manager in the Mayor’s absence, to submit additional information in a timely manner as may be required by the FDEO application, award agreement or other State or Federal request related to said application and award agreement.

Section 5. The City Council does hereby commit to spend $50,000.00 in SHIP Funding on CDBG eligible activities identified in the City of Avon Park FFY 2017 CDBG application as local government leverage in accordance with the applicable rules and guidelines as set forth by the FDEO, subject to grant award.

Section 6. The City Council does hereby commit to expend all local government leverage between the time of site visit and the time of administrative
close-out for said application, in accordance with applicable rules and guidelines as set forth by the FDEO.

**Section 7.** The proposed CDBG application is consistent with the local comprehensive plan.

**Section 8.** The proposed CDBG application is consistent with the City’s adopted Community Development Plan.

**Section 9.** That this Resolution shall take effect immediately upon its passage.

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**ATTEST:**

Garrett Anderson, Mayor
City of Avon Park

Janie Ayala, Interim City Clerk

---

**Approved as to Form:**

Glinda R. Pruitt, City Attorney
DEO Agreement No.: G0061

EXHIBIT F

NOTICE OF COMPLETION AND ENGINEER’S CERTIFICATION OF COMPLIANCE

NOTICE OF COMPLETION

FLORIDA JOB GROWTH GRANT FUND AGREEMENT

Between

THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY

and ________________________________

PROJECT DESCRIPTION:

______________________________

DEO Agreement
No.

______________________________

In accordance with the Terms and Conditions of the Florida Job Growth Grant Fund Agreement, the
undersigned provides notification that the work authorized by this Agreement is complete as of _________
_____, 20__.  

By: ____________________________________________

Name: __________________________________________

Title: __________________________________________

ENGINEER’S CERTIFICATION OF COMPLIANCE

In accordance with the Terms and Conditions of the Florida Job Growth Grant Fund Agreement, the
undersigned certifies that all work which originally required certification by a Professional Engineer has been
completed in compliance with the Project construction plans and specifications. If any deviations have been
made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to
accept each deviation, will be attached to this Certification. Also, with submittal of this certification, Grantee
shall furnish DEO a set of “as-built” plans certified by the Engineer of Record/CEI.

By: _______________________________________, P.E.

SEAL:

Name: ________________________________________

Date: ________________________________________

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August 20, 2019

Ronnie T. Jones
City of Avon Park
110 East Main St.
Avon Park, FL 33825

Agreement No.: CSX890551 Dated: July 17, 2019

Dear Ronnie T. Jones,

Attached is the fully-executed Agreement of the above reference file.

In accordance with this Agreement, Agreement Holder is responsible for paying the actual cost of CSXT protection services and/or support services, including all applicable surcharges (collectively "Fees").

**No work is to be performed on CSXT property without Roadmaster's authorization.**

It is your responsibility to schedule any work on CSXT property with CSXT Outside Services. Please visit the CSX Property Portal to complete the Outside Party (OP) Application in order to have your work scheduled.

It was a pleasure assisting you with this project and we look forward to working with you in the future.

Should there be any questions, please feel free to give us a call at the above referenced number.

Sincerely,

Eric Horton

Attachment
FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of July 17, 2019, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF AVON PARK, a municipal corporation, political subdivision or state agency, under the laws of the State of Florida, whose mailing address is 110 East Main St., Avon Park, Florida 33825, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) twelve inch (12") diameter sub-grade pipeline crossing, solely for the conveyance of potable water, located at or near Avon Park, Highlands County, Florida, Florida Zone Division, Auburndale Subdivision, Valuation Station 4683+00, Milepost SX-854.73, Latitude N27:38:33.58, Longitude W81:31:25.69;

2. One (1) eight inch (8") diameter sub-grade pipeline crossing, solely for the conveyance of raw/treated sewage, located at or near Avon Park, Highlands County, Florida, Florida Zone Division, Auburndale Subdivision, Valuation Station 4682, Milepost SX-854.73, Latitude N27:38:33.58, Longitude W81:31:25.69;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

(A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes;

(B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and

(C) Compliance by Licensee with the terms and conditions herein contained;
does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensors.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensors consideration in the amount of ONE DOLLAR AND 00/100 U.S. DOLLARS ($1.00) and other good and valuable consideration the receipt of which is acknowledged by the parties hereto. Notwithstanding the consideration amount in this Agreement, Licensors preserves the right to request fees for any future facility projects. Furthermore, Licensee agrees that the above referenced amount applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensors's current administrative and document preparation fees for the cost incurred by Licensors in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensors), any additional annual taxes and/or periodic assessments levied against Licensors or Licensors's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensees's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensors shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensors (CSXT Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.
3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

3.10 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit, Licensee shall seek prior approval from Licensor, or when applicable, an official field representative of Licensor permitted to approve changes, authorizing the necessary field changes and Licensee shall provide Licensor with complete As-Built Drawings of the completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.
3.11 In the event of large scale maintenance/construction work to railroad bridges Licensee is required to protect power lines with insulated covers or comparable safety devices at their costs during construction/maintenance for safety of railroad employees.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

(A) support track(s) and roadbed in a manner satisfactory to Licensor;

(B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and

(C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

(A) Restore any track(s), roadbed and other disturbed property; and

(B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.
6. **TRACK CHANGES:**

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. **FACILITY CHANGES:**

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefore shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. **INTERFERENCE WITH RAIL FACILITIES:**

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of the rail corridor, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.
9. **RISK, LIABILITY, INDEMNITY:**

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.
9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor’s ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

(i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS ($1,000,000.00).

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS ($5,000,000.00)in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement and naming Licensor, and/or its designee, as additional insured. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.

(iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS ($1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence naming Licensor, and/or its designee, as additional insured.

(iv) The insurance policies must contain a waiver of subrogation against CSXT and its Affiliates, except where prohibited by law. All insurance companies must be A. M. Best rated A- and Class VII or better.
(v) Such other insurance as Licensor may reasonably require.

(vi) Licensee shall require its contractors to meet minimum insurance requirements above when performing work in relation to this agreement. Licensee will procure and review contractor's insurance certificates to confirm requirements are met. Licensor may request a copy of the insurance certificate.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 To the extent permitted by law and without waiver of the sovereign immunity of Licensee, securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor,

i) Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 04 13) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS ($5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS ($10,000,000.00) aggregate limit per annual policy period. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

OR

ii) The CGL policy shall include endorsement ISO CG 24 17 and the Auto Liability Policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsements are not included, RPL insurance must be provided.

(B) At Licensor's option, in lieu of purchasing RPL insurance or the 50 foot endorsements from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional
construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

11. **GRADE CROSSINGS; PROTECTION SERVICES:**

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, or field construction managers for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

12. **LICENSOR'S COSTS:**

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. **DEFAULT, BREACH, WAIVER:**

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this
Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s)
having been paid in advance for any annual or other period. Upon such revocation, Licensee
shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition
herein contained shall be construed as a permanent waiver of such covenant or condition, or any
subsequent breach thereof, unless such covenant or condition is permanently waived in writing
by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or
method of construction or maintenance of said Encroachment, nor any approval given or
supervision exercised by Licensor, shall be construed as an admission of liability or
responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or
responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of
(a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the
Facility from the Encroachment. However, neither termination nor revocation of this Agreement
shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the
time of termination or revocation have not been satisfied; neither party, however, waiving any
third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole
risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the
parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to
Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such
removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before
doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may
be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property
Portal from Licensor's web site, via web link:

b. For emergencies, Licensee shall complete all of the steps outlined in
Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee
shall also call and report details of the emergency to Licensor's Rail Operations Emergency
Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee
concerning an emergency involving Licensee's Facility(ies), the emergency phone number for
Licensee is: 863-452-4433.
15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.
17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to
challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. **GENERAL PROVISIONS:**

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars ($100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual
amount of Licensee's overpayment within 120 days of Licensor's verification of such overpayment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor: 

CSX TRANSPORTATION, INC.

By: ___________________________

Dona Jadwin
Manager Real Estate Services

Print/Type Name:

Print/Type Title:

Witness for Licensee: 

CITY OF AVON PARK

By: ___________________________

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: James G. Anderson

Print/Type Title: Mayor of Avon Park

Tax ID No.: 59-6000269

Authority under Ordinance or

Resolution No. __________________________

Dated August 12, 2019.
CSX-890551 EXHIBIT A

Avon Park, Highlands Co., Fl.
South Region / Florida Zone / Auburndale (AR) Subdivision
Mile Post SX-854.73
Adjacent to At-Grade Public DOT #627565B, Sun Pure Rd.
Val. Sta. 4683+00 (GIS Map No. 03220)
N27:38:33.58 / W81:31:25.69

ITB #19-05 US 27 NORTH UTILITIES WATER & SEWER MAIN EXTENSIONS

CSX GENERAL NOTES:

1. REFER TO THE CSX PIPELINE DESIGN & CONSTRUCTION SPECIFICATIONS FOR ADDITIONAL INFORMATION.
2. THE FRONT OF THE PIPE SHALL BE PROVIDED WITH MECHANICAL ARRANGEMENTS OR DEVICES THAT WILL POSITIVELY PREVENT THE AUGER FROM LEADING THE PIPE SO THAT NO UNSUPPORTED EXCAVATION IS AHEAD OF THE PIPE.
3. THE OPERATION SHALL BE PROGRESS ON A 24-HOUR BASIS WITHOUT STOPPAGE (EXCEPT FOR ADDING LENGTHS OF PIPE) UNTIL THE LEADING EDGE OF THE PIPE HAS REACHED THE RECEIVING PIT.
4. THE AUGER AND CUTTING HEAD ARRANGEMENT SHALL BE REMOVABLE FROM WITHIN THE PIPE IN THE EVENT AN OBSTRUCTION IS ENCOUNTERED.
5. PIPELINE SHALL BE PROMINENTLY MARKED AT BOTH SIDES OF THE CSX PROPERTY LINES BY DURABLE, WEATHERPROOF SIGNS LOCATED OVER THE CENTERLINE OF THE PIPE IN ACCORDANCE WITH CSX SPECIFICATIONS.
6. NO CONSTRUCTION OR ENTRY UPON THE CSX CORRIDOR IS PERMITTED UNTIL THE DOCUMENT TRANSACTION IS COMPLETED, YOU ARE IN RECEIPT OF A FULLY EXECUTED DOCUMENT, AND YOU HAVE OBTAINED AUTHORITY FROM THE LOCAL ROADMASTER.
7. IF REQUIRED, A DEWATERING PLAN IN ACCORDANCE WITH CSX SPECIFICATIONS WILL BE SUBMITTED TO THE CSX REPRESENTATIVE FOR REVIEW AND APPROVAL PRIOR TO ANY DEWATERING OPERATIONS.

CSX PROPERTY SERVICES REVIEW

No Exceptions

[Signature]
[Name]
[Title]

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ITB #19-05 US 27 NORTH UTILITIES WATER & SEWER MAIN EXTENSIONS

EXCEPTIONS NOTED:

1. CONTRACTOR SHALL BE GOVERNED BY SECTION VII "TRACK MONITORING" REQUIREMENTS OF CSX CONSTRUCTION SUBMISSION CRITERIA.
2. CONTRACTOR SHALL BE GOVERNED BY CSX SR 1300-01 EXCAVATION AND TRENCHING GUIDELINES, DATED 2/01/2017.

Tracking Number: 10020191

Sheet 1 of 6
NOTES:

REFER TO MEO INTERMEDIATE GUIDELINES AND ENGINEERING SPECIFICATIONS IN THE APPLICATION DECISION FOR ADDITIONAL INFORMATION AND GUIDANCE.

LOCATE MEO SIGNAL FACILITIES AND/OR WARNING DEVICES AT PROPOSED FACILITY CROSSING LOCATION, I.E. CATCHLIGHTS, PLANEES, GATES AND ROAD CLEARANCES.

CROSS PIPE ENDS MUST BE SEALED.

IF APPLICABLE, HEDS OR 11 OR SHORTER MUST BE USED.

YOUR DRAWING MUST SHOW ALL SITES AND CLASSES PRESENT AT THE PROPOSED UTILITY CROSSING LOCATION.

CIX SCALE PLAN TEMPLATE AND PRACTICE INTEGRATION PLAN TO BE SUBMITTED TO CIX FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.
# STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

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 document prepared by Contractor, in a form acceptable to Engineer, to request 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; 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; 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.

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.

c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

d. 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), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations 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 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. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. Electronic Means—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the
recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. **Engineer**—The individual or entity named as such in the Agreement.

23. **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.

24. **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.
   
a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
   
b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
   
c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

25. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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

27. **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.

28. **Notice of Award**—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.

29. **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.

30. **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.

31. **Progress Schedule**—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.

32. **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.
33. **Resident Project Representative**—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

34. **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.

35. **Schedule of Submittals**—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.

36. **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.

37. **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.

38. **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 or areas furnished by Owner which are designated for the use of Contractor.

39. **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.

40. **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.

41. **Submittal**—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. **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 of such Work.
43. **Successful Bidder**—The Bidder to which the Owner makes an award of contract.

44. **Supplementary Conditions**—The part of the Contract that amends or supplements these General Conditions.

45. **Supplier**—A manufacturer, fabricator, supplier, distributor, 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.

46. **Technical Data**
   
a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
   
b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
   
c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. **Underground Facilities**—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. **Unit Price Work**—Work to be paid for on the basis of unit prices.

49. **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.

50. **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 Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. **Intent of Certain Terms or Adjectives:** 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:** The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. **Defective:** The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

   1. does not conform to the Contract Documents;
   2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
   3. 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 Paragraph 15.04).

E. **Furnish, Install, Perform, Provide**

   1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means 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. **Contract Price or Contract Times**: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.

G. 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 Performance and Payment Bonds; Evidence of Insurance**

A. **Performance and Payment Bonds**: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. **Evidence of Contractor’s Insurance**: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. **Evidence of Owner’s Insurance**: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), 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 signed 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 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 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 the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will 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.

4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents.
ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is required by one Contract Document 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 versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will 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.

F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. 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.

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, means 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, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer 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 or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

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UTILITIES WATER & SEWER MAIN EXTENSIONS
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 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 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 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 in writing 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.
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 notify Owner and Contractor in writing 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 versions, 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;
   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 precludes 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 30th 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 60th day after the day of Bid opening or the 30th 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 may 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 must 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 will 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 Contract Price or 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. Such an adjustment will 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 third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and

4. Acts of war or terrorism.
D. Contractor’s entitlement to an adjustment of Contract Times or Contract Price is limited as follows:

1. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.

2. Contractor shall not be entitled to an adjustment in Contract Price 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. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.

3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days’ increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

F. 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, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses 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.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Contractor in writing 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, or to improvements, structures, utilities, or similar facilities located at such adjacent lands 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 7.13, 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 in a court of competent jurisdiction; 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 will 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 of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and

3. Technical Data contained in such reports and drawings.

B. **Underground Facilities**: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. **Reliance by Contractor on Technical Data**: 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 Paragraph 1.01.A.46.b.

D. **Limitations of Other Data and Documents**: 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;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner’s archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.
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:

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;
2. is of such a nature as to require a change in the Drawings or Specifications;
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 whether it is necessary for Owner to obtain 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; 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. Early Resumption of Work: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer’s review or Owner’s issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. Possible Price and Times Adjustments

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, 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

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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 subject to the provisions of Paragraphs 4.05.D and 4.05.E.

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;

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 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, then any such adjustment will 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, 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.

F. Underground Facilities; Hazardous Environmental Conditions: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 Underground Facilities

A. Contractor’s Responsibilities: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;
3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

5. 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 on the Drawings, or was not shown or indicated on the Drawings 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), notify Owner and Engineer in writing regarding such Underground Facility.

C. **Engineer’s Review:** Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor’s resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; 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

4. 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. **Early Resumption of Work:** If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer’s review or Owner’s issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. **Possible Price and Times Adjustments**

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown...
or indicated on the Drawings, 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. 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;

b. Contractor’s entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

c. 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, then any such adjustment will 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, no later than 30 days after Owner’s issuance of the Owner’s written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor’s remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 Hazardous Environmental Conditions at Site

A. Reports and Drawings: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; 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 on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. 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;

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, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, 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. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

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, 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.I obligates 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 obligates 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 Contractor’s obligations under the Contract. These bonds must 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 terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The bonds must be recorded in the public records of the county where the work is to be performed before the work begins.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, 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 must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. 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.

G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.

H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

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. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages 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, documentation of
applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.

F. 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, will not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. 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.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker’s compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor’s liability policies) on each Subcontractor’s commercial general liability insurance policy; and

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If either party does not purchase or maintain 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.

J. If Contractor has failed to obtain and maintain required insurance, Contractor’s entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner’s termination rights under Article 16.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) 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 will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor’s interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor’s liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, 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 and Engineer.

6.03 Contractor’s Insurance

A. Required Insurance: Contractor shall purchase and maintain Worker’s Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. General Provisions: The policies of insurance required by this Paragraph 6.03 as supplemented must:
   1. include at least the specific coverages required;
   2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
   3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, 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;
   4. apply with respect to the performance of the Work, whether such performance is 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; and
   5. include all necessary endorsements to support the stated requirements.

C. Additional Insureds: The Contractor’s commercial general liability, automobile liability, employer’s liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
   1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
   2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor’s acts or omissions, or the acts and omissions of those working on Contractor’s behalf, in the performance of Contractor’s operations.

6.04 Builder’s Risk and Other 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 Work’s full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder’s risk insurance are set forth in the Supplementary Conditions.

B. Property Insurance for Facilities of Owner Where Work Will Occur: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder’s risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.

C. Property Insurance for Substantially Complete Facilities: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder’s risk insurance. The builder’s risk insurance may terminate upon written confirmation of Owner’s procurement of such property insurance.

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 advance notice of such occupancy or use to the builder’s risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

E. Insurance of Other Property; Additional Insurance: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. 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 6.04, it may do so at Contractor’s expense.

6.05 Property Losses; Subrogation

A. The builder’s risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary
Conditions), will contain provisions to the effect that in the event of payment of any loss or
damage the insurer 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.

1. 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, risks, 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 individuals or entities identified in the Supplementary
Conditions as builder’s risk or installation floater 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.

2. None of the above waivers extends 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. Any property insurance policy maintained by Owner covering any loss, damage, or
consequential loss to Owner’s existing structures, buildings, or facilities in which any part of
the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent
structures, buildings, or facilities of Owner; or to part or all of the completed or substantially
completed Work, 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, will contain provisions to the effect that in the event of payment of any loss
or damage the insurer will have no rights of recovery against any insureds thereunder, or
against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners,
employees, agents, consultants, or subcontractors of each and any of them, and that the
insured is allowed to waive the insurer’s rights of subrogation in a written contract executed
prior to the loss, damage, or consequential loss.

1. 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 all losses and damages caused by, arising out
of, or resulting from fire or any of the perils, risks, or causes of loss covered by such
policies.

C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured
peril, risk, or cause of loss.

D. Contractor shall be responsible for assuring that each Subcontract 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 fire or other peril, risk, or cause of loss covered by builder’s
risk insurance, installation floater, and any other property insurance applicable to the Work.
6.06 Receipt and Application of Property Insurance Proceeds

A. Any insured loss under the builder’s risk and other policies of property insurance required by Paragraph 6.04 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 6.04 shall maintain such proceeds in a segregated account, and 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, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

7.01 Contractor’s Means and Methods of Construction

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 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.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 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 maintain good discipline and order at the Site.
B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor’s employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor’s own acts and omissions.

C. 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 will 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.

7.04 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 must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will 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 must 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.

7.05 “Or Equals”

A. Contractor’s Request; Governing Criteria: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, 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 equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an “or equal” item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that the proposed item:

1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
2) 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) has a proven record of performance and availability of responsive service; and

4) is not objectionable to Owner.

b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) the item 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 will result in any change in Contract Price. The Engineer’s denial of an “or-equal” request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

E. Treatment as a Substitution Request: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an “or-equal” item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

A. Contractor’s Request; Governing Criteria: Unless the specification or description of an item of equipment or material 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 equipment or material under the circumstances described below. To the extent possible such requests must 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 equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.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 equipment or material that Contractor seeks to furnish or use. The application:
   
a. will 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 the item specified; and
      
      3) be suited to the same use as the item 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 the item specified; and
      
      2) available engineering, sales, maintenance, repair, and replacement services.
   
d. will 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 will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 Concerning Subcontractors and Suppliers

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor’s retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor’s obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers 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 or Supplier 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 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. 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 or Suppliers 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 or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, 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 or Supplier, whether initially or as a replacement, will 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 solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 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 an 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 will be disclosed 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.
7.09  **Permits**

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. 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.

7.10  **Taxes**

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

7.11  **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. 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 is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written 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 written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12  **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.
7.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. 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.

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. 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.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.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).

E. 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.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that 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.

G. Contractor shall comply with the applicable requirements of Owner’s safety programs, if any. Any Owner’s safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. 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.
I. Contractor’s duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor’s duties and responsibilities for safety and protection will 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.

7.14 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as 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 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 by an emergency, or are required as a result of Contractor’s response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor’s response, a Work Change Directive or Change Order will be issued.

7.16 Submittals

A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, Contractor shall:
   a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
   b. determine and verify:
      1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
      2) 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
      3) all information relative to Contractor’s responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
   c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must 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 Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. Submittal Procedures for Shop Drawings and Samples: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. Shop Drawings
   a. Contractor shall submit the number of copies required in the Specifications.
   b. Data shown on the Shop Drawings must 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.C.

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.C.

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. Engineer’s Review of Shop Drawings and Samples

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of 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 will 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 or other appropriate Contract modification.

5. Engineer’s review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 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, will 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 or Sample will 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.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

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 Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer’s time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer’s charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer’s charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

   a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

   b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

   c. Engineer’s review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

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 is entitled to rely on Contractor’s warranty and guarantee.

B. Owner’s rights under this warranty and guarantee are in addition to, and are not limited by, Owner’s rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor’s warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, 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.

D. Contractor’s obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor’s obligation to perform the Work in accordance with the Contract Documents, or a release of Owner’s warranty and guarantee rights under this Paragraph 7.17:

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. The end of the correction period established in Paragraph 15.08;

8. Any inspection, test, or approval by others; or
9. Any correction of defective Work by Owner.

E. 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 will 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 losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage 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, or 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 will 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.

7.19 Delegation of Professional Design Services

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor’s design professional when submitted by Contractor to Engineer.
D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer’s review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

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 third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner’s employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. 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.
E. If the proper execution or results of any part of Contractor’s Work depends upon work performed by others, 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.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

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 for Owner at or adjacent to the Site, the Owner’s employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, 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. 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 will 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, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will 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 or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
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.

1. 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 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 8.03.B.

2. 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 Contractor.

C. 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 will 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 (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 10.07. 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 Resident 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 the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer’s consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 Engineer’s Authority
A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer’s authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer’s authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner’s delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer’s authority as to changes in the Work is set forth in Article 11.
E. Engineer’s authority as to Applications for Payment is set forth in Article 15.

10.05 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.

10.06 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.

10.07 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, will 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 Contractor under 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 10.07 also apply to the Resident Project Representative, if any.

10.08 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 of which Engineer has been informed.
ARTICLE 11—CHANGES TO THE CONTRACT

11.01 Amending and Supplementing the Contract

A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that 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, must be supported by Engineer’s recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 Change Orders

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. Changes in 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 11.05, (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 that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 Work Change Directives

A. 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 11.07 regarding change of Contract Price.
B. If Owner has issued a Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 Field Orders

A. 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.

B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 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. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer’s recommendation.

B. Such changes in the Work 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 must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates 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.

11.06 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.C.2.

11.07 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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must 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);

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 11.07.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 11.07.C).

C. **Contractor’s Fee**: When applicable, the Contractor’s fee for overhead and profit will 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 will be 15 percent;

   b. For costs incurred under Paragraph 13.01.B.3, the Contractor’s fee will be 5 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 11.07.C.2.a and 11.07.C.2.b is that the Contractor’s fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.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 5 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 will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

   d. No fee will 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 of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

   f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor’s fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.
11.08 **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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 **Change Proposals**

A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. **Submittal**: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. **Supporting Data**: 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.
   a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
   b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must 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.

3. **Engineer’s Initial Review**: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. **Engineer’s Full Review and Action on the Change Proposal**: Upon receipt of Contractor’s supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor’s supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal, it will be considered approved in whole.
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.

5. **Binding Decision**: Engineer’s decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

C. **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 in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. **Post-Completion**: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 **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 are subject 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;
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; and
4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.

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 rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, 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 will 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 will 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 will 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 will 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 will 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 will 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 will be incorporated in a
Change Order or other written document 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. When needed 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 will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will 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 in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, 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, will 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 accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will 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, which 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 will 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 or retained for services specifically related to the Work.

5. Other costs consisting of 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, 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.

1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. **Construction Equipment Rental**

1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price (“changed Work”), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed 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 builder’s risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will 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 does not include any of the following items:

1. Payroll costs and other compensation of Contractor’s officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, 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. The cost of purchasing, renting, or furnishing small tools and hand tools.

3. Expenses of Contractor’s principal and branch offices other than Contractor’s office at the Site.

4. Any part of Contractor’s capital expenses, including interest on Contractor’s capital employed for the Work and charges against Contractor for delinquent payments.

5. 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.

6. Expenses incurred in preparing and advancing Claims.

7. 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

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:

   a. Contractor’s fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.

   b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor’s fee will be determined as follows:

      1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.

      2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.

2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor’s fee for any Work covered by a Change
Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. **Documentation and Audit:** Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor’s accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor’s fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

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 for any of the foregoing will be valid.

C. **Owner’s Contingency Allowance:** Contractor agrees that an Owner’s 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 for Work covered by allowances, and the Contract Price will 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, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. Adjustments in Unit Price

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
   a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
   b. Contractor’s unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor’s costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.

3. Adjusted unit prices will apply to all units of that item.

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 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 with such procedures and programs 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 will 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 will 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 will 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 written 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 will 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 additional 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, 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 will 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 defective Work as required by Engineer, then Owner may, after 7 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 for 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.

2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation.
establishing full payment by Contractor for the materials and equipment; (b) at Owner’s request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) 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.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor’s legitimate obligations associated with prior Applications for Payment.

4. 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;
   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
   c. for Contractor’s failure to comply with Laws and Regulations applicable to Contractor’s performance of the Work;
   d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; 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 based on Contractor’s conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from 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 has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

j. Liquidated or other 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; or

l. Other items entitle 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 will 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 will be treated as an amount due as determined by Paragraph 15.01.D.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 7 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 will 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 7 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 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 15.03.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 6.04 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 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must 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 duly pending Change Proposals and Claims; 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 Final Application and Recommendation of Payment: 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 10
   days after receipt of the final Application for Payment, indicate in writing Engineer’s
   recommendation of final payment and present the final Application for Payment to Owner
   for payment. Such recommendation will 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. 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. Notice of Acceptability: In support of its recommendation of payment of the final Application
   for Payment, Engineer will also give written notice to Owner and Contractor that the Work is
   acceptable, subject to stated limitations in the notice and to the provisions of
   Paragraph 15.07.

D. 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
   and issuance of notice of the acceptability of the Work.

E. Final Payment Becomes Due: Upon receipt from Engineer of the final Application for Payment
   and accompanying documentation, Owner shall set off against the amount recommended by
   Engineer for final payment any further sum to which Owner is entitled, including but not
   limited to set-offs for liquidated damages and set-offs allowed under the provisions of this
   Contract with respect to progress payments. Owner shall pay the resulting balance due to
   Contractor within 30 days of Owner’s receipt of the final Application for Payment from
   Engineer.

15.07 Waiver of Claims

A. By making final payment, Owner waives its claim or right to liquidated damages or other
   damages for late completion by Contractor, except as set forth in an outstanding Claim,
appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

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 as a Claim, 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 Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor’s repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect 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 adjacent areas;
2. correct such defective Work;
3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, 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 from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, 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 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). Contractor’s failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. 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.

E. 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.
F. Contractor’s obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to 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 directly attributable to any such suspension. Any Change Proposal seeking such adjustments must 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) 10 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) written 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 7 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 will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 **Owner May Terminate for Convenience**

A. Upon 7 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 for any loss of anticipated profits or revenue, post-termination overhead costs, 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 7 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, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon.
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, pursuant to Article 12; and
2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise 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;
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 requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient’s place of business;
2. by registered or certified mail, postage prepaid, to the recipient’s place of business; or
3. by e-mail to the recipient, with the words “Formal Notice” or similar in the e-mail’s subject line.

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 or in connection with any other project or anticipated project.

18.05 No Waiver
   A. A party’s non-enforcement of any provision will not constitute a waiver of that provision, nor will 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 of the Contract or 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 Assignment of Contract
   A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party 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.

18.09 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.

18.10 Headings
   A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.
SUPPLEMENTAL
Terms and Conditions

A. All responses shall become the property of the City of Avon Park.

B. The City, at its discretion, reserves the right to waive minor informalities or irregularities in any responses, to reject any and all responses, in whole or in part, with or without cause, and to accept that response, if any, which in its judgment will be in its best interest.

C. The submitting firm will be required to comply with all applicable laws, regulations, rules and ordinances of local, state and federal authorities having jurisdiction, including, but not limited to: all provisions of the Federal Government Equal Employment Opportunity clauses issued by the Secretary of Labor on May 21, 1968 and published in the Federal Register (41 CFR Part 60-1, 33 F.2 7804); all provisions of the Public Entity Crimes (Fla. Stat. §287.133, et seq, as amended); shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable; shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3); shall comply with section 6002 of the Solid Waste Disposal Act, Environmental Protection Agency (EPA) at 40 CFR part 247; and the provisions in Fla. Stat. §287.134, et seq, as amended, regarding discrimination.

D. STATEMENT OF INDEMNIFICATION

CITY OF AVON PARK – The Contractor hereby acknowledges and confirms that the contract price includes the consideration for this indemnification / hold harmless. The Contractor shall, in addition to any other obligation to indemnify the City of Avon Park and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City, its elected officials, employees, agents, and volunteers from and against all claims, actions, liabilities, losses, (including economic losses), costs, including attorney fees and all costs of litigation, and judgments of every name and description arising out of, or incidental to the performance of this contract, unless caused by the sole negligence of the City, its elected officials, employees, agents, or volunteers. Any cost or expenses, including attorney fees (including appellate, bankruptcy, or patent council fees), incurred by the City to enforce this agreement shall be borne by the Contractor. This indemnification shall also cover all claims brought against the City, its elected officials, employees, agents, or volunteers by any employee of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them. The Contractor’s obligation under this article shall be limited to $10,000,000 and shall not be limited in any way to the agreed upon contract price as shown in this contract or the Contractor’s limit of all services, obligations, and duties provided for in this contract, or in the event of termination of this contract for any reason, the terms and conditions of this article shall survive indefinitely.

City of Avon Park, Florida

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UTILITIES WATER & SEWER MAIN EXTENSIONS

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Florida Department of Economic Opportunity - The Contractor shall indemnify, defend, save and hold harmless the Florida Department of Economic Opportunity and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/subcontractor/consultant/subconsultant, its officers, agents or employees.

E. **Florida Statutes 287.087, on Drug Free Work Place, 287.133(3)(a) on Public Entity Crimes, and Section287.134, on Discrimination, as a whole and/or as shown below, will be complied with:**

287.087, Preference to businesses with drug-free workplace programs:

In order to have a drug-free workplace program, 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 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, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or no 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 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.

**NOTE:** PLEASE INCLUDE YOUR “DRUG FREE” STATUS AS PART OF THE GENERAL COMMENTS IN YOUR PROPOSAL OR WHERE INDICATED ON THE BID FORM.

287.133, Public entity crime; denial or revocation of the right to transact business with public entities:

(2)(a) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount of $10,000 for a period of 36 months from the date of being placed on the convicted vendor list.
287.134, Discrimination; denial or revocation of the right to transact business with public entities:

(2)(a) An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract or provide goods and services to a public entity, may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with a public entity.

F. Responses are due and must be received in accordance with the instructions given in the announcement page.

G. The City will not reimburse respondent(s) for any costs associated with the preparation and submittal of any responses.

H. Respondents, their agents and associates shall refrain from contacting or soliciting any City Official and that contact may be made ONLY with the individual(s) listed in this document for additional information and clarification.

I. Due care and diligence have been exercised in the preparation of this document and all information contained herein is believed to be substantially correct; however, the responsibility for determining the full extent of the service required rest solely with those making response. Neither the City nor its representative shall be responsible for any error or omission in the responses submitted, nor for the failure on the part of the respondents to determine the full extent of the exposures.

J. All timely responses meeting the specifications set forth in this document will be considered. However, respondents are cautioned to clearly indicate any deviations from these specifications. The terms and conditions contained herein are those desired by the City and preference will be given to those responses in full or substantially full compliance with them.

K. Each respondent is responsible for full and complete compliance with all laws, rules and regulations including those of the Federal Government, the State of Florida and the City of Avon Park. Failure or inability on the part of the respondent to have complete knowledge and intent to comply with such laws, rules and regulations shall not relieve any respondent from its obligation to honor its response and to perform completely in accordance with its response.

L. The CITY, at its discretion, reserves the right to waive minor informalities or irregularities in any responses, to reject any and all responses in whole or in part, with or without cause, and to accept that response, if any, which in its judgment will be in its best interest.

M. Award will be made to the respondent whose submittal is determined to be the most advantageous to the City taking into consideration those responses in compliance with the requirements as set forth in this document. The City Council and Mayor reserves the right to reject any and all responses for any reason or make no award whatsoever or request clarification of information from the respondents.

N. Any interpretation, clarification, correction or change to this document will be made by written addendum issued by the Public Works Department. Any oral or other type of communication concerning this document shall not be binding.
O. Responses must be signed by an individual of the respondent’s organization legally authorized to commit the respondent’s organization to the performance of the product(s) and/or service(s) contemplated by this document.

P. **INSURANCE REQUIREMENTS**

Unless otherwise stated in the specifications, the following Insurance Requirements must be met before delivery of goods and services:

**Special Requirements / Evidence of Insurance:**

a. A copy of the Contractor’s / Vendor's current certificate of insurance MUST be provided with the response to this BID. A formal certificate shall be provided upon announcement that a Contractor / Vendor has been awarded the work as called for in this document. The Certificate(s) shall be signed by a person authorized by that insurer to bind coverage on its behalf. All Certificates of Insurance must be on file with and approved by the City before commencement of any work activities. The formal insurance certificate shall also comply with the following:

   “The City of Avon Park”, a Political Subdivision of the State of Florida and its Elected Officials, its Agents, Employees, and Volunteers” shall be named as an “Additional Insured” on all policies except Worker’s Compensation. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy. The City will be given notice prior to cancellation or modification of any stipulated insurance.

   In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. Such notification will be in writing by registered mail, return receipt to:
   Avon Park City Hall, 110 East Main Street, Avon Park, FL33825.

b. It is the responsibility of the contractor to insure that all subcontractors comply with all insurance requirements.

c. It should be remembered that these are minimum requirements, which are subject to modification in response to high hazard operations.

**Workers’ Compensation Insurance:** Coverage is to apply for all employees for statutory limits in compliance with the law of the State of Florida and federal laws. The policy must include Employer’ Liability with a limit of $1,000,000 each accident, $1,000,000 each employee, $1,000,000 policy limit for disease.

If subletting any of the work, ensure that the subcontractor(s) have Workers’ Compensation Insurance for their employees in accordance with Florida’s Workers’ Compensation law. If using “leased employees” or employees obtained through professional employer organizations (“PEO’s”), ensure that such employees are covered by Workers’ Compensation insurance through the PEO’s or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida’s Workers' Compensation law.
**Commercial General Liability Insurance:** Carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Contract. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Cause the Florida Department of Economic Opportunity and the City of Avon Park to be made an Additional Insured as to such insurance. Such coverage shall be on an “occurrence” basis and shall include Products/Completed Operations coverage. The coverage afforded to the Florida Department of Economic Opportunity and the City of Avon Park as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than $1,000,000 for each occurrence and not less than a $5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to the contract. The policy/ies and coverage described herein may be subject to a deductible. Pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. Prior to the execution of the Contract, and at all renewal periods which occur prior to final acceptance of the work, the Florida Department of Economic Opportunity and the City of Avon Park shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Florida Department of Economic Opportunity and the City of Avon Park shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Florida Department of Economic Opportunity or the City of Avon Park approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Florida Department of Economic Opportunity and the City of Avon Park may have.
NOTICE OF AWARD

Date of Issuance:

Owner: 
Owner’s Project No.: 

Engineer: 
Engineer’s Project No.: 

Project: 

Contract Name: 

Bidder: 

Bidder’s Address: 

You are notified that Owner has accepted your Bid dated [date] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[Describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is $[Contract Price]. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

[Number of copies sent] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☐ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner [number of copies sent] counterparts of the Agreement, signed by Bidder (as Contractor).

2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.

3. Other conditions precedent (if any): [Describe other conditions that require Successful Bidder’s compliance]

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: 

By (signature): 

Name (printed): 

Title: 

Copy: 

ITB #19-05 US 27 NORTH 
UTILITIES WATER & SEWER MAIN EXTENSIONS
PERFORMANCE BOND

BY THIS BOND, We, ........................................................., a □ corporation □
limited liability company, whose address is ............................, and whose phone number is .............................., as Principal, and
........................................................., a corporation, whose address is
........................................................., and whose phone number is .............................., as Surety, are bound to City of Avon Park, herein
called “Owner”, in the sum of $ ___________ (___________________ Dollars)
regarding the Contract for the ............................ located at
........................................................., Avon Park, Highlands County, Florida, for the payment of
of which we bind ourselves, our heirs, personal representatives, successors and assigns,
jointly and severally.

THE CONDITION OF THIS BOND  is that if Principal:

1. Performs the contract dated ________________, 20__, between Principal
and Owner for the ............................ located at
........................................................., Avon Park, Highlands County, Florida, the contract
being made a part of this bond by reference, at the times and in the manner
prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney’s fees,
including appellate proceedings, that Owner sustains because of default by
Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the
contract for the time specified in the contract, then this bond is void; otherwise it
remains in full force.

Any action instituted by claimant under this bond for payment must be in
accordance with the notice and time limitation provisions in §255.05(1), Fla. Stat.
Any changes in or under the Contract Documents and compliance or non-
compliance with formalities connected with contract or with the changes do not affect
Surety’s obligation under this bond.

Dated _________________________________, 20__.

Principal:                      Surety:

By: _______________________________   By: _______________________________
Title: _______________________________  Title: _______________________________

(corporate seal)                                                                 (corporate seal)
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 will 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 may 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 will 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 does 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 does 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 will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will 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 will not be reduced or set off on account of any such unrelated obligations. No right of action will 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 must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must 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 will be applicable.

12. Notice to the Surety, the Owner, or the Contractor must 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 will be deemed deleted there from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will 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 will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

16. Modifications to this Bond are as follows: ____________________________________________.
   Describe modification or enter “None”
PAYMENT BOND

BY THIS BOND, We, ____________________________ , a □ corporation □ limited liability company, whose address is ________________________, and whose phone number is ________________, as Principal, and ________________________________________, a corporation, whose address is ___________________________________________ and whose phone number is __________________, as Surety, are bound to City of Avon Park, herein called “Owner”, in the sum of $_____________ (___________________ Dollars) regarding the Contract for the _________________________ located at ________________________, project No.______ < Avon Park, Highlands County, Florida, for the payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally. Bond No.__________.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____________, 20__, between Principal and Owner for construction of the ________________________ located at ________________________, Avon Park, Highlands County, Florida, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payment to all claimants, as defined in §255.05(1), Fla. Stat., supplying labor, materials, or supplies used directly or indirectly by Principal in the prosecution of the work provided in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract, then this bond is void, otherwise it remains in full force.

Any action instituted by claimant under this bond for payment must be in accordance with the notice and time limitation provisions in §255.05(1), Fla. Stat.

Any changes in or under the Contract Documents and compliance or non-compliance with formalities connected with contract or with the changes do not affect Surety’s obligation under this bond.

Dated ________________________, 20__.

Principal:         Surety:

By: ____________________________            By: ____________________________
Title: ____________________________            Title: ____________________________

(corporate seal)                                                                                (corporate seal)
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 will 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 will arise after the following:
   5.1. Claimants who do not have a direct contract with the Contractor
      5.1.1. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than forty-five (45) days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor with a written notice that he or she intends to look to the bond for protection and must 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 will 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 will 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 will 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 will 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 satisfying 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 will 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 will be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will 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 will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will 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:

16.1.1. The name of the Claimant;
16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
16.1.3. 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;
16.1.4. A brief description of the labor, materials, or equipment furnished;
16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
16.1.7. The total amount of previous payments received by the Claimant; and
16.1.8. 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 is 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 will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

18. Modifications to this Bond are as follows:

__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
Describe modification or enter None
NOTICE TO PROCEED

Owner: ___________________________ Owner’s Project No.: ___________
Engineer: _________________________ Engineer’s Project No.: ___________
Contractor: ______________________ Contractor’s Project No.: ___________
Project: ____________________________________________________________
Contract Name: ______________________________________________________
Effective Date of Contract: ____________________________________________

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on ___________________________, pursuant to Paragraph 4.01 of the General Conditions.
On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement: [Select one of the following two alternatives, insert dates or number of days, and delete the other alternative.]

The date by which Substantial Completion must be achieved is _________________, and the date by which readiness for final payment must be achieved is ____________________.

[or]
The number of days to achieve Substantial Completion is __________________ from the date stated above for the commencement of the Contract Times, resulting in a date for Substantial Completion of ___________________; and the number of days to achieve readiness for final payment is __________________ from the commencement date of the Contract Times, resulting in a date for readiness for final payment of ____________________.

Before starting any Work at the Site, Contractor must comply with the following:

______________________________________________________________

Owner: ___________________________
By(signature): _______________________
Name (printed): _______________________
Title: _______________________________
Date Issued: _________________________
Copy: Engineer
CHANGE ORDER NO.: ______________________

Owner: ____________________________ Owner’s Project No.: __________

Engineer: __________________________ Engineer’s Project No.: __________

Contractor: _________________________ Contractor’s Project No.: __________

Project: ____________________________

Contract Name: _____________________

Date Issued: ________________________ Effective Date of Change Order: __________

The Contract is modified as follows upon execution of this Change Order:

Description:

________________________________________________________________________

Attachments: (List documents related to the change)

<table>
<thead>
<tr>
<th>Change in Contract Price</th>
<th>Change in Contract Times</th>
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</thead>
<tbody>
<tr>
<td>Original Contract Price:</td>
<td>Original Contract Times:</td>
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<tr>
<td>$ ______________________</td>
<td>Substantial Completion:</td>
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<tr>
<td>[Increase] [Decrease]</td>
<td>Ready for final payment:</td>
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<tr>
<td>from previously approved</td>
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<tr>
<td>Change</td>
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<td>[Increase] [Decrease]</td>
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<td>this Change Order:</td>
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<td>this Change Order:</td>
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<tr>
<td>Contract Price prior to this Change Order:</td>
<td>Contract Times prior to this Change Order:</td>
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<tr>
<td>Contract Price incorporating this Change Order:</td>
<td>Contract Times with all approved Change Orders:</td>
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<td>$ ______________________</td>
<td>Substantial Completion:</td>
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<td>[Increase] [Decrease]</td>
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<td>this Change Order:</td>
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<td>$ ______________________</td>
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</table>

Recommended by Engineer (if required)  Accepted by Contractor

By: ____________________________  ____________________________

Title: __________________________  ____________________________

Date: __________________________  ____________________________

Authorized by Owner  Approved by Funding Agency (if applicable)

By: ____________________________  ____________________________

Title: __________________________  ____________________________

Date: __________________________  ____________________________
WORK CHANGE DIRECTIVE NO.: ____________________

Owner: __________________________ Owner’s Project No.: ______
Engineer: ________________________ Engineer’s Project No.: ______
Contractor: ______________________ Contractor’s Project No.: ______
Project: __________________________
Contract Name: ____________________ Effective Date of Work Change Directive: ____________
Date Issued: ______________

Contractor is directed to proceed promptly with the following change(s):

Description:

________________________________________________________________________

Attachments:

________________________________________________________________________

Purpose for the Work Change Directive:

________________________________________________________________________

Directive to proceed promptly with the Work described herein, prior to agreeing to change in 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 reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price: $ ________________ [increase] [decrease] [not yet estimated].
Contract Time: __________ days [increase] [decrease] [not yet estimated].

Basis of estimated change in Contract Price:

☐ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

Recommended by Engineer Authorized by Owner

By: ____________________________ ____________________________
Title: __________________________ Title: __________________________
Date: __________________________ Date: __________________________
Contractor's Application For Payment No. __________

<table>
<thead>
<tr>
<th>Application Period:</th>
<th>Application Date:</th>
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To (Owner): From (Contractor): Via (Engineer)

<table>
<thead>
<tr>
<th>Project:</th>
<th>Contract:</th>
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Owner's Contract No.: Contractor's Project No.: Engineer's Project No.: 

<table>
<thead>
<tr>
<th>APPLICATION FOR PAYMENT</th>
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<tbody>
<tr>
<td>Change Order Summary</td>
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<tr>
<td>Number</td>
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</table>

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 on Progress Estimate) ................................................. $ __________

5. RETAINAGE:  
   a. _____ % x $_____________ Work Completed ............................... $ __________
   b. _____ % x $_____________ Stored Material............................ $ __________
   c. Total Retainage (Line 5a + Line 5b) .................................... $ __________

6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c) ................................... $ __________

7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application) ............... $ __________

8. AMOUNT DUE THIS APPLICATION ..................................................... $ __________

9. BALANCE TO FINISH, PLUS RETAINAGE  
   (Column G on Progress Estimate + Line 5 above) .......................... $ __________

<table>
<thead>
<tr>
<th>CONTRACTOR'S CERTIFICATION</th>
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</table>

The undersigned Contractor certifies that: (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 Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Payment of: $_________________________ (Line 8 or other - attach explanation of other amount)

is recommended by: ____________________ (Engineer) (Date)

Payment of: $_________________________ (Line 8 or other - attach explanation of other amount)

is approved by: ____________________ (Owner) (Date)

Approved by: ____________________ (Funding Agency if applicable) (Date)

By: ____________________ Date: ____________________
### Progress Estimate

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<tr>
<th>Item</th>
<th>Specification Section No.</th>
<th>Description</th>
<th>Scheduled Value</th>
<th>Work Completed</th>
<th>% Balance to Finish (B - F)</th>
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<tbody>
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#### Totals

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<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
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</table>

**Application Number:**

**Application Period:**

**Application Date:**

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**Contractor’s Application**

**ITB #19-05 US 27 NORTH UTILITIES WATER & SEWER MAIN EXTENSIONS**

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<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
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<td>Shop Drawing Transmittal No.</td>
<td>Materials Description</td>
<td>Stored Previously</td>
<td>Stored this Month</td>
<td>Incorporated in Work</td>
<td>Materials Remaining in Storage ($) (D + E - F)</td>
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</tbody>
</table>

**Totals**

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ITB #19-05 US 27 NORTH
UTILITIES WATER & SEWER MAIN EXTENSIONS

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CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner: ________________________________ Owner’s Project No.: __________________

Engineer: ______________________________ Engineer’s Project No.: ________________

Contractor: ____________________________ Contractor’s Project No.: ______________

Project: ________________________________

Contract Name: ________________________________________________________________________

This ☐ Preliminary ☐ Final Certificate of Substantial Completion applies to:

☐ All Work ☐ The following specified portions of the Work:

__________________________________________________________________________________

__________________________________________________________________________________

(Describe the portion of the work for which Certificate of Substantial Completion is issued)

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 Documents.

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.

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 must be as provided in the Contract, except as amended as follows:

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:

List attachments such as punch list; other documents

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor’s obligation to complete the Work in accordance with the Contract Documents.

Engineer

By (signature): _______________________________________________________________________

Name (printed): _______________________________________________________________________

Title: _______________________________________________________________________________
SPECIFICATIONS/PERMITS/SPECIAL REQUIREMENTS

Florida Department of Economic Opportunity (FDEO) - Florida Job Growth Infrastructure Grant Agreement - DEO Agreement No. G0061

The Facility Encroachment Agreement between CSX Transportation, Inc. and the City of Avon Park dated July 17, 2019.

All verification testing is performed in accordance with, when applicable, the 2014 Standard Specifications for Road and Bridge Construction, as amended from time to time, under the oversight of the Consultant Construction Engineering Inspection (“CCEI”) firm retained by the owner.

The Florida Department of Transportation Utility Permit (Permit 3) issued to the City of Avon Park for the US 27 North Water Main and Force Main Utility Extension Project.

Florida Department of Transportation Standard Specifications for Road and Bridge Construction (latest edition)

Highlands County Land Development Regulations (most recent revision)

Highlands County Technical Standards Manual (most recent edition)

Florida Department of Environmental Protection Permit(s) for the water main, force main, gravity line and lift station.

The Highlands County Engineering Department Permit(s) for the water main, force main, gravity line and lift station.
CHAIN LINK FENCE SPECIFICATIONS

1.0 GENERAL

1.01 CHAIN LINK FENCE MANUFACTURERS INSTITUTE PRODUCT MANUAL CLF-PM0610 (Revised January, 2014)

1.02 REFERENCES

A. ASTM A121 Specification for Metallic-Coated Carbon Steel Barbed Wire
B. ASTM A392 Specification for Zinc-Coated Steel Chain-Link Fence Fabric
C. ASTM A491 Specification for Aluminum-Coated Steel Chain-Link Fabric
D. ASTM A780 Standard Practice for Repair of Damaged and Uncoated Areas of Hot-Dip Galvanized Coatings
E. ASTM A824 Specification for Metallic-Coated Steel Marcelled Tension Wire for Use With Chain Link
F. ASTM F552 Standard Terminology Relating to Chain Link Fencing
G. ASTM F567 Standard Practice for Installation of Chain Link Fence
H. ASTM F626 Specification for Fence Fittings
I. ASTM F668 Specification for Polymer Coated Chain Link Fence Fabric
J. ASTM F900 Specification for Industrial and Commercial Swing Gates
K. ASTM F934 Specification for Standard Colors for Polymer-Coated Chain Link
L. ASTM F1043 Specification for Strength and Protective Coatings of Metal Industrial Chain Link Fence Framework
M. ASTM F1083 Specification for Pipe, Steel, Hot-Dipped Zinc-Coated (Galvanized) Welded, for Fence Structures
N. ASTM F1184 Specification for Industrial and Commercial Horizontal Slide Gates
O. ASTM F1345 Specification for Zinc-5% Aluminum-Mischmetal Alloy-Coated Steel Chain-Link Fence Fabric
P. ASTM F1664 Specification for Poly (Vinyl Chloride) (PVC) and Other Conforming Organic Polymer-Coated Steel Tension Wire Used with Chain-Link Fence

Q. ASTM F1665 Specification for Poly (Vinyl Chloride) (PVC) and Other Conforming Organic Polymer-Coated Steel Barbed Wire Used with Chain-Link Fence

R. ASTM F1910 Specification for Long Barbed Tape Obstacles

S. ASTM F1911 Standard Practice for Installation of Barbed Tape

T. ASTM F2200 Specification for Automated Vehicular Gate Construction


V. CHAIN LINK FENCE MANUFACTURERS INSTITUTE (CLFMI) SFR 2445 Security Fence Recommendations

W. CLFMI CLF TPO211 Tested and Proven Performance of Security Grade Chain Link Fence Systems

X. CLFMI WLG2445 Chain Link Fence Wind Load Guide for the Selection of Line Post and Line Post Spacing

Y. CHAIN LINK FENCE MANUFACTURERS INSTITUTE PRODUCT MANUAL CLF-PM0610 (Revised January, 2014) CHAIN LINK FENCE MANUFACTURERS INSTITUTE GUIDE FOR SPECIFYING COMMERCIAL, INDUSTRIAL AND SECURITY CHAIN LINK FENCE AND GATES (CLFS 2445) [12/2013]

1.03 QUALITY ASSURANCE

A. Manufacturer: Company operating in the United States having U.S. manufacturing facility/facilities specializing in manufacturing chain link fence products with at least 5 years of experience.

B. Fence contractor: Company with demonstrated successful experience installing similar projects and products in accordance with ASTM F567 and have at least 5 years of experience.


1.04 DELIVERY, STORAGE AND HANDLING

A. Storage: Store and protect products off the ground when required.
2.0 PRODUCTS

2.01 MANUFACTURERS

A. Manufacturer: Company operating in the United States having U.S. manufacturing facility/facilities specializing in manufacturing chain link fence products with at least 5 years of experience.

2.02 CHAIN LINK FABRIC

A. Zinc Coated Steel Chain Link Fabric (galvanized steel): Two (2) inch mesh, nine (9) gauge, six (6) feet high per ASTM A392 hot dipped galvanized, Class 2 (2 oz/sq ft), twist top selvage, knuckle bottom selvage.

2.03 STEEL FENCE FRAMEWORK

A. Schedule 40 galvanized pipe per ASTM F1083 (group 1A). Exterior zinc coating Type A, interior zinc coating Type A. Steel yield strength 30,000 psi Regular Grade.
   1. Line post: 2.375 inch OD, 3.65 lb/ft
   2. End, Corner, Pull post: 2.875 inch, 8.62 lb/ft
   3. Top, brace, bottom and intermediate rails, 1.660 inch OD, 2.27 lb/ft

2.04 TENSION WIRE

A. Metallic Coated Steel Marcelled Tension Wire: 7 gauge (0.177 in.) marcelled wire complying with ASTM A824, Type II Zinc-Coated Class 5 - 2.0 oz/ft²

2.05 BARBED WIRE

Not Required.

2.06 BARBED TAPE

Not Required

2.07 FITTINGS

A. Tension and Brace Bands: Galvanized pressed steel complying with ASTM F626, minimum steel thickness of 12 gauge (0.105 inch), minimum width of 3/4 inch and minimum zinc coating of 1.20 oz/ft². Bands supplied with 5/16 inch or 3/8 inch galvanized steel carriage bolts.
B. Terminal Post Caps, Line Post Loop Tops, Rail and Brace Ends, Boulevard Clamps, Rail Sleeves: In compliance to ASTM F626, pressed steel galvanized after fabrication having a minimum zinc coating of 1.20 oz/ft².

C. Truss Rod Assembly: In compliance with ASTM F626, 3/8 inch diameter steel truss rod with a pressed steel tightener, minimum zinc coating of 1.2 oz/ft², assembly capable of withstanding a tension of 2,000 lbs.

D. Tension Bars: In compliance with ASTM F626. Galvanized steel one-piece length 2 inch less than the fabric height. Minimum zinc coating 1.2 oz./ft². Bars for 2 inch mesh shall have a minimum cross section of 3/16 inch by 3/4 inch.

2.08 TIE WIRE and HOG RINGS

A. Tie wire and hogs rings per ASTM F626. [Standard applications: 9 gauge (0.148 inch) aluminum alloy ties, 9 gauge (0.148 inch) aluminum alloy hog rings]

2.09 SWING GATES


2.10 CONCRETE

A. Concrete for post footings shall have a 28-day compressive strength of 2,500 psi.

3.0 INSTALLATION

3.01 CLEARING FENCE LINE

A. Clearing: The contract drawings indicate the extent of the area, if there is any, to be cleared and grubbed.

3.02 FRAMEWORK INSTALLATION

A. Posts: Posts shall be set plumb in concrete footings in accordance with ASTM F567. Gate and Corner Post shall be set a minimum of 36 inches into the ground and the footing shall extend 6 inches below the bottom of the post for a total minimum footing depth of 42 inches below ground level. Gate and Corner post minimum footing diameter shall be 18 inches. Line post shall be set a minimum of 30 inches into the ground and the footing shall extend 6 inches below the bottom of the post, for a total minimum footing depth of 36 inches. Top of post concrete
footing to be at grade and crowned to shed water away from the post. Line posts installed at intervals not exceeding 10 ft. on center.

B. Top rail: Install 21 foot lengths of rail continuous thru the line post or barb arm loop top. Splice rail using top rail sleeves minimum 6 inches long. The rail shall be secured to the terminal post by a brace band and rail end. Bottom rail or intermediate rail shall be field cut and secured to the line posts using boulevard bands or rail ends and brace bands.

C. Terminal posts: End, corner, pull and gate posts shall be braced and trussed. The horizontal brace rail and diagonal truss rod shall be installed in accordance with ASTM F567.

D. Tension wire: Shall be installed 4 inches up from the bottom of the fabric. Tension wire to be stretched taut, independently and prior to the fabric, between the terminal posts and secured to the terminal post using a brace band. Secure the tension wire to the chain link fabric with a 9 gauge hog rings 18 inches on center and to each line post with a tie wire.

3.03 CHAIN LINK FABRIC INSTALLATION

A. Chain Link Fabric: Install fabric to outside of the framework. Attach fabric to the terminal post by threading the tension bar through the fabric; secure the tension bar to the terminal post with tension bands and 5/16 inch carriage bolts spaced no greater than 12 inches on center. Chain link fabric to be stretched taut free of sag. Fabric to be secured to the line post with tie wires spaced no greater than 12 inches on center and to rail spaced no greater than 18 inches on center. Secure fabric to the tension wire with Pre-formed 9 gauge galvanized steel power-fastened tie wire shall be wrapped 360 degrees around the post or rail and fabric picket, twist the two wire ends together three full turns per ASTM F626. Excess wire shall be cut off and bent over to prevent injury. The installed fabric shall have a ground clearance on no more than 2 inches.

3.04 GATE INSTALLATION

A. Swing Gates: Installation of swing gates and gateposts in compliance with ASTM F567. Direction of swing shall be outward. Gates shall be plumb in the closed position having a bottom clearance of 3 inches, grade permitting. Hinge and latch offset opening space from the gate frame to the post shall be no greater than 3 inches in the closed position. Double gate drop bar receivers shall be set in a concrete footing minimum 6 inches diameter and 24 inches deep. Gate leaf holdbacks shall be installed for all double gates.

3.05 BARBED TAPE INSTALLATION

Not Required.

3.06 NUTS AND BOLTS
A. Bolts: Carriage bolts used for fittings shall be installed with the head on the secure side of the fence. All bolts shall be peened over to prevent removal of the nut.

3.07 ELECTRICAL GROUNDING

A. Grounding: Grounding of the fence and gates is not the responsibility of the fence contractor and not included in the fencing scope of work for this contract.

3.08 CLEAN UP

A. Clean Up: The area of the fence line shall be left neat and free of any debris caused by the installation of the fence.