



TOWN OF SURFSIDE

Surfside Seawall Replacement

Prepared by:



Calvin, Giordano & Associates, Inc.

EXCEPTIONAL SOLUTIONS

CGA Project No. 12-5247
Town of Surfside RFP No. 2014-003

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Contract Documents and Specifications



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May 2014

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Surfside Seawall Replacement
CGA Project No. 12-5247

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END OF LIST OF DRAWINGS

SECTION 00020

NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that the TOWN COMMISSION of the TOWN OF SURFSIDE is seeking sealed bids for the following work as specified.

Surfside Seawall Replacement
CGA Project No. 12-5247
Town of Surfside RFP No. 2014-003

Sealed bids for the Surfside Seawall Replacement will be received by the Owner, Town of Surfside.

Bids shall be on a unit price basis; segregated bids will not be accepted. Sealed bids will be received by the Town Clerk until 2:00 pm, June 17, 2014 at the Town of Surfside, Town Hall located at 9293 Harding Avenue, Surfside, FL 33154. Bids received after this time will be returned unopened. Bidders are to submit One (1) Original, Five (5) copies and One (1) electronic copy on CD Bids submitted will be opened publicly and read aloud at this time.

A Mandatory Pre-Bid Conference is scheduled for 10:00 am, Tuesday, May 20, 2014 at the Town of Surfside, Town Hall located at 9293 Harding Avenue, Surfside, FL 33154, (305) 861-4863.

Bidders may obtain complete sets of Bidding Documents from the Town Clerk Sandra Novoa, CMC at 9293 Harding Avenue, Surfside, FL 33154. Partial sets of Bidding Documents will not be available.

Bidding Documents may be examined at the Town of Surfside, at the above-referenced address.

Bid security in the amount of five percent (5%) of the Total Bid, must accompany the Bid in accordance with the Instructions to Bidders.

The contract will be awarded by the Owner to the lowest responsible and responsive bidder whose bid best serves the interests of, and represents the best value to, the Owner.

The Owner reserves the right to reject any or all Bids, with or without cause, to waive technical errors and informalities, and to accept the Bid, which best serves the interest of the Owner.

For further information, contact the office of the Town Engineer c/o Calvin, Giordano & Associates, Inc. at (954) 921-7781.

Sandra Novoa, CMC

Town Clerk
Town of Surfside

Publish Dates: May 6, 2014

END OF DOCUMENT

SECTION 00100
INSTRUCTIONS TO BIDDERS

1. DEFINITION OF TERMS

- 1.1 Bidding Documents - these include the Advertisement for Bid, Instructions to Bidders, Bid Form, sample bidding and contract forms, proposed Contract Documents as defined in the General Conditions and any Addenda issued prior to receipt of bids.
- 1.2 Total Base Bid - the amount stated on the Bid Form for which the Bidder offers to perform the Work as described in the Bidding Documents.
- 1.3 Unit Price Bid - the amount stated in the Bid Form as a price per unit of measurement for materials and/or labor as described in the Bidding Documents.
- 1.4 Addenda - written and graphic documents issued by the Owner prior to the execution of the Contract to modify or interpret the Bidding Documents.
- 1.5 General Conditions – 2002 Version of the Standard General Conditions of the Construction Contract.
- 1.6 Any Capitalized terms contained here-in (e.g. Owner, Engineer, Work, Agreement, Contract) and is not defined above are contained in the General Conditions Article 1 – Definitions and Terminology.

2. BIDDING DOCUMENTS

- 2.1 Complete sets of Bidding Documents may be obtained from the office of the Engineer as stated in the Advertisement for Bid.
- 2.2 Complete sets of Bidding Documents shall be used by Bidders in preparation of Bids; neither the Owner nor the Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets.
- 2.3 Bidding Documents consist of this project manual along with the following construction plans titled:
 - a. Surfside Seawall Design
RFP No. 2014-003
CGA Project No. 12-5247

3. EXAMINATION OF DOCUMENTS AND SITE

- 3.1 Bidders shall visit the site of the proposed work and become familiar with the nature and extent of work to be performed and local conditions that may affect the work.
- 3.2 The Bidding Documents were prepared to present an essentially accurate representation of existing conditions, interpreted from available information on the site. The Bidder is not relieved, however, of the responsibility of becoming fully informed as to existing conditions at the site.
- 3.3 Bidders shall examine existing site improvements, and conditions, utilities, and streets to determine all conditions, which will affect the Work.

4. INTERPRETATION OF BIDDING DOCUMENTS

- 4.1 All questions requiring clarification or interpretation of the Bidding Documents shall be made in writing and shall reach the office of the Engineer at least 5 days prior to the date for receipt of bids. Direct all requests to the attention of the Project Engineer at Calvin, Giordano & Associates, Inc., 1800 Eller Drive Suite 600, Fort Lauderdale, FL 33316; Fax: 954-921-8807; Phone: 954-921-7781.
- 4.2 Any modification or interpretation of the Bidding Documents will be made by Addendum to all who are recorded by the Engineer as having received a complete set of Bidding Documents.
- 4.3 Interpretations or modifications of Bidding Documents made in any manner other than by Addendum will not be binding.
- 4.4 A Bidder, prior to submitting his Bid, shall ascertain that he has received all Addenda issued, and shall acknowledge their receipt in the Bid Form.

5. SUBSTITUTIONS

- 5.1 Bidders represent that their bid is based upon the materials and equipment described in the Bidding Documents.
- 5.2 Requests for substitutions will be considered prior to receipt of bids if they reach the Engineer at least 5 days prior to the date for receipt of bids.
- 5.3 Acceptance by the Engineer of a proposed substitution will be issued in the form of an Addendum or Substitution Request Form.

6. QUALIFICATION OF BIDDERS

- 6.1 If requested, the Bidder shall submit to the Engineer, prior to award of contract, a properly completed Contractors Qualification Statement, along with any other evidence of his satisfactory experience and ability to perform the proposed Work.
- 6.2 If requested by the Owner, the Bidder shall submit a certified financial statement, prepared within the past 30 days, indicating current financial resources, liabilities, capital equipment, and past history performance.
- 6.3 Bidders may be disqualified and their bids rejected for any of the following specific reasons:
 - a. Reason to believe that collusion exists among Bidders.
 - b. Determination of lack of competency as may be revealed by qualification statements, financial statements, experience records, or other questionnaires.
 - c. The Bidder's uncompleted work load which in the judgment of the Owner, may cause detrimental impact on prompt completion of this project.
 - d. The Bidder is involved in any litigation against the Owner.
 - e. The Bidder has defaulted on any previous contract or is in arrears on any existing contract.
 - f. The submittal of more than one proposal from an individual, firm, partnership, corporation or association under the same or different names.
 - g. The Bidder, or its principals, have outstanding code enforcement violations with the Town of Surfside.
- 6.4 It shall be a requirement of this bid that there are no related party transactions between the Bidder and any employee, agent or contractor of the Town of Surfside. Any Bidder who is a related party, as noted herein, will be considered non-responsive and the proposal and bid bond will be immediately returned. A Bidder will be considered a related party if the bidder has an ownership interest or is in any way related to an employee, agent, consultant or contractor of the Town, is a sub-consultant of an employee, agent, consultant or contractor, and can influence the management or operating policy of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

7. PERFORMANCE OF WORK BY CONTRACTOR:

- 7.1 The Contractor shall perform on the site and with its own forces, work equivalent to at least forty percent (40%) of the total amount of work to be performed under this contract. After the contract is awarded, and during

the progress of the work, the Owner reserves the right to reduce the percentage of work performed by the contractor's own forces.

- 7.2 The Town will allow the Contractor to perform other marine construction activities, including private resident seawall repairs/replacement, within the Town limits with the following requirements. The Contractor agrees to perform seawall repairs/replacement for Town residents at the same unit pricing offered to the Town and subject to the following requirements:
- i. The Contractor must enter into a separate contract for any additional work to be performed for any other Owner/Agency.
 - ii. The Town will not be considered a part or party of any other contract entered into by the Contractor and any other Owner/Agency or for any work performed outside of the Town's Contract or additional Change Orders/Directives executed and provided to the Contractor in writing.
 - iii. The Contractor or other Owner, not the Town, are responsible for all permitting, licensing or other requirements for any work performed outside of the Town's Contract.
 - iv. The Contractor's additional work for other Owners while mobilized in Town will not affect/impact or alter the Town's Contract or Contractual requirements in any way.
 - v. The addition by the Contractor of other seawall work for other Owners will not affect the Town's required schedule for completion or any penalties related to the substantial or final completion schedule of the Town.
 - vi. The Town assumes no liability for any work performed outside of the scope of the Contract between the Town and Contractor.
 - vii. The Town requests the Contractor to adhere to and extend the Contractor's competitively bid contractual unit rate pricing for other Owner/Agency/resident requests of similar nature and scope within the Town.
 - viii. The Contractor may not utilize any Town Owned property, easements, rights of way, parks, streets, etc for storage, delivery, active work or any other activity while performing work for any other Owner without the written consent of the Town.
 - ix. The Contractor is responsible to repair any impacted areas to as good or better condition. This restoration includes all Town controlled property (property, easements, rights of way, parks, streets, etc) and any private property. The restoration may including landscaping, hardscaping or other improvements."

8. BID PREPARATION

- 8.1 Prepare bids on the forms provided with all blanks on the Bid Form filled in by typewriter or written in ink.
- 8.2 State total base bid amount in both words and figures. In case of a discrepancy between the two, the amount written in words shall govern.

- 8.3 Bids shall include the legal name and address of the Bidder and indicate whether the Bidder is a sole proprietor, a partnership, a corporation, or other legal entity.
- a. Individual - provide name and post office address.
 - b. Partnership - provide name and post office address of each member of the partnership.
 - c. Corporation - provide name and post office address of person signing the form and legal evidence of his authority to do so; names and addresses of the corporation president, secretary and treasurer; name of state where chartered; and affixed with the seal of the corporation, attested by the secretary.
- 8.4 Bids shall include documentation required by the Florida "Trench Safety Act." The Trench Safety Act form is included within the Bid Form Section for completion by the Contractor and review by the Owner. The unit prices presented in the Bid shall include the Bidder's cost of compliance with the applicable trench safety standards.
- 8.5 All Unit Price Bids requested on the Bid Form shall be bid.

9. BID SUBMITTAL

- 9.1 Submit one (1) original, five (5) copies and one (1) electronic copy on CD of the Bid Form, the bid security, the list of Subcontractors, and other requested attachments, enclosed in a sealed opaque envelope, addressed to the entity receiving the bids as stated in the Advertisement for Bids. The envelope shall be further identified with the Project name, the Bidder's name and address, and the words "BID ENCLOSED".
- 9.2 Deposit bids at the designated location on or before the time and date for receipt of Bids indicated in the Advertisement for bids. Bids received after the time and date indicated for receipt of Bids will be returned unopened.

10. BID SECURITY

- 10.1 Each Bid shall be accompanied by a cashiers check drawn on any State or National Bank in Florida, or an acceptable Bidders Bond, payable unconditionally to the Owner, in an amount of five percent (5%) of the amount of the total Bid.
- 10.2 Failure of the successful Bidder to enter into the Contract in accordance with his Bid, or failure to furnish the required bonds will be just cause for an annulment of the award with the amount of the bid security being forfeited to the Owner as liquidated damages, not as a penalty.

10.3 Should a Bid Bond be used, acceptable surety companies shall be determined from the latest United States Treasury Department's list of companies holding certificates of authority as acceptable Sureties on Federal Bonds. Requirements for Acceptable Surety Companies are outlined in Item 15.4.

10.4 The Owner may retain the bid security of those Bidders to whom an award may be considered until successful execution of the Contract and bonds; or the specified time for holding bids has elapsed; or all Bids have been rejected.

11. MODIFICATION AND WITHDRAWAL OF BID

11.1 Prior to the time of bid opening, a Bidder may withdraw his Bid at any time, but may not resubmit it. Bids may not be modified after submittal.

11.2 After the bid opening, no Bid may be withdrawn, canceled or modified for a period of 90 days after the time and date designated for the receipt of bids.

12. OPENING OF BIDS

12.1 Bids submitted will be opened publicly and read aloud at the time and place stated in the Advertisement for Bids.

13. GOVERNING LAWS AND REGULATIONS

13.1 Bidders shall be familiar with all federal, state, and local laws, ordinances, rules, and regulations that may in any way affect the Work.

13.2 Trench Safety Act: 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. In compliance with current State of Florida statutes, the Bidder shall provide documentation required by the Florida Trench Safety statute to the Owner, in conjunction with the Bid Form.

14. LIQUIDATED DAMAGES

14.1 The Owner may incur financial loss if the Work is not substantially complete by the date set forth in the Agreement. The Contractor (and his Surety) shall be liable for liquidated damages in accordance with the Supplementary Conditions and the Agreement.

15. PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

15.1 With the execution and delivery of the Contract, the Bidder shall furnish the following Surety bonds of the forms contained herein:

- a. Performance Bond guaranteeing full and faithful execution of the Work in an amount equal to 100 percent of the Contract Sum, and including guaranteed repair and maintenance of all defects due to faulty materials and workmanship that appear within one year after completion of contract.
- b. Labor and Material Payment Bond guaranteeing full and proper protection of all claimants supplying labor and materials in the Work in an amount equal to 100 percent of the Contract Sum.

15.2 Bonds shall be executed by Surety authorized to do business in the State of Florida and listed on the latest U.S. Treasury Department list of companies holding certificates of authority as acceptable sureties on Federal Bonds.

15.3 Bonds executed by an Attorney-in-Fact on behalf of the Surety, shall have affixed thereto a certified and current copy of Power of Attorney, indicating the monetary limit of such power.

15.4 Qualifications: As to companies being rated acceptable:

A Bid Bond and Performance and Payment Bond must be executed by a Surety Company of recognized standing, authorized to do business in the State of Florida and having been in business with a record of successful continuous operation for at least (5) years.

In addition to the above – minimum qualifications, the Surety Company must meet the following additional qualifications.

1. The Town will accept a surety bond from a company with a rating of B++ or better for bonds up to \$1 million, provided, however, that if any Surety Company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the Town shall review and either accept or reject the Surety Company based on the financial information available to the Town. A Surety Company that is rejected by the Town may be substituted by the bidder or proposer with a surety company acceptable to the Town, only if the bid amount does not increase.
 - a. The Surety Company shall have at least the following minimum ratings:

<u>Amount of Bond Category</u>	<u>Policyholder's Rating</u>	<u>Financial Size</u>
100,000 to 1,000,000	B++	Class V or higher
1,000,001 to 2,000,000	A-	Class VI or higher
2,000,001 to 5,000,000	A	Class VII or higher

- b. All Surety Companies are subject to review and approval by the Owner and may be rejected without cause. All bonds signed by an Agency must be accompanied by a certificate of authority to act.

15.5 The Surety Company shall submit verification from the Department of Insurance Office of the Treasurer stating the surety company's license and certificate of authorization to do business in the State of Florida.

16. SUBCONTRACTOR LIST

16.1 In conjunction with the Bid Form, Bidder shall submit a list of names of the subcontractors and major material suppliers proposed for the principal portions of the Work.

16.2 Prior to award of Contract, the Owner will notify the Bidder in writing if they have an objection to any person or entity listed. Upon such reasonable objection, the Bidder shall propose an acceptable substitute person or entity in accordance with Article 6.06 of the General Conditions.

17. BID PROTEST

17.1 In the event of a timely protest, the Town Manager or his/her designee shall stay the award of the contract unless, after consulting with the Town Attorney and the affected director, he/she determines that the award of the contract without delay is necessary to protect substantial interests of the Owner.

17.2 The Town shall require a deposit from a protester to compensate the Owner for the expenses of administering the protest. If the protest is decided in the protester's favor, the entire deposit shall be returned to the protester. If the protest is not decided in the protester's favor, the deposit shall be forfeited to the Owner. The deposit shall be in the form of a cashier's check and shall be in the amount of 3% (three percent) of the amount of the estimated price quoted, bid or proposal amount, or \$30,000.00 (thirty thousand dollars), whichever is less.

18. CONTRACT AWARD AND EXECUTION

18.1 Until final award of Contract, the Owner reserves the right to reject any and all Bids, with or without cause; to waive any informality or irregularity; or to accept the Bid which is in the best interest of the Owner.

18.2 It is the intent of the Owner to award a Contract to the lowest responsible and responsive bidder whose bid best serves the interests of, and represents the best value to, the Owner pursuant to the criteria set forth in Section 62-8 of the Town Code of Surfside, and whose Bid is in conformance with the Bidding Documents and does not exceed the funds

available. Price is only a factor in determining the lowest responsible and responsive bidder.

- 18.3 Upon acceptance of a Bid and award of the Contract, the successful Bidder shall deliver the executed Contract, along with required bonds and any other items requested, to the Owner within 10 days. Failure to do so will be deemed as a breach of agreement by the Bidder and result in forfeiture of bid security as described in the Instructions to Bidders.
- 18.4 The Owner reserves the right to hold all proposals and bid guarantees for a period not to exceed 90 days after the date of bid opening stated in the Advertisement for Bids.
- 18.5 The award of the contract, if it is awarded, will be to the lowest responsible and responsive bidder whose bid best serves the interests of, and represents the best value to, the Owner pursuant to the criteria set forth in Section 62-8 of the Town Code of Surfside, and whose proposal shall comply with the requirements of the Contract Documents. Time is of the essence for this project and the time limits set in the proposal, if set by the bidder, will be accorded weight by the Owner in the determination of the best proposal. In no case will the award be made until all necessary investigations have been made into the responsibility of the bidder and the Owner is satisfied that the bidder is qualified to do the Work and have the necessary organization, capital and equipment to carry out the provisions of the contract to the satisfaction of the Owner within the time specified.
- 18.7 If the Contractor feels that a problem exists either prior to, or during the bid opening, he/she shall contact the Town (within 24 hours of the bid opening) and follow the Town's current policy for bid protests.
- 18.8 The Owner reserves the right to award as a total contract any combination of the Unit Price Bid Schedule Items that would be in the best interest of the Owner.

19. CASH ALLOWANCES

- 19.1 The Bidder is advised that a space is provided in the Bid Form, Document 00300, for this purpose only. The Contractor shall not proceed on any additional work to be covered by allowances until authorized in writing by the Engineer. Such work shall be approved by the Owner, shall be within the scope of work defined by this Contract and shall not exceed the amount indicated in the Bid Form. Any amount remaining in the Cash Allowance will be retained by the Owner.

END OF DOCUMENT

Document 00200
GEOTECHNICAL REPORT

See Attached



UNIVERSAL ENGINEERING SCIENCES

Consultants In: Geotechnical Engineering • Threshold Inspection Services
Environmental Sciences • Construction Materials Testing

Offices In:
• Atlanta
• Daytona Beach
• DeBary
• Ft. Myers
• Ft. Pierce
• Gainesville
• Jacksonville
• Leesburg
• Miami
• Ocala
• Orlando
• Palm Coast
• Panama City
• Pensacola
• Rockledge
• Sarasota
• St. Augustine
• Tampa
• West Palm Beach

November 7, 2012

Mr. David Frodsham
Calvin, Giordano & Associates
560 Village Boulevard, Suite 340
West Palm Beach, Florida 33409

Reference: Geotechnical Exploration Services
Surfside Bulkhead Improvements
Surfside, Miami-Dade County, Florida
UES Project No. 0630.1200076
UES Report No. 12165

Dear Mr. Frodsham:

Universal Engineering Sciences, Inc. (UES) has completed a subsurface exploration for the above referenced project in Miami-Dade County, Florida. The completed services were conducted in general accordance with authorized UES Opportunity No. 0630.1012.00007. These completed services were performed in accordance with generally accepted soil and foundation engineering practices. No other warranty, expressed or implied, is made.

PROJECT DESCRIPTION

The project consists of planning and design of several bulkhead replacements in Surfside, Miami-Dade County, Florida. A general location map of the project area appears in Appendix A: Site Location Map. The bulkhead locations that are to be included in this geotechnical study are as follows:

- Bulkhead #1: Carlyle Avenue & 88th Street
- Bulkhead #2: Froude Avenue & 88th Street
- Bulkhead #5: End of 88th Street on Isle of Biscayne
- Bulkhead #6: Irving Avenue & Bay Drive
- Bulkhead #7: 90th Street & Bay Drive
- Bulkhead #8: 92nd Street & Bay Drive
- Bulkhead #9: 93rd Street & Bay Drive
- Bulkhead #10: 94th Street & Bay Drive
- Bulkhead #11: 95th Street & Bay Drive
- Bulkhead #12: Surfside Park

FIELD EXPLORATION

UES drilled a total of ten (10) Standard Penetration Test borings (B-1, B-2, B-5, B-6, B-7, B-9, B-10, B-11, B-12A, and B-12B) for Bulkhead Nos. 1, 2, 5, 6, 7, 9, 10, 11, and 12, respectively. Bulkhead Nos. 8 and 10 were not drilled due to conflict with utilities and obstructions. The approximate locations of the soil borings are presented in Appendix B. Boring Location Map.

The SPT borings were advanced to the depths of 15 to 25 feet below existing grade using the rotary wash method; samples were collected while performing the SPT at regular intervals. We completed the SPT in general accordance with ASTM D-1586 guidelines, with continuous sampling from 1 to 10 feet, and then at 5-foot sampling intervals. The SPT test consists of driving a standard split-barrel sampler (split-spoon) into the subsurface using a 140-pound hammer free-falling 30 inches. The number of hammer blows required to drive the sampler 12 inches, after first seating it 6 inches, is designated the penetration resistance, or SPT-N value. This value is used as an index to soil strength and consistency.

Samples collected during the SPT were placed in clean sample containers and transported to our laboratory where they were visually classified by a member of our geotechnical engineering staff in accordance with ASTM D-2488. These soil samples will be held in our laboratory for your inspection for 90 days, after which time they will be discarded unless we are otherwise notified.

LABORATORY TESTING

The soil samples recovered from the soil test borings were returned to the laboratory where a member of our geotechnical staff visually classified them, reviewed the field descriptions, and selected a representative sample for laboratory test.

Tests were performed to aid in classifying the soils and to help evaluate the general engineering characteristics of the site soils. The tests performed included six (6) No. 200 wash analyses and moisture content determination. See Appendix B: Boring Logs, Key to Boring Logs, for further data and explanations.

FINDINGS

SURFACE CONDITIONS

We reviewed U.S.G.S. topographic quadrangle maps and the USDA Soil Conservation Service Soil Survey of Miami-Dade County for relevant information about the site. Based on the 1996 Soil Survey for Miami-Dade County, Florida, as prepared by the US Department of Agriculture, Natural Resources Conservation Service (NRCS), the predominant soil type at the site is Urban land.



Urban land is in areas where more than 85 percent of the surface is covered by shopping centers, parking lots, streets, sidewalks, airports, large buildings, houses, and other structures. The natural soil cannot be observed. The soils in open areas, mostly lawns, vacant lots, playgrounds, and parks, are mainly Udorthents.

SUBSURFACE CONDITIONS

The results of our field exploration together with pertinent information obtained from the test borings, such as soil descriptions, and groundwater levels are shown on the boring logs included in Appendix B. The soil descriptions are based on visual classifications completed by a member of our geotechnical staff. The stratification lines shown on the boring logs represent the approximate boundaries between soil layers, and may not depict exact stratification. The actual soil strata boundaries are often more transitional than depicted. A generalized profile of the soils found at our boring locations is presented in Table 1: General Soil Profile.

TABLE 1: GENERAL SOIL PROFILE	
Typical Depth Below Grade (Feet)	Soil Description
0 – 9	Very loose to medium dense, brown to gray sand with rocks and shell fragments, sand with silt, silty sand, and peat [SP, SP-SM, SM, PT]
9 – 25*	Very loose to dense, gray silty sand, silty sandy limestone, and sandy limestone [SM, GM, GP]
* Boring Termination depth	

A notable feature found in the general soil profile was the presence of peat layer at borings B-1 from 6 to 9 feet below existing grade, B-5 from 4.5 to 9 feet below existing grade, and B-9 from 6 to 7 feet below grade. Groundwater was measured at a depth of approximately 1 foot below land surface in the test borings.



SOIL PARAMETERS

Table 2 presents the recommended soil parameters for the boring locations.

TABLE 2: RECOMMENDED SOIL DESIGN PARAMETERS								
Layer Depth (Feet)	SPT "N" Range	Phi	c (PSF)	k _a	k _p	K _o	Unit Weight (PCF)	
							Saturated	Submerged
0 – 9	2 – 15	28	0	0.36	2.77	0.53	100	38
9 – 25	6 – 47	30	0	0.33	3	0.5	115	53

LIMITATIONS

Our field exploration found unsuitable materials (i.e., peat) at the time of occurrence at borings B-1 from 6 to 9 feet below existing grade, B-5 from 4.5 to 9 feet below existing grade, and B-9 from 6 to 7 feet below grade. The test borings completed for this report were widely spaced and are not considered sufficient for reliably detecting the presence of isolated, anomalous surface or subsurface conditions, or reliably estimating unsuitable or suitable material quantities. Accordingly, UES does not recommend relying on our boring information to negate the presence of anomalous materials or for estimation of material quantities. Therefore, UES will not be responsible for any extrapolation or use of our data by others beyond the purpose(s) for which it is applicable or intended.

During the early stages of most construction projects, geotechnical issues not addressed in this report may arise. Because of the natural limitations inherent in working with the subsurface, it is not possible for a geotechnical engineer to predict and address all possible problems. An ASFE publication, "Important Information About Your Geotechnical Engineering Report" appears in Appendix C, and will help explain the nature of geotechnical issues.

Further, we present documents in Appendix C: Constraints and Restrictions, to bring to your attention the potential concerns and the basic limitations of a typical geotechnical report.



We appreciate the opportunity to have worked with you on this project and look forward to a continued association. Please contact us if you have any questions, or if we may further assist you as your plans proceed.

Respectfully submitted,
UNIVERSAL ENGINEERING SCIENCES, INC.
Certificate of Authorization No. 549


Allan G. Abubakar, P.E.
Project Engineer
Florida Professional Engineer No. 69952


Peter G. Read, P.E.
Regional Manager
Florida Professional Engineer No. 35604
11/7/2012

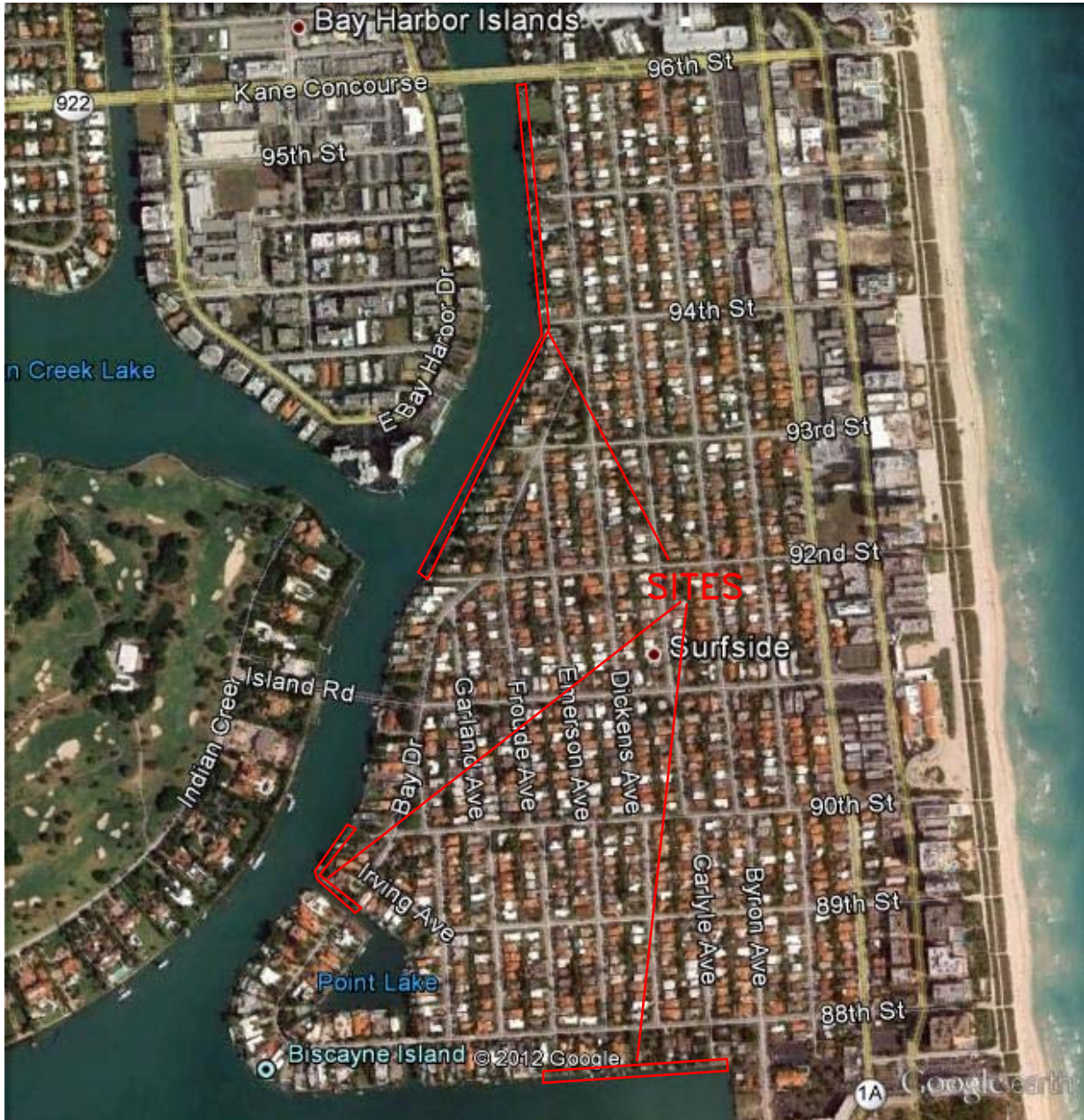
Enclosures: Appendix A: Site Location Map
Appendix B: Boring Location Map
Boring Logs
Appendix C: Important Information About Your Geotechnical
Engineering Report
Constraints and Restrictions
Appendix D: General Conditions

Dist: Client (4)



APPENDIX A





**UNIVERSAL
ENGINEERING SCIENCES**

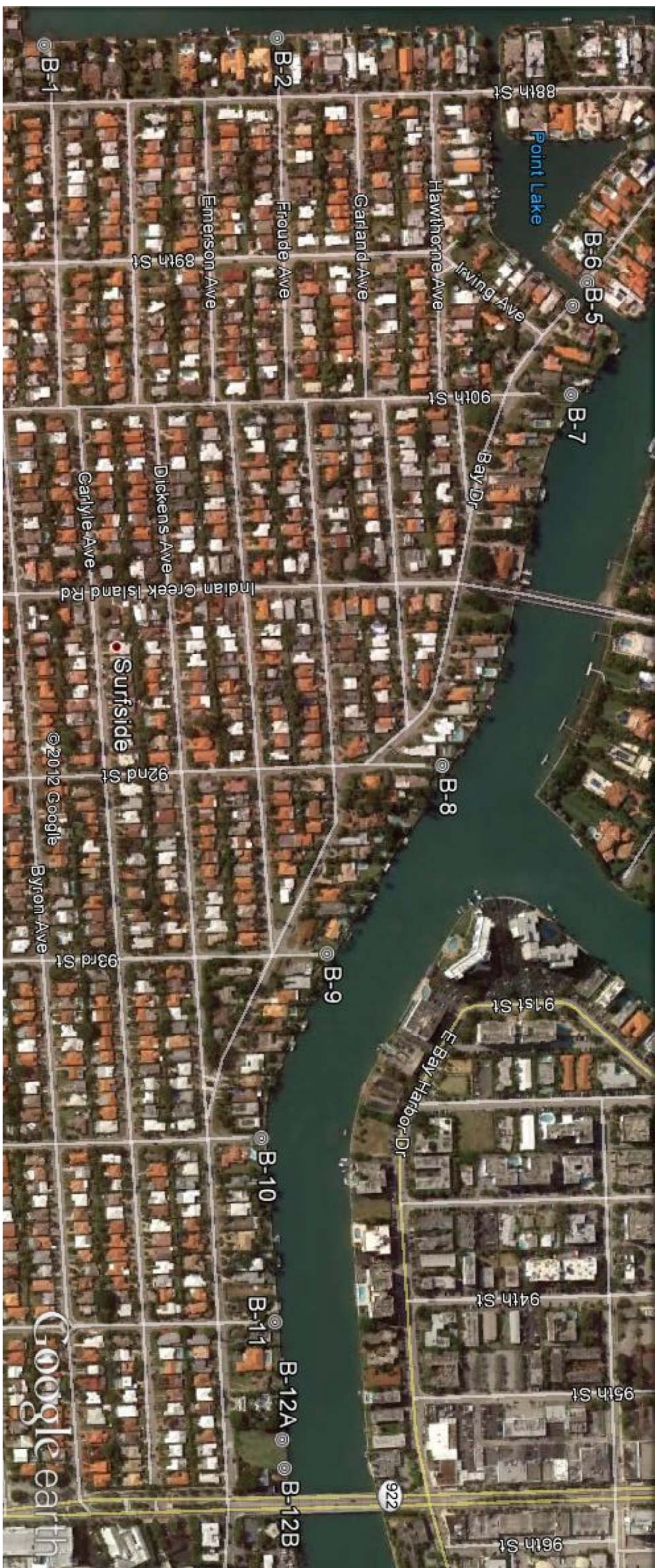
**GEOTECHNICAL EXPLORATION SERVICES
BULKHEAD IMPROVEMENTS
SURFSIDE, MIAMI-DADE COUNTY, FLORIDA**


SITE LOCATION MAP

DRAWN BY: A.G.A.	DATE: 11/02/12	CHECKED BY: P.G.R.	DATE: 11/02/12
SCALE: AS SHOWN	PROJECT NO: 0630.1200060	REPORT NO: 12165	PAGE NO: A-1

APPENDIX B





 UNIVERSAL ENGINEERING SCIENCES		GEOTECHNICAL EXPLORATION SERVICES BULKHEAD IMPROVEMENTS SURFSIDE, MIAMI-DADE COUNTY, FLORIDA					
		BORING LOCATION PLAN					
DRAWN BY:	A.G.A.	DATE:	11/06/12	CHECKED BY:	P.G.R.	DATE:	11/06/12
SCALE:	NTS	PROJECT NO:	0630.120076	REPORT NO:	12165	PAGE NO:	B-2



UNIVERSAL ENGINEERING SCIENCES BORING LOG

PROJECT NO.: 0630.1200076

REPORT NO.: 12165

PAGE: B-2

PROJECT: Surfside Bulkhead Improvements
Miami
Miami, Florida

BORING DESIGNATION: **B-1**
SECTION: TOWNSHIP:

SHEET: **1 of 1**
RANGE:

CLIENT: Calvin, Giordano & Associates, Inc.

G.S. ELEVATION (ft):

DATE STARTED: 10/31/12

LOCATION: See Location Plan

WATER TABLE (ft): 1.3

DATE FINISHED: 10/31/12

REMARKS:

DATE OF READING: 10/31/12

DRILLED BY: UES (Lake Worth)

EST. W.S.W.T. (ft): 0

TYPE OF SAMPLING: SPT

DEPTH (FT.)	S A M P L E	BLOWS PER 6" INCREMENT	N (BLOWS/ FT.)	W.T.	S Y M B O L	DESCRIPTION	-200 (%)	MC (%)	ATTERBERG LIMITS		K (FT./ DAY)	ORG. CONT. (%)
									LL	PI		
0						Topsoil						
		6-5-5	10			Limerock (Fill)loose						
		4-4-3	7			Very loose, gray sand with shell fragments [SP]						
5		1-2-1	3			Very loose, brown peat [PT]						
		1-1-1	2			Very loose, gray silty sand [SM]						
		1-1-1	2									
10		2-2-2	4			Medium dense, gray limestone [GP]	37	33				
15		10-12-16	28			SPT Soil Boring Terminated at 15 Feet.						



UNIVERSAL ENGINEERING SCIENCES BORING LOG

PROJECT NO.: 0630.1200076

REPORT NO.: 12165

PAGE: B-3

PROJECT: Surfside Bulkhead Improvements
Miami
Miami, Florida

BORING DESIGNATION: **B-2**
SECTION: TOWNSHIP:

SHEET: **1 of 1**
RANGE:

CLIENT: Calvin, Giordano & Associates, Inc.

G.S. ELEVATION (ft):

DATE STARTED: 10/31/12

LOCATION: See Location Plan

WATER TABLE (ft): 1.3

DATE FINISHED: 10/31/12

REMARKS:

DATE OF READING: 10/31/12

DRILLED BY: UES (Lake Worth)

EST. W.S.W.T. (ft): 0

TYPE OF SAMPLING: SPT

DEPTH (FT.)	SAMPLE	BLOWS PER 6" INCREMENT	N (BLOWS/ FT.)	W.T.	SYMBOL	DESCRIPTION	-200 (%)	MC (%)	ATTERBERG LIMITS		K (FT./ DAY)	ORG. CONT. (%)
									LL	PI		
0						Topsoil						
		3-2-1	3			Brown sand [SP]very loose						
		1-2-2	4			Very loose, brown silty sand with rocks [SP]	20	33				
5		2-1-2	3			Very loose, gray silty sand [SM]						
		1-1-2	3									
		1-1-1	2									
10		1-1-1	2									
15		18-16-16	32			Medium dense, light gray sandy limestone [GP]						
						SPT Soil Boring Terminated at 15 Feet.						



UNIVERSAL ENGINEERING SCIENCES BORING LOG

PROJECT NO.: 0630.1200076

REPORT NO.: 12165

PAGE: B-4

PROJECT: Surfside Bulkhead Improvements
Miami
Miami, Florida

BORING DESIGNATION: **B-5**
SECTION: TOWNSHIP:

SHEET: **1 of 1**
RANGE:

CLIENT: Calvin, Giordano & Associates, Inc.

G.S. ELEVATION (ft):

DATE STARTED: 10/31/12

LOCATION: See Location Plan

WATER TABLE (ft): 1.7

DATE FINISHED: 10/31/12

REMARKS:

DATE OF READING: 10/31/12

DRILLED BY: UES (Lake Worth)

EST. W.S.W.T. (ft): 0

TYPE OF SAMPLING: SPT

DEPTH (FT.)	SAMPLE	BLOWS PER 6" INCREMENT	N (BLOWS/ FT.)	W.T.	SYMBOL	DESCRIPTION	-200 (%)	MC (%)	ATTERBERG LIMITS		K (FT./ DAY)	ORG. CONT. (%)
									LL	PI		
0				▽		Topsoil						
		4-4-3	7	▽		Loose, brown sand with silt and shell fragments [SP-SM]	9	24				
		4-2-3	5									
5		1-1-2	3			Very loose, brown peat [PT]						
		1-2-2	4									
		1-2-1	3									
10		2-2-2	4			Very loose, gray sand with shell fragments and trace organics [SP]						
15		20-21-28	49			Dense, light gray sandy limestone [GP]						
						SPT Soil Boring Terminated at 15 Feet.						



UNIVERSAL ENGINEERING SCIENCES BORING LOG

PROJECT NO.: 0630.1200076

REPORT NO.: 12165

PAGE: B-5

PROJECT: Surfside Bulkhead Improvements
Miami
Miami, Florida

BORING DESIGNATION: **B-6**
SECTION: TOWNSHIP:

SHEET: **1 of 1**
RANGE:

CLIENT: Calvin, Giordano & Associates, Inc.

G.S. ELEVATION (ft):

DATE STARTED: 10/30/12

LOCATION: See Location Plan

WATER TABLE (ft): 1.8

DATE FINISHED: 10/30/12

REMARKS:

DATE OF READING: 10/30/12

DRILLED BY: UES (Lake Worth)

EST. W.S.W.T. (ft): 0

TYPE OF SAMPLING: SPT

DEPTH (FT.)	SAMPLE	BLOWS PER 6" INCREMENT	N (BLOWS/ FT.)	W.T.	SYMBOL	DESCRIPTION	-200 (%)	MC (%)	ATTERBERG LIMITS		K (FT./ DAY)	ORG. CONT. (%)
									LL	PI		
0				▽		Topsoil						
		1-1-1	2	▽		Very loose, brown sand with shell fragments [SP]						
		2-2-2	4									
5		3-2-2	4			Very loose, gray sand with shell fragments [SP]						
		1-1-1	2			Very loose, brown sand with shell fragments and trace organics [SP]						
		1-1-1	2									
10		1-2-1	3									
						Dense, light gray silty sandy limestone [GM]						
15		15-20-19	39			SPT Soil Boring Terminated at 15 Feet.	15	29				



UNIVERSAL ENGINEERING SCIENCES BORING LOG

PROJECT NO.: 0630.1200076

REPORT NO.: 12165

PAGE: B-6

PROJECT: Surfside Bulkhead Improvements
Miami
Miami, Florida

BORING DESIGNATION: **B-7**
SECTION: TOWNSHIP:

SHEET: **1 of 1**
RANGE:

CLIENT: Calvin, Giordano & Associates, Inc.

G.S. ELEVATION (ft):

DATE STARTED: 10/30/12

LOCATION: See Location Plan

WATER TABLE (ft): 1.7

DATE FINISHED: 10/30/12

REMARKS:

DATE OF READING: 10/30/12

DRILLED BY: UES (Lake Worth)

EST. W.S.W.T. (ft): 0

TYPE OF SAMPLING: SPT

DEPTH (FT.)	SAMPLE	BLOWS PER 6" INCREMENT	N (BLOWS/ FT.)	W.T.	SYMBOL	DESCRIPTION	-200 (%)	MC (%)	ATTERBERG LIMITS		K (FT./ DAY)	ORG. CONT. (%)
									LL	PI		
0				▽		Topsoil						
		2-1-2	3	▽		Very loose, brown sand with shell fragments [SP]						
		2-2-1	3			Very loose, gray sand with shell fragments [SP]						
5		1-1-3	4			Very loose, gray silty sand with shell fragments and root [SM]						
		2-2-3	5			Loose, gray sand with shell fragments [SP]						
		2-2-3	5									
10		3-4-4	8									
						Medium dense, light gray sandy limestone [GP]						
15		2-11-17	28			SPT Soil Boring Terminated at 15 Feet.						



UNIVERSAL ENGINEERING SCIENCES BORING LOG

PROJECT NO.: 0630.1200076

REPORT NO.: 12165

PAGE: B-7

PROJECT: Surfside Bulkhead Improvements
Miami
Miami, Florida

BORING DESIGNATION: **B-9**
SECTION: TOWNSHIP:

SHEET: **1 of 1**
RANGE:

CLIENT: Calvin, Giordano & Associates, Inc.

G.S. ELEVATION (ft):

DATE STARTED: 10/30/12

LOCATION: See Location Plan

WATER TABLE (ft): 1.3

DATE FINISHED: 10/30/12

REMARKS:

DATE OF READING: 10/30/12

DRILLED BY: UES (Lake Worth)

EST. W.S.W.T. (ft): 0

TYPE OF SAMPLING: SPT

DEPTH (FT.)	SAMPLE	BLOWS PER 6" INCREMENT	N (BLOWS/ FT.)	W.T.	SYMBOL	DESCRIPTION	-200 (%)	MC (%)	ATTERBERG LIMITS		K (FT./ DAY)	ORG. CONT. (%)
									LL	PI		
0						Topsoil						
		4-3-2	5			Loose, brown sand with rocks [SP]						
		1-3-4	7			Loose, brown sand with shell fragments [SP]						
						Loose, gray sand with shell fragments [SP]						
5		2-3-2	5									
		1-2-2	4			Very loose, peat [PT]						
		2-2-2	4			Very loose, gray sand with shell fragments [SP]	5	33				
10		3-3-4	7									
						Medium dense, light gray sandy limestone [GP]						
15		21-12-15	27			SPT Soil Boring Terminated at 15 Feet.						



UNIVERSAL ENGINEERING SCIENCES BORING LOG

PROJECT NO.: 0630.1200076

REPORT NO.: 12165

PAGE: B-8

PROJECT: Surfside Bulkhead Improvements
Miami
Miami, Florida

BORING DESIGNATION: **B-11**
SECTION: TOWNSHIP:

SHEET: **1 of 1**
RANGE:

CLIENT: Calvin, Giordano & Associates, Inc.

G.S. ELEVATION (ft):

DATE STARTED: 10/30/12

LOCATION: See Location Plan

WATER TABLE (ft): 1.1

DATE FINISHED: 10/30/12

REMARKS:

DATE OF READING: 10/30/12

DRILLED BY: UES (Lake Worth)

EST. W.S.W.T. (ft): 0

TYPE OF SAMPLING: SPT

DEPTH (FT.)	SAMPLE	BLOWS PER 6" INCREMENT	N (BLOWS/ FT.)	W.T.	SYMBOL	DESCRIPTION	-200 (%)	MC (%)	ATTERBERG LIMITS		K (FT./ DAY)	ORG. CONT. (%)
									LL	PI		
0						Topsoil						
		1-2-2	4			Very loose, brown sand with shell fragments [SP]						
		2-2-8	10									
5		3-3-3	6			Loose, gray sand with rock [SP]						
		4-4-3	7			Loose to very loose, gray sand with shell fragments [SP]						
		3-3-3	6									
10		3-3-3	6									
15		2-1-2	3			SPT Soil Boring Terminated at 15 Feet.						



UNIVERSAL ENGINEERING SCIENCES BORING LOG

PROJECT NO.: 0630.1200076

REPORT NO.: 12165

PAGE: B-9

PROJECT: Surfside Bulkhead Improvements
Miami
Miami, Florida

BORING DESIGNATION: **B-12A** SHEET: **1 of 1**
SECTION: TOWNSHIP: RANGE:

CLIENT: Calvin, Giordano & Associates, Inc.

G.S. ELEVATION (ft): DATE STARTED: 10/29/12

LOCATION: See Location Plan

WATER TABLE (ft): 1.3 DATE FINISHED: 10/29/12

REMARKS:

DATE OF READING: 10/29/12 DRILLED BY: UES (Lake Worth)

EST. W.S.W.T. (ft): 0 TYPE OF SAMPLING: SPT

DEPTH (FT.)	SAMPLE	BLOWS PER 6" INCREMENT	N (BLOWS/ FT.)	W.T.	SYMBOL	DESCRIPTION	-200 (%)	MC (%)	ATTERBERG LIMITS		K (FT./ DAY)	ORG. CONT. (%)
									LL	PI		
0				▽		Topsoil						
		3-2-3	5	▼		Loose, brown sand with shell fragments [SP]						
		2-2-3	5									
5		4-4-8	12			Medium dense to very loose, gray sand with shell fragments						
		5-4-5	9									
		2-2-1	3									
10		1-1-2	3									
		3-3-4	7									
15												
		6-7-6	13									
20												
		5-6-5	11			Medium dense, light gray silty sandy limestone [GM]						
25						SPT Soil Boring Terminated at 25 Feet.	23	29				



UNIVERSAL ENGINEERING SCIENCES BORING LOG

PROJECT NO.: 0630.1200076

REPORT NO.: 12165

PAGE: B-10

PROJECT: Surfside Bulkhead Improvements
Miami
Miami, Florida

BORING DESIGNATION: **B-12B** SHEET: **1 of 1**
SECTION: TOWNSHIP: RANGE:

CLIENT: Calvin, Giordano & Associates, Inc.

G.S. ELEVATION (ft): DATE STARTED: 10/29/12

LOCATION: See Location Plan

WATER TABLE (ft): 1.1 DATE FINISHED: 10/29/12

REMARKS:

DATE OF READING: 10/29/12 DRILLED BY: UES (Lake Worth)

EST. W.S.W.T. (ft): 0 TYPE OF SAMPLING: SPT

DEPTH (FT.)	SAMPLE	BLOWS PER 6" INCREMENT	N (BLOWS/ FT.)	W.T.	SYMBOL	DESCRIPTION	-200 (%)	MC (%)	ATTERBERG LIMITS		K (FT./ DAY)	ORG. CONT. (%)
									LL	PI		
0				▽		Topsoil						
		4-4-4	8	▼		Loose to medium dense, brown sand with shell fragments [SP]						
		3-3-4	7									
5		3-5-6	11									
		8-7-8	15			Medium dense to loose, gray sand with shell fragments [SP]						
		5-5-6	11									
10		4-3-2	5									
		2-3-4	7									
15												
		10-9-9	18									
20												
		7-8-8	16			Medium dense, light gray sandy limestone [GP]						
25						SPT Soil Boring Terminated at 25 Feet.						

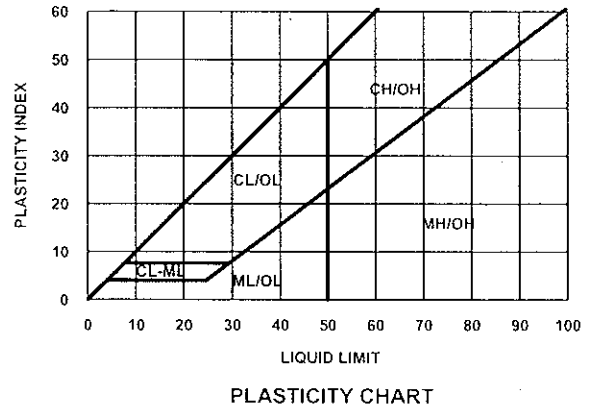
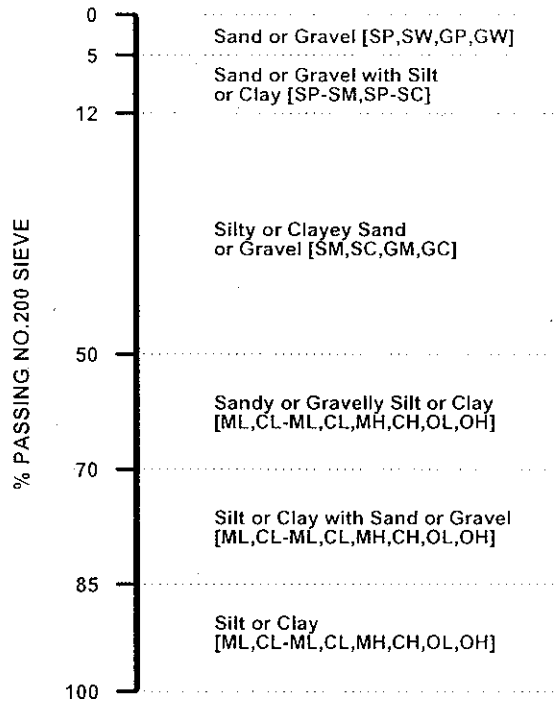
BL.3

KEY TO BORING LOGS

SOIL CLASSIFICATION CHART*

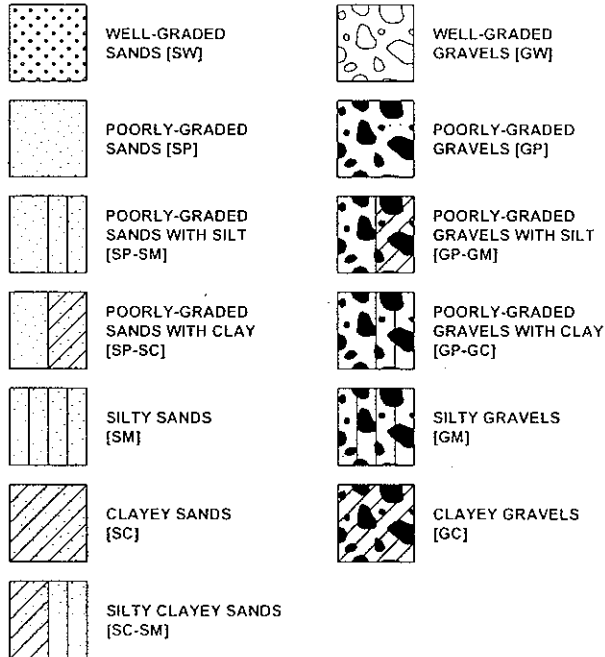


UNIVERSAL
ENGINEERING
SCIENCES, INC.

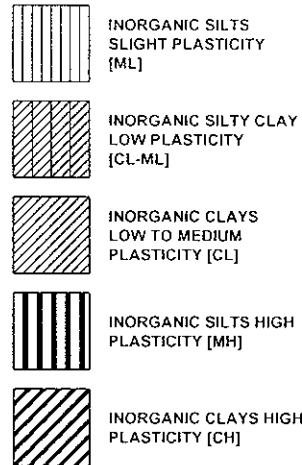


GROUP NAME AND SYMBOL

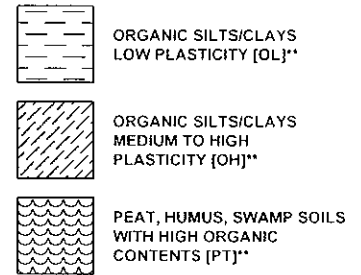
COARSE GRAINED SOILS



FINE GRAINED SOILS



HIGHLY ORGANIC SOILS



RELATIVE DENSITY (SAND AND GRAVEL)

VERY LOOSE - 0 to 4 Blows/ft.
 LOOSE - 5 to 10 Blows/ft.
 MEDIUM DENSE - 11 to 30 Blows/ft.
 DENSE - 31 to 50 Blows/ft.
 VERY DENSE - more than 50 Blows/ft.

CONSISTENCY (SILT AND CLAY)

VERY SOFT - 0 to 2 Blows/ft.
 SOFT - 3 to 4 Blows/ft.
 FIRM - 5 to 8 Blows/ft.
 STIFF - 9 to 16 Blows/ft.
 VERY STIFF - 17 to 30 Blows/ft.
 HARD - more than 30 Blows/ft.

* IN ACCORDANCE WITH ASTM D 2487 - UNIFIED SOIL CLASSIFICATION SYSTEM.

** LOCALLY MAY BE KNOWN AS MUCK.

NOTE: DUAL SYMBOLS ARE USED TO INDICATE BORDERLINE SOIL CLASSIFICATIONS

SOIL CLASSIFICATION CHART

MAJOR DIVISIONS			SYMBOLS		TYPICAL DESCRIPTIONS	
			GRAPH	LETTER		
<p>COARSE GRAINED SOILS</p> <p>MORE THAN 50% OF MATERIAL IS LARGER THAN NO. 200 SIEVE SIZE</p>	<p>GRAVEL AND GRAVELLY SOILS</p> <p>MORE THAN 50% OF COARSE FRACTION RETAINED ON NO. 4 SIEVE</p>	<p>CLEAN GRAVELS</p> <p>(LITTLE OR NO FINES)</p>		GW	WELL-GRADED GRAVELS, GRAVEL - SAND MIXTURES, LITTLE OR NO FINES	
		<p>GRAVELS WITH FINES</p> <p>(APPRECIABLE AMOUNT OF FINES)</p>		GP	POORLY-GRADED GRAVELS, GRAVEL - SAND MIXTURES, LITTLE OR NO FINES	
		<p>GRAVELS WITH FINES</p> <p>(APPRECIABLE AMOUNT OF FINES)</p>		GM	SILTY GRAVELS, GRAVEL - SAND - SILT MIXTURES	
		<p>GRAVELS WITH FINES</p> <p>(APPRECIABLE AMOUNT OF FINES)</p>		GC	CLAYEY GRAVELS, GRAVEL - SAND - CLAY MIXTURES	
	<p>SAND AND SANDY SOILS</p> <p>MORE THAN 50% OF COARSE FRACTION PASSING ON NO. 4 SIEVE</p>	<p>CLEAN SANDS</p> <p>(LITTLE OR NO FINES)</p>		SW	WELL-GRADED SANDS, GRAVELLY SANDS, LITTLE OR NO FINES	
		<p>CLEAN SANDS</p> <p>(LITTLE OR NO FINES)</p>		SP	POORLY-GRADED SANDS, GRAVELLY SAND, LITTLE OR NO FINES	
		<p>SANDS WITH FINES</p> <p>(APPRECIABLE AMOUNT OF FINES)</p>		SM	SILTY SANDS, SAND - SILT MIXTURES	
		<p>SANDS WITH FINES</p> <p>(APPRECIABLE AMOUNT OF FINES)</p>		SC	CLAYEY SANDS, SAND - CLAY MIXTURES	
		<p>FINE GRAINED SOILS</p> <p>MORE THAN 50% OF MATERIAL IS SMALLER THAN NO. 200 SIEVE SIZE</p>	<p>SILTS AND CLAYS</p> <p>LIQUID LIMIT LESS THAN 50</p>		ML	INORGANIC SILTS AND VERY FINE SANDS, ROCK FLOUR, SILTY OR CLAYEY FINE SANDS OR CLAYEY SILTS WITH SLIGHT PLASTICITY
					CL	INORGANIC CLAYS OF LOW TO MEDIUM PLASTICITY, GRAVELLY CLAYS, SANDY CLAYS, SILTY CLAYS, LEAN CLAYS
	OL			ORGANIC SILTS AND ORGANIC SILTY CLAYS OF LOW PLASTICITY		
<p>SILTS AND CLAYS</p> <p>LIQUID LIMIT GREATER THAN 50</p>			MH	INORGANIC SILTS, MICACEOUS OR DIATOMACEOUS FINE SAND OR SILTY SOILS		
		CH	INORGANIC CLAYS OF HIGH PLASTICITY			
		OH	ORGANIC CLAYS OF MEDIUM TO HIGH PLASTICITY, ORGANIC SILTS			
<p>HIGHLY ORGANIC SOILS</p>				PT	PEAT, HUMUS, SWAMP SOILS WITH HIGH ORGANIC CONTENTS	

USCS LEGEND 10/02/07

NOTE: DUAL SYMBOLS ARE USED TO INDICATE BORDERLINE SOIL CLASSIFICATIONS



Important Information About Your Geotechnical Engineering Report

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

The following information is provided to help you manage your risks.

Geotechnical Services Are Performed for Specific Purposes, Persons, and Projects

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical engineering study conducted for a civil engineer may not fulfill the needs of a construction contractor or even another civil engineer. Because each geotechnical engineering study is unique, each geotechnical engineering report is unique, prepared *solely* for the client. No one except you should rely on your geotechnical engineering report without first conferring with the geotechnical engineer who prepared it. *And no one — not even you — should apply the report for any purpose or project except the one originally contemplated.*

Read the Full Report

Serious problems have occurred because those relying on a geotechnical engineering report did not read it all. Do not rely on an executive summary. Do not read selected elements only.

A Geotechnical Engineering Report Is Based on A Unique Set of Project-Specific Factors

Geotechnical engineers consider a number of unique, project-specific factors when establishing the scope of a study. Typical factors include: the client's goals, objectives, and risk management preferences; the general nature of the structure involved, its size, and configuration; the location of the structure on the site; and other planned or existing site improvements, such as access roads, parking lots, and underground utilities. Unless the geotechnical engineer who conducted the study specifically indicates otherwise, do not rely on a geotechnical engineering report that was:

- not prepared for you,
- not prepared for your project,
- not prepared for the specific site explored, or
- completed before important project changes were made.

Typical changes that can erode the reliability of an existing geotechnical engineering report include those that affect:

- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light industrial plant to a refrigerated warehouse,

- elevation, configuration, location, orientation, or weight of the proposed structure,
- composition of the design team, or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project changes—even minor ones—and request an assessment of their impact. *Geotechnical engineers cannot accept responsibility or liability for problems that occur because their reports do not consider developments of which they were not informed.*

Subsurface Conditions Can Change

A geotechnical engineering report is based on conditions that existed at the time the study was performed. *Do not rely on a geotechnical engineering report* whose adequacy may have been affected by: the passage of time; by man-made events, such as construction on or adjacent to the site; or by natural events, such as floods, earthquakes, or groundwater fluctuations. *Always* contact the geotechnical engineer before applying the report to determine if it is still reliable. A minor amount of additional testing or analysis could prevent major problems.

Most Geotechnical Findings Are Professional Opinions

Site exploration identifies subsurface conditions only at those points where subsurface tests are conducted or samples are taken. Geotechnical engineers review field and laboratory data and then apply their professional judgment to render an opinion about subsurface conditions throughout the site. Actual subsurface conditions may differ—sometimes significantly—from those indicated in your report. Retaining the geotechnical engineer who developed your report to provide construction observation is the most effective method of managing the risks associated with unanticipated conditions.

A Report's Recommendations Are *Not* Final

Do not overrely on the construction recommendations included in your report. *Those recommendations are not final*, because geotechnical engineers develop them principally from judgment and opinion. Geotechnical engineers can finalize their recommendations only by observing actual

subsurface conditions revealed during construction. *The geotechnical engineer who developed your report cannot assume responsibility or liability for the report's recommendations if that engineer does not perform construction observation.*

A Geotechnical Engineering Report Is Subject to Misinterpretation

Other design team members' misinterpretation of geotechnical engineering reports has resulted in costly problems. Lower that risk by having your geotechnical engineer confer with appropriate members of the design team after submitting the report. Also retain your geotechnical engineer to review pertinent elements of the design team's plans and specifications. Contractors can also misinterpret a geotechnical engineering report. Reduce that risk by having your geotechnical engineer participate in prebid and preconstruction conferences, and by providing construction observation.

Do Not Redraw the Engineer's Logs

Geotechnical engineers prepare final boring and testing logs based upon their interpretation of field logs and laboratory data. To prevent errors or omissions, the logs included in a geotechnical engineering report should *never* be redrawn for inclusion in architectural or other design drawings. Only photographic or electronic reproduction is acceptable, *but recognize that separating logs from the report can elevate risk.*

Give Contractors a Complete Report and Guidance

Some owners and design professionals mistakenly believe they can make contractors liable for unanticipated subsurface conditions by limiting what they provide for bid preparation. To help prevent costly problems, give contractors the complete geotechnical engineering report, *but* preface it with a clearly written letter of transmittal. In that letter, advise contractors that the report was not prepared for purposes of bid development and that the report's accuracy is limited; encourage them to confer with the geotechnical engineer who prepared the report (a modest fee may be required) and/or to conduct additional study to obtain the specific types of information they need or prefer. A prebid conference can also be valuable. *Be sure contractors have sufficient time to perform additional study.* Only then might you be in a position to give contractors the best information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions.

Read Responsibility Provisions Closely

Some clients, design professionals, and contractors do not recognize that geotechnical engineering is far less exact than other engineering disciplines. This lack of understanding has created unrealistic expectations that

have led to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their reports. Sometimes labeled "limitations" many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Geoenvironmental Concerns Are Not Covered

The equipment, techniques, and personnel used to perform a *geoenvironmental* study differ significantly from those used to perform a *geotechnical* study. For that reason, a geotechnical engineering report does not usually relate any geoenvironmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated environmental problems have led to numerous project failures.* If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the *express purpose* of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may have been addressed as part of the geotechnical engineering study whose findings are conveyed in this report, the geotechnical engineer in charge of this project is not a mold prevention consultant; *none of the services performed in connection with the geotechnical engineer's study were designed or conducted for the purpose of mold prevention.* *Proper implementation of the recommendations conveyed in this report will not of itself be sufficient to prevent mold from growing in or on the structure involved.*

Rely on Your ASFE-Member Geotechnical Engineer for Additional Assistance

Membership in ASFE/The Best People on Earth exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit for everyone involved with a construction project. Confer with you ASFE-member geotechnical engineer for more information.



8811 Colesville Road/Suite G106, Silver Spring, MD 20910

Telephone: 301/565-2733 Facsimile: 301/589-2017

e-mail: info@asfe.org www.asfe.org

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CONSTRAINTS AND RESTRICTIONS

WARRANTY

UES has prepared this report for our client for his exclusive use, in accordance with generally accepted soil and foundation engineering practices, and makes no other warranty either expressed or implied as to the professional advice provided in the report.

UNANTICIPATED SOIL CONDITIONS

The analysis and recommendations submitted in this report are based upon the data obtained from soil borings performed at the locations indicated on the Boring Location Plan. This report does not reflect any variations which may occur between these borings.

The nature and extent of variations between borings may not become known until excavation begins. If variations appear, we may have to re-evaluate our recommendations after performing on-site observations and noting the characteristics of any variations.

CHANGED CONDITIONS

We recommend that the specifications for the project require that the contractor immediately notify Universal Engineering Sciences, as well as the owner, when subsurface conditions are encountered that are different from those present in this report.

No claim by the contractor for any conditions differing from those anticipated in the plans, specifications, and those found in this report, should be allowed unless the contractor notifies the owner and UES of such changed conditions. Further, we recommend that all foundation work and site improvements be observed by a representative of UES to monitor field conditions and changes, to verify design assumptions and to evaluate and recommend any appropriate modifications to this report.

MISINTERPRETATION OF SOIL ENGINEERING REPORT

UES is responsible for the conclusions and opinions contained within this report based upon the data relating only to the specific project and location discussed herein. If the conclusions or recommendations based upon the data presented are made by others, those conclusions or recommendations are not the responsibility of UES.

CHANGED STRUCTURE OR LOCATION

This report was prepared in order to aid in the evaluation of this project and to assist the architect or engineer in the design of this project. If any changes in the design or location of the structure as outlined in this report are planned, or if any structures are included or added that are not discussed in the report, the conclusions and recommendations contained in this report shall not be considered valid unless the changes are reviewed and the conclusions modified or approved by UES.

USE OF REPORT BY BIDDERS

Bidders who are examining the report prior to submission of a bid are cautioned that this report was prepared as an aid to the designers of the project and it may affect actual construction operations. Bidders are urged to make their own soil borings, test pits, test caissons or other investigations to determine those conditions that may affect construction operations. UES cannot be responsible for any interpretations made from this report or the attached boring logs with regard to their adequacy in reflecting subsurface conditions which will affect construction operations.

STRATA CHANGES

Strata changes are indicated by a definite line on the boring logs which accompany this report. However, the actual change in the ground may be more gradual. Where changes occur between soil samples, the location of the change must necessarily be estimated using all available information and may not be shown at the exact depth.

OBSERVATIONS DURING DRILLING

Attempts are made to detect and/or identify occurrences during drilling and sampling, such as: water level, boulders, zones of lost circulation, relative ease or resistance to drilling progress, unusual sample recovery, variation of driving resistance, obstructions, etc.; however, lack of mention does not preclude their presence.

WATER LEVELS

Water level readings have been made in the drill holes during drilling and they indicate normally occurring conditions. Water levels may not have been stabilized at the last reading. This data has been reviewed and interpretations made in this report. However, it must be noted that fluctuations in the level of the groundwater may occur due to variations in rainfall, temperature, tides, and other factors not evident at the time measurements were made and reported. Since the probability of such variations is anticipated, design drawings and specifications should accommodate such possibilities and construction planning should be based upon such assumptions of variations.

LOCATION OF BURIED OBJECTS

All users of this report are cautioned that there was no requirement for UES to attempt to locate any man-made buried objects during the course of this exploration and that no attempt was made by UES to locate any such buried objects. UES cannot be responsible for any buried man-made objects which are subsequently encountered during construction that are not discussed within the text of this report.

TIME

This report reflects the soil conditions at the time of investigation. If the report is not used in a reasonable amount of time, significant changes to the site may occur and additional reviews may be required.



Universal Engineering Sciences, Inc.
GENERAL CONDITIONS

SECTION 1: RESPONSIBILITIES

- 1.1 *Universal Engineering Sciences, Inc.*, heretofore referred to as the Consultant, has the responsibility for providing the services described under the Scope of Services section. The work is to be performed according to accepted standards of care and is to be completed in a timely manner. The term "Consultant" as used herein includes all of *Universal Engineering Sciences, Inc's* agents, employees, professional staff, and subcontractors.
- 1.2 The Client or a duly authorized representative is responsible for providing the Consultant with a clear understanding of the project nature and scope. The Client shall supply the Consultant with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys and designs, to allow the Consultant to properly complete the specified services. The Client shall also communicate changes in the nature and scope of the project as soon as possible during performance of the work so that the changes can be incorporated into the work product.

SECTION 2: STANDARD OF CARE

- 2.1 Services performed by the Consultant under this Agreement are expected by the Client to be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the Consultant's profession practicing contemporaneously under similar conditions in the locality of the project. No other warranty, express or implied, is made.
- 2.2 The Client recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or other explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by the Consultant will be based solely on information available to the Consultant at the time of service. The Consultant is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.

SECTION 3: SITE ACCESS AND SITE CONDITIONS

- 3.1 Client will grant or obtain free access to the site for all equipment and personnel necessary for the Consultant to perform the work set forth in this Agreement. The Client will notify any and all possessors of the project site that Client has granted Consultant free access to the site. The Consultant will take reasonable precautions to minimize damage to the site, but it is understood by Client that, in the normal course of work, some damage may occur, and the correction of such damage is not part of this Agreement unless so specified in the Proposal.
- 3.2 The Client is responsible for the accuracy of locations for all subterranean structures and utilities. The Consultant will take reasonable precautions to avoid known subterranean structures, and the Client waives any claim against Consultant, and agrees to defend, indemnify, and hold Consultant harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim with compensation to be based upon Consultant's prevailing fee schedule and expense reimbursement policy.

SECTION 4: SAMPLE OWNERSHIP AND DISPOSAL

- 4.1 Soil or water samples obtained from the project during performance of the work shall remain the property of the Client.
- 4.2 The Consultant will dispose of or return to Client all remaining soils and rock samples 60 days after submission of report covering those samples. Further storage or transfer of samples can be made at Client's expense upon Client's prior written request.
- 4.3 Samples which are contaminated by petroleum products or other chemical waste will be returned to Client for treatment or disposal, consistent with all appropriate federal, state, or local regulations.

SECTION 5: BILLING AND PAYMENT

- 5.1 Consultant will submit invoices to Client monthly or upon completion of services. Invoices will show charges for different personnel and expense classifications.
- 5.2 Payment is due 30 days after presentation of invoice and is past due 31 days from invoice date. Client agrees to pay a finance charge of one and one-half percent (1 ½ %) per month, or the maximum rate allowed by law, on past due accounts.
- 5.3 If the Consultant incurs any expenses to collect overdue billings on invoices, the sums paid by the Consultant for reasonable attorneys' fees, court costs, Consultant's time, Consultant's expenses, and interest will be due and owing by the Client.

SECTION 6: OWNERSHIP OF DOCUMENTS

- 6.1 All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by the Consultant, as instruments of service, shall remain the property of the Consultant.
- 6.2 Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose.
- 6.3 The Consultant will retain all pertinent records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to the Client at all reasonable times.

SECTION 7: DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS

- 7.1 Client warrants that a reasonable effort has been made to inform Consultant of known or suspected hazardous materials on or near the project site.
- 7.2 Under this agreement, the term hazardous materials include hazardous materials (40 CFR 172.01), hazardous wastes (40 CFR 261.2), hazardous substances (40 CFR 300.6), petroleum products, polychlorinated biphenyls, and asbestos.
- 7.3 Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Consultant and Client agree that the

discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. Consultant and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for Consultant to take immediate measures to protect health and safety. Client agrees to compensate Consultant for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous waste.

- 7.4 Consultant agrees to notify Client when unanticipated hazardous materials or suspected hazardous materials are encountered. Client agrees to make any disclosures required by law to the appropriate governing agencies. Client also agrees to hold Consultant harmless for any and all consequences of disclosures made by Consultant which are required by governing law. In the event the project site is not owned by Client, Client recognizes that it is the Client's responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.
- 7.5 Notwithstanding any other provision of the Agreement, Client waives any claim against Consultant, and to the maximum extent permitted by law, agrees to defend, indemnify, and save Consultant harmless from any claim, liability, and/or defense costs for injury or loss arising from Consultant's discovery of unanticipated hazardous materials or suspected hazardous materials including any costs created by delay of the project and any cost associated with possible reduction of the property's value. Client will be responsible for ultimate disposal of any samples secured by the Consultant which are found to be contaminated.

SECTION 8: RISK ALLOCATION

- 8.1 Client agrees that Consultant's liability for any damage on account of any error, omission or other professional negligence will be limited to a sum not to exceed \$50,000 or Consultant's fee, whichever is greater. Client agrees that the foregoing limits of liability extend to all of consultant's employees and professionals who perform any services for Client. If Client prefers to have higher limits on professional liability, Consultant agrees to increase the limits up to a maximum of \$1,000,000.00 upon Client's written request at the time of accepting our proposal provided that Client agrees to pay an additional consideration of four percent of the total fee, or \$400.00, whichever is greater. The additional charge for the higher liability limits is because of the greater risk assumed and is not strictly a charge for additional professional liability insurance.

SECTION 9: INSURANCE

- 9.1 The Consultant represents and warrants that it and its agents, staff and Consultants employed by it, is and are protected by worker's compensation insurance and that Consultant has such coverage under public liability and property damage insurance policies which the Consultant deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, Consultant agrees to indemnify and save Client harmless from and against loss, damage, or liability arising from negligent acts by Consultant, its agents, staff, and consultants employed by it. The Consultant shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance or the limits described in Section 8, whichever is less. The Client agrees to defend, indemnify and save Consultant harmless for loss, damage or liability arising from acts by Client, Client's agent, staff, and other consultants employed by Client.

SECTION 10: DISPUTE RESOLUTION

- 10.1 All claims, disputes, and other matters in controversy between Consultant and Client arising out of or in any way related to this Agreement will be submitted to alternative dispute resolution (ADR) such as mediation and/or arbitration, before and as a condition precedent to other remedies provided by law.
- 10.2 If a dispute at law arises related to the services provided under this Agreement and that dispute requires litigation instead of ADR as provided above, then:
- (a) the claim will be brought and tried in judicial jurisdiction of the court of the county where Consultant's principal place of business is located and Client waives the right to remove the action to any other county or judicial jurisdiction, and
 - (b) The prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, and other claim related expenses.

SECTION 11: TERMINATION

- 11.1 This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, Consultant shall be paid for services performed to the termination notice date plus reasonable termination expenses.
- 11.2 In the event of termination, or suspension for more than three (3) months, prior to completion of all reports contemplated by the Agreement, Consultant may complete such analyses and records as are necessary to complete his files and may also complete a report on the services performed to the date of notice of termination or suspension. The expense of termination or suspension shall include all direct costs of Consultant in completing such analyses, records and reports.

SECTION 12: ASSIGNS

- 12.1 Neither the Client nor the Consultant may delegate, assign, sublet or transfer his duties or interest in this Agreement without the written consent of the other party.

SECTION 13. GOVERNING LAW AND SURVIVAL

- 13.1 The laws of the State of Florida will govern the validity of these Terms, their interpretation and performance.
- 13.2 If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this Agreement for any cause.

SECTION 00300

BID FORM

Bid of _____

Address _____

Phone _____

To furnish all materials, equipment and labor and to perform all work in accordance with the Contract Documents for construction of: ten concrete pile and panel seawalls (bulkheads) with appertaining under grounding of certain utilities, such as FPL Power, requiring coordination with others.

To: TOWN OF SURFSIDE
9293 Harding Ave.
Surfside, Florida 33154

The undersigned Bidder has carefully examined the Bidding Documents and the site of the proposed work and is familiar with the nature and extent of the work and any local conditions that may in any manner affect the work to be done.

The undersigned Bidder agrees to do all the work and furnish all materials called for by the Bidding Documents, in the manner prescribed therein and to the standards of quality and performance established by the Engineer for the unit price amounts stated in the spaces herein provided, for each of the items or combination of items stipulated. Unit price line items shall include cost of implementing all applicable safety requirements. Bidder acknowledges that estimated quantities scheduled are approximated for the sole purpose of obtaining comparative bids for determination of the lowest responsible and responsive bidder whose bid best serves the interest of, and represents the best value to, the Owner, and that actual quantities required may increase or decrease. Bidder further agrees that payments will be made on the basis of actual quantities placed and accepted in the construction. Bidder acknowledges that price is only a factor in determining the lowest responsible and responsive bidder.

**TOWN OF SURFSIDE SEAWALL REPLACEMENT
UNIT PRICE BID SCHEDULE**

Item No.	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
I. GENERAL					
1	Mobilization/Demobilization	1	LS		
2	General Conditions/Temporary Facilities	1	LS		
3	Maintenance of Traffic per FDOT including temporary striping and signage, barricades, barriers, arrow panels, etc. as required.	1	LS		
4	Utility Coordination	1	LS		
5	Preconstruction seismic survey and video	1	LS		
6	F&I Turbidity Curtain(s) and Silt Fencing, Hay Bales	1	LS		
7	Clearing & Grubbing	1	LS		
8	Restoration (S/W, Driveway, Asphalt, Landscaping, Fencing, PMS, Etc.)	1	LS		
9	Testing (density, soil, concrete, etc., as-builts)	1	LS		
GENERAL SUBTOTAL					
II. CIVIL					
A	Demolition/Site Preparation	1	LS		
10	NPDES Compliance	1	LS		
11	Seismic monitoring of houses adjacent to seawalls during construction	1	LS		
12	Grading/Fine Grading	1	LS		
13	Sodding	1	LS		
14	Landscaping	1	LS		
15	Demolition of Existing Seawalls as required (Cap, Wall, Tieback, King Piles, etc.)	731	LF		
SUBTOTAL					
B	Earthwork				
16	Jet excavation of FPL lines	2	EA		
17	Excavation behind walls	731	LF		

18	Unsuitable Soil Removal & Disposal	1	LS		
19	Clean Fill / Import Material (in-place)	1	LS	_____	_____
				_____	_____
	SUBTOTAL				_____
	C Seawall Construction				
20	F&I 20' King Piles	107	EA	_____	_____
21	F&I 20' Batter Piles	107	EA	_____	_____
22	Test Pile	10	EA	_____	_____
23	Pile Splices	-	EA	_____	_____
24	Pile Cutoff	107	EA	_____	_____
25	F&I Concrete Panels	731	LF	_____	_____
26	Filter Fabric	883	LF	_____	_____
27	Weep Holes	92	EA	_____	_____
28	Concrete Endwalls (with reinforcement)	20	EA	_____	_____
29	Extend Drainage Culverts with Fittings	7	EA	_____	_____
30	Form and Pour Concrete Cap (with reinforcement)	731	LF	_____	_____
31	F&I Manatee Grates	7	EA	_____	_____
32	F&I Rip-Rap	731	LF	_____	_____
33	Irrigation Repairs	1	LS	_____	_____
				_____	_____
	SUBTOTAL				_____
	GRAND TOTAL (Items 1-33)				_____

BID SECURITY

Accompanying this Bid is a certified or cashier's check or a bid bond in the amount of 5% of the bid made payable to the Owner which may be forfeited as liquidated damages if, in the event this proposal is accepted, the undersigned fails to execute the Agreement and furnish and pay for the required performance and payment bonds for the Owner within 10 days after acceptance of the Bid; otherwise said certified or cashier's check or bid bond will be returned to the undersigned.

The undersigned Bidder agrees to commence work within 10 days after the date of written Notice to Proceed, and further agrees to substantially complete the work within 150 consecutive calendar days after the date of written Notice to Proceed, subject to such extensions of time allowed by the Conditions of the Contract.

The undersigned Bidder also agrees to complete the entire work within 180 days after the Contract time commences to run.

The undersigned Bidder agrees that this Bid shall be good and may not be withdrawn for a period of 60 days after the scheduled closing time for receiving bids.

The undersigned further agrees to forfeit to the Owner, as liquidated damages for each calendar day elapsing between the date established as the date of final completion and the actual date of final completion of the contract work, the amount of \$2,000.00 per calendar day.

ADDENDA

Bidder acknowledges the receipt of Addendum No.'s

1. _____, 2. _____, 3. _____, 4. _____, 5. _____.

Dated this ____ day of _____ .
(month) (year)

Contractor: _____

Address: _____

*

SEAL

*

Attachments:

Subcontractor List

Bid Security

Trench Safety Act documentation

END OF DOCUMENT

BID BOND

BIDDER (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

TOWN OF SURFSIDE
9298 Harding Ave.

Surfside, Florida 33154

BID

BID DUE DATE: _____

PROJECT (Brief Description including Location): _____

BOND NUMBER: _____

DATE: (Not later than Bid Due Date): _____

PENAL SUM: _____

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY

_____(Seal)
Bidder's Name and Corporate Seal

_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Note: (1) Above addresses are to be used for giving required notice.
(2) Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder any difference between the total amount of Bidder's bid and the total amount of the bid of the next lowest, responsible and responsive bidder as determined by Owner for the Work required by the Contract Documents, provided that:

- 1.1. If there is no such next lowest, responsible and responsive bidder, and Owner does not abandon the Project, then Bidder and Surety shall pay to Owner the penal sum set forth on the face of this Bond, and
- 1.2. In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.

2. Default of Bidder shall occur 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 and Contract Documents.

3. This obligation shall 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 and Contract 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 by Bidder and within 30 calendar days after receipt by 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 and 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 shall not in the aggregate exceed 120 days from Bid Due Date without Surety's written consent.

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

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

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the 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 shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "bid" as used herein includes a bid, offer or proposal as applicable.

**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, 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, nor any 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 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 THIS 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 _____

(Type of identification)

My commission expires _____

(Printed typed or stamped
commissioned name of notary public)

DOCUMENT 00403

TRENCH SAFETY ACT

(90-96, Laws of Florida)

Bidder acknowledges that included in the appropriate bid items of the proposal and in the Total Bid Price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The bidder further identifies the costs of such compliance to be summarized below:

	Trench Safety Measure (Description)	Unit of Measure (LFSF)	Unit (Quantity)	Unit Cost	Extended Cost
A.	_____	_____	_____	_____	_____
B.	_____	_____	_____	_____	_____
C.	_____	_____	_____	_____	_____
D.	_____	_____	_____	_____	_____
				Total \$	_____

If applicable, the Contractor certifies that all trench excavation done within his control in excess of five feet in depth shall be in accordance with the Florida Department of Transportation's Special Provisions Article 125-1 and Subarticle 125-4.1 (**TRENCH EXCAVATION SAFETY SYSTEM AND SHORING, SPECIAL - TRENCH EXCAVATION**).

Failure to complete the above may result in the bid being declared non-responsive.

Contractor agrees that the above safety compliances and costs are included in his bid package.

Signature of Bidding Contractor

END OF DOCUMENT

DOCUMENT 00420

INFORMATION REQUIRED FROM BIDDERS

GENERAL INFORMATION

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

1. Contractor's Name/Address: _____

2. Contractor's Telephone Number: _____

3. Contractor's License: _____
Primary Classification: _____

4. Number of years as a Contractor in construction work of the type involved in this Contract:

5. List the names and titles of all officers of Contractor's firm:

6. Name of person who inspected site or proposed work for your firm:
Name: _____
Date of Inspection: _____

7. What is the last project of this nature you have completed?

8. Have you ever failed to complete work awarded to you; if so, where and why?

9. Name three individuals or corporations for which you have performed work and to which you refer:

10. List the following information concerning all contracts on hand as of the date of submission of this proposal. (In case of co-venture, list the information for all co-ventures).

<u>NAME OF PROJECT</u>	<u>CITY</u>	<u>TOTAL CONTRACT VALUE</u>	<u>CONTRACTED DATE OF COMPLETION</u>	<u>% COMPLETION TO DATE</u>
--------------------------------	-------------	-------------------------------------	--	-------------------------------------

(Continue list on inset sheet, if necessary)

11. What equipment do you own that is available for the work?

12. What equipment will you purchase for the proposed work?

NOTE: Attach additional sheets if required.

If requested by the Town, the Bidder shall furnish a notarized financial statement, references and other information, sufficiently comprehensive to permit an appraisal of his current financial condition.

LIST OF SUBCONTRACTORS

The Bidder SHALL list below the name and address of each Subcontractor who will perform work under this Contract in excess of one-half percent of the total bid price, and shall also list the portion of the work which will be done by such Subcontractor. After the opening of Proposals, changes or substitutions will be allowed with written approval of the Town of Surfside. Subcontractors must be properly licensed.

<u>Work to be Performed</u>	<u>Subcontractor's Name/Address</u>
1. _____ _____	_____ _____
2. _____ _____	_____ _____
3. _____ _____	_____ _____
4. _____ _____	_____ _____
5. _____ _____	_____ _____
6. _____ _____	_____ _____
7. _____ _____	_____ _____
8. _____ _____	_____ _____
9. _____ _____	_____ _____
10. _____ _____	_____ _____

NOTE: Attach additional sheets if required.

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20__ by and between **TOWN OF SURFSIDE** (hereinafter called **OWNER**) and _____ (hereinafter called **CONTRACTOR**).

OWNER and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

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

Article 2. ENGINEER.

The Project has been designed by:

Calvin, Giordano & Associates, Inc.
1800 Eller Drive, Suite 600
Fort Lauderdale, FL 33316
(954) 921-7781

who is hereinafter called **ENGINEER** and who is to act as **OWNER'S** representative, assume all duties and responsibilities and have the rights and authority assigned to **ENGINEER** in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES.

3.1. The Work will be substantially completed within 150 calendar days after the date when the Contract Times commence to run completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 180 calendar days after the date when the Contract Times commence to run.

3.2. LIQUIDATED DAMAGES. **OWNER** and **CONTRACTOR** recognize that time is of the essence of this Agreement and that **OWNER** will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving 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) **CONTRACTOR** shall pay **OWNER** One Thousand Five Hundred dollars and 00/100 dollars (**\$1,500.00**) for each day that expires after the time specified in paragraph 3.1 for each Substantial Completion date until the Work is substantially complete. If **CONTRACTOR** shall neglect, refuse or fail to complete the project by the project completion date within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by **OWNER**, **CONTRACTOR** shall pay **OWNER** Two Thousand dollars and 00/100 dollars (**\$2,000.00**) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

OWNER shall pay **CONTRACTOR** for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.1 below:

FOR A LUMP SUM CONTRACT OF:

TOTAL BASE BID (Lump sum, Unit prices, and contingency items)

(use words) (\$ _____) figures

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by **ENGINEER** as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.B of the General Conditions.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by **ENGINEER** as provided in the General Conditions.

5.1. Progress Payments; Retainage. **OWNER** shall make progress payments on account of the contract Price on the basis of **CONTRACTOR's** Applications for Payment as recommended by **ENGINEER**, on or about the last day of each month during construction as provided in paragraphs 5.1.1. and 5.1.2. below. All such payments will be measured by the schedule of values established in paragraph 2.07 of 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 in the General Requirements.

5.1.1. 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 **ENGINEER** shall determine, or **OWNER** may withhold, in accordance with paragraph 14.02 of the General Conditions.

90 % of Work completed (with the balance being retainage). If Work has been 50% completed as determined by **ENGINEER**, and if the character and progress of the Work have been satisfactory to **OWNER** and **ENGINEER**, **OWNER**, on recommendation of **ENGINEER**, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

90 % (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to **OWNER** as provided in paragraph 14.02 of the General Conditions and within Section 9-6.5 partial payments as provided in FDOT Standard Specifications for Road and Bridge Construction.

5.1.2. When circumstances beyond the **CONTRACTORS** control arise (as determined by the **OWNER**) the **OWNER** may allow the total payment to the **CONTRACTOR** to increase to 98% of the contract price (with the balance being retainage), less such amounts as **ENGINEER** shall determine, only after receipt of the final as-builts and upon substantial

completion of the project and in accordance with Paragraph 14.02 of the General Conditions.

5.2. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, **OWNER** shall pay the remainder of the Contract Price as recommended by **ENGINEER** as provided in said paragraph 14.07.

Article 6. INTEREST. (Not Applicable)

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce **OWNER** to enter into this Agreement **CONTRACTOR** makes the following representations:

7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1. of the General Conditions. **CONTRACTOR** accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extend of the "technical data" contained in such reports and drawings upon which **CONTRACTOR** is entitled to rely as provided in paragraph 4.2 of the General Conditions. **CONTRACTOR** acknowledges that such reports and drawings are not Contract Documents and may not be complete for **CONTRACTOR's** purposes. **CONTRACTOR** acknowledges that **OWNER** and **ENGINEER** do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by **CONTRACTOR** and safety precautions and programs incident thereto. **CONTRACTOR** does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5. 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.

7.6. CONTRACTOR has correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7. CONTRACTOR has given **ENGINEER** written notice of all conflicts, errors, ambiguities or discrepancies that **CONTRACTOR** has discovered in the Contract Documents and the written resolution thereof by **ENGINEER** is acceptable to **CONTRACTOR**, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between **OWNER** and **CONTRACTOR** concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 12, inclusive).
- 8.2. Exhibits to this Agreement (page) inclusive).
- 8.3. Performance, Payment, and other Bonds, identified as exhibits 00600 and 00601 and consisting of 4 pages.
- 8.4. Notice to Proceed.
- 8.5. General Conditions (pages 1 to 44, inclusive).
- 8.6. Supplementary Conditions (pages 800-1 to 800-A-FDEP-45, inclusive) and any amendments thereto.
- 8.7. Specifications bearing the title Specifications and consisting of 16 divisions.
- 8.8. Drawings consisting of a cover sheet and sheets numbered as specified in the Drawing Index INX-1.
- 8.9. Addenda No. X through X inclusive.
- 8.10. **CONTRACTOR's** Bid.
- 8.11. Documentation submitted by **CONTRACTOR** prior to Notice of Award (pages N/A to N/A inclusive).
- 8.12. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.
- 8.13. Amendments and Additions to the Standard General Conditions of the Construction Contract and the Supplementary Conditions, identified as exhibits N/A and N/A and consisting of 0 pages.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

Article 9. MISCELLANEOUS.

- 9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless

specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4. Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon **OWNER and CONTRACTOR**, who agree that the Contract Documents shall be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5. OTHER PROVISIONS.

9.5.1. DRAWINGS

See Index Sheet on Drawings

9.5.2. In accordance with the indemnification provision contained in the General Conditions, the **CONTRACTOR** agrees to indemnify and save harmless **the TOWN OF SURFSIDE, and their agents and employees**, from or on account of any injuries or damages received or sustained by any person or person during or on account of any operations connected with the construction of all Work; or by or in consequence of any negligence in connection with the same; or by use of any improper materials or by or on account of any act or omission of the said Contractor, subcontractor, agents, servants, or employees; and

9.5.3. The **CONTRACTOR** agrees to maintain in force at all times during the life of the construction, public liability insurance, by separate certificate, in an amount not less than \$1,000,000 for injuries, including willful death, to any one person and subject to those same limits for each person, in an amount not less than \$1,000,000 for damages as a result of each occurrence and property damage insurance and in an amount not less than \$1,000,000 for damages on any one occurrence. Such policy shall specifically protect the **TOWN OF SURFSIDE, AND their agents and employees**, by making them an additional insured, and shall not be modified or canceled without thirty (30) days written notice to the **TOWN OF SURFSIDE**.

9.5.4 Should the final completion and acceptance of the work herein embraced together with any modification or additions be delayed beyond the time herein set because of lache of performance by the Contract, it is understood and agreed that aside from any other liquidated damage per day for such delay from such time until the work is completed and accepted as herein provided, all costs of engineering and inspection on behalf of the Owner will be charged to the contractor and deducted from any estimate or payment otherwise due and payable to him from time to time. The costs of engineering and inspection which may be charged to the Contractor by the Owner under this article shall be equal to the Engineer's charges to the Owner.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in Five (5) parts. One counterpart each has been delivered to **OWNER, CONTRACTOR and ENGINEER**. All portions of the Contract Documents have been signed, initialed or identified by **OWNER and CONTRACTOR** or identified by **ENGINEER** on their behalf.

This Agreement will be effective on _____, 20__ (which is the Effective Date of the Agreement).

ATTEST:

By _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Address for giving notices

License No. _____

Agent for service of process

(If CONTRACTOR is a corporation, attached evidence of authority to sign).

**SIGNATURE PAGE FOR CONTRACTS/AGREEMENTS
TOWN EXECUTIONS**

IN WITNESS WHEREOF, the parties hereto have made and executed this (Agreement or Contract) on the respective dates under each signature: Town of Surfside through its Town Commission, signing by and through its Mayor, authorized to execute same by Commission action on the ____ day of _____, ____; and CONTRACTOR authorized to execute same.

TOWN OF SURFSIDE, through its
Town Commission

ATTEST:

By: _____
Daniel Dietch, Mayor

Town Clerk

____ day of _____, 2011

Approved as to form and legality by
Office of the Town Attorney

By: _____
Town Manager

____ day of _____, 2011

By: _____
Town Attorney

____ day of _____, 2011

(TOWN SEAL)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ of _____, and that _____, who signed the Bid with Town of Surfside, Dade County Florida for _____, Town Bid No. _____, is _____ of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this ____ day of _____, 20__.

(SEAL)

Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF DADE

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 20__.

My Commission Expires:

Notary Public

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, _____, certify that I am the _____ of _____, who signed the Bid with Town of Surfside, Dade County Florida for the project titled _____, Consultant Project No. _____, and that the following persons have the authority to sign payment requests on behalf of the Corporation:

_____	_____
(Signature)	(Typed Name w/Title)
_____	_____
(Signature)	(Typed Name w/Title)
_____	_____
(Signature)	(Typed Name w/Title)

Signed and sealed this ____ day of _____, 20__.

(SEAL)

Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF DADE

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 20__.

My Commission Expires:

Notary Public

Construction Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

TOWN OF SURFSIDE
9293 Harding Avenue
Surfside, Florida 22154

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description (Name and Location): Surfside Seawall Replacement

BOND

Date (Not earlier than Construction Contract Date):

Amount: \$

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company

(Corp. Seal)

SURETY

Company

(Corp. Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL

Company

(Corp. Seal)

SURETY

Company

(Corp. Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:

00600-1

1. The Contractor and the 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. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed: and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly: and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1. Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owned by the Owner to the Contractor under the Construction Contract shall be used for the performance of the

- Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
9. 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 payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to relate subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be acceptable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1. 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 Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of 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.
 - 15.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Construction Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

TOWN OF SURFSIDE
9293 Harding Avenue
Surfside, Florida 22154

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description (Name and Location): Surfside Seawall Replacement

BOND

Date (Not earlier than Construction Contract Date):

Amount: \$

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company (Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company (Corp. Seal)

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL

Company (Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company (Corp. Seal)

Signature: _____
Name and Title:

00601-1

1. The Contractor and the 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 to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1. The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default: and
 - 3.2. The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1: and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. 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:
 - 4.1. Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract: or
 - 4.2. Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or
 - 4.3. 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 the contractor selected with the Owner's 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 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default: or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 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, tender payment therefor to the Owner: or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen 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 Subparagraph 4.4, and the Owner refuses the payment tendered 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.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1. The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract:
 - 6.2. 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 4: and
 - 6.3. 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.
 7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
 8. 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.
 9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after 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 limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
 10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
 11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
 12. Definitions.
 - 12.1. 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 to the Contractor of 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.
 - 12.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3. Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

DOCUMENT 00650

ACKNOWLEDGEMENT OF CONFORMANCE

WITH O.S.H.A. STANDARDS

TO THE TOWN OF SURFSIDE

We _____ acknowledge and agree that as contractors for the construction of the " _____ ", that we have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health Act of 1970, and all State and Local Safety and Health regulations, and agree to indemnify and hold harmless the Town of Surfside, and Calvin, Giordano & Associates, Inc., Consulting Engineers against any and all legal liability or loss the District or the Engineer may incur due to _____ failure to comply with such act.

ATTEST

CONTRACTOR

ATTEST

By: _____

Title: _____

DATE

END OF DOCUMENT

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



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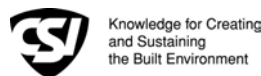
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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given 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 under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

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

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *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.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or

assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

44. *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 at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered", "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed 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 Paragraph 9.09 or any other provision of the Contract Documents.

C. Day

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents, or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or

c. has been damaged prior to Engineer's - recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade

meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement 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 Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements),

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 Documents;

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.

2.06 *Preconstruction Conference*

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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be

effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

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 knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction

(whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, 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 Engineer's consultants, including electronic media editions; or

2. reuse any of 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 adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

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 the Work is to be performed 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.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

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

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 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.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

- 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
- 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) 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.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition,

provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial

Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the

Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the

Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with

Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities

identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or re-

placed, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order .

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall

consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials,

equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

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

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 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 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of

other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

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

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

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

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

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or

equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified , and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the 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.

F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or

Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

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

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer,, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in

the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but

this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *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.

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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 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 by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: 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 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 Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. 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, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or , 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).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

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

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. 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 6.17.D.

B. 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. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be

required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and 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.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

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

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in

Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *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.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *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 Documents and will not be changed without written consent of Owner and Engineer.

9.02 *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 9.09. 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.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in

the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision

made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

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

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

will be adjusted to reflect the effect of any such change.

10.05 Claims

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,
2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers'

field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), 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 shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the

agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 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

1. Contractor agrees that:

a. 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

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the 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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor,

the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. 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, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *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, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as

contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may

do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which 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 (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) incurred or sustained by

Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrange-

ments to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, 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 on the Site 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to 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 Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action 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, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *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 (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written

recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 will apply with respect to certification of Substantial

Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *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 is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or

releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible 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.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. 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. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and , will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the

retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. 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

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed 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.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any

Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 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 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. 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.

17.03 *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 Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

SECTION 00800

FIRST AMENDED SUPPLEMENTARY CONDITIONS

The following supplements modify, change from or add to the Standard General Conditions of the Construction Contract, EJCDC Document C-700, 2002 Edition. Where any Article of the General Conditions is modified or any Paragraph, Subparagraph or Clause thereof is modified or deleted by these supplements, the unaltered provisions shall remain in effect.

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

Add the following sentence to Paragraph 1.01.28 entitled "Notice of Award":

"When requested by OWNER, the Notice of Award may be issued by the ENGINEER."

Add the following sentence to Paragraph 1.01.29 entitled "Notice to Proceed":

"When requested by OWNER, the Notice to Proceed may be issued by ENGINEER."

Add the following terms after Paragraph 1.01 50:

1.51 ARCHITECT/ENGINEER - The person, firm or corporation named as the ENGINEER in the Agreement.

1.52 Provide - As used in the Project Manual, means to furnish and install, complete and ready for intended use.

1.53 Product - As used in the Project Manual, includes materials, fabrications, systems and equipment.

1.54 Project Manual - The volume of written construction documents, including the Bidding Documents, sample forms, and the Contract Documents, such as the Conditions of the Contract and the Specifications.

1.55 Retainage – The percentage of the Contract Price, retained by Owner from the progress payments to the Contractor for Work performed until the Work is completed. It shall be payable to Contractor in accordance with the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

Add the following to Paragraph 2.01:

"If the Work is to be commenced prior to execution of the Agreement in response to a letter of intent, CONTRACTOR shall, prior to commencement of the Work, submit evidence satisfactory to OWNER that such bonds will be furnished."

In the first line of Paragraph 2.02. change the term "...ten..." to read:

"...six(6)...".

Delete Paragraph 2.03. and replace with the following:

"The date of commencement of the Work is the date established in a Notice to Proceed."

Add the following to Paragraph 2.05.:

"D. CONTRACTOR shall perform no portion of the Work at any time without Contract Documents or, where specified, approved Shop Drawings for such portion of the Work.

E. By executing the Contract, CONTRACTOR represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents."

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Add the following to Paragraph 3.02.A.:

"3. Sections of Division One - General Requirements govern the execution of all sections of the Specifications."

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

In Paragraph 4.02.A., change the term "...Supplementary Conditions..." to read:

"...bidding requirements...".

In Paragraph 4.02.B., change the term "Supplementary Conditions..." to read:

"...bidding requirements...".

ARTICLE 5 - BONDS AND INSURANCE

In the first line of Paragraph 5.04., following the word "...maintain...", insert the words:

"...in a company or companies licensed to do business in the State of Florida,...".

In the last line of Paragraph 5.04.A.6., following the word "...vehicle.", insert the words:

"..., or arising out of operation of laws and regulations for damages because of bodily injury or death of any person or for damage to property."

Add the following after Paragraph 5.04.B.7.:

8. Include all major divisions of coverage and be on a comprehensive basis including:

- i. Premises Operations (including X, C and U coverages as applicable.
- ii. Independent contractor's Protective.
- iii. Products and Completed Operations.
- iv. Personal Injury Liability with Employment Exclusion deleted.
- v. Contractual Liability.
- vi. Owned, non-owned and hired motor vehicles.
- vii. Broad Form property Damage including Completed Operations.

9. Provide coverage for not less than the following amounts.

Workers' Compensation, etc.
under paragraphs 5.4.1 and 5.4.2:

- a.
 - 1. State Including employers liability limits \$1,000,000 each accident, \$1,000,000 disease policy limit, \$1,000,000 disease each employee
 - 2. Applicable Federal (e.g. Longshoreman's and/or Maritime) Statutory
 - 3. Employer's Liability \$ 1,000,000.00
- b. Contractor's Liability Insurance under Article 5.4, which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
 - 1. General Aggregate (Except Products - Completed Operations) \$ 1,000,000.00
 - 2. Products – Completed Operations Aggregate \$ 1,000,000.00
 - 3. Personal and Advertising Injury (Per Person/Organization) \$ 1,000,000.00
 - 4. Each Occurrence (Bodily Injury and Property Damage) \$ 1,000,000.00
 - 5. Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where \$ 1,000,000.00

applicable.

- | | | |
|-----|--|---|
| 6. | Professional Liability, Errors & Omissions insurance for architects, engineers and other consulting professionals | \$ <u>1,000,000.00</u> |
| 7.. | Excess Liability | |
| | General Aggregate | \$ <u>1,000,000.00</u> |
| | Each Occurrence | \$ <u>1,000,000.00</u> |
| 8. | Professional Liability Insurance, as it applies | \$ <u>1,000,000.00</u> |
| c. | Automobile Liability under paragraph 5.4.6: | |
| 1. | Bodily Injury: | |
| | Each Person | \$ <u>1,000,000.00</u> |
| | Each Accident | \$ <u>1,000,000.00</u> |
| | Property Damage: | |
| | Each Occurrence | \$ <u>1,000,000.00</u> |
| OR | 2. Bodily Injury and Property Damage Combined Single Limit: | |
| | Each Occurrence | \$ <u>1,000,000.00</u> |
| | Aggregate | \$ <u>1,000,000.00</u> |
| d. | Additional liability coverage for OWNER and ENGINEER shall be provided by endorsement as additional insured's on Contractor's General Liability Policy. Add the following names: | |
| | OWNER - | Town of Surfside
9298 Harding Avenue
Surfside, Florida 33154 |
| | ENGINEER - | Calvin, Giordano & Associates, Inc.
Engineers, Planners & Surveyors
1800 Eller Drive, Suite 600
Fort Lauderdale, Florida 33316 |
| 10. | The additional liability coverage for ENGINEER is not to be construed as to requiring, in any way, that either OWNER or CONTRACTOR be obligated to supply insurance protecting ENGINEER for its liability emanating from professional errors or omissions. | |
| 11 | In conformance with the requirements of Section 725.06, Florida Statutes, the specific considerations for CONTRACTOR's promises are: | |

- a. One dollar (\$1.00) in hand paid by OWNER, ENGINEER, and ENGINEER's employees to CONTRACTOR, receipt whereof is hereby acknowledged and the adequacy of which CONTRACTOR accepts as completely fulfilling the obligations of OWNER, ENGINEER, and ENGINEER's employees under the requirements of Section 725.06, Florida Statutes, and;
- b. The entry of OWNER and CONTRACTOR into the construction contract because, but for CONTRACTOR's promises as contained in the General Conditions, OWNER would not have entered into the construction contract with CONTRACTOR."

Add the following after Paragraph 5.06.E:

"F. The form of policy for this coverage shall be Completed Value.

G. If, under the provisions of this insurance, there are mandatory deductibles, or if OWNER elects to increase the mandatory deductibles or purchase this insurance with voluntary deductible amounts, then OWNER shall be responsible for payment of the full amount of the deductible in the event of a paid claim."

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Add the following after Paragraph 6.05.F:

"G. The use of asbestos or asbestos-based fiber materials is prohibited in this Project."

Add the following after Paragraph 6.08:

"6.08.A. The OWNER will secure and pay for only the following governmental charges and inspection fees:

- a. special assessments,
- b. capital connection fees,
- c. threshold and special inspection fees,
- d. permanent utility meter installation fees,
- e. permanent utility hook-up fees, and
- f. impact fees.

6.08.B. CONTRACTOR shall pay for all building permits and charges of utility owners for connections to the Work, and OWNER will pay charges of such utility owners for capital costs related thereto such as plant investment fees."

Add the following after the last sentence in Paragraph 6.10:

In accordance with Exhibit A hereto, entitled Tax Exemption Agreement to Contract, the Owner may directly purchase all materials and equipment identified in the Contract Documents for incorporation into the Project ("Owner-Provide Materials").

Delete the last sentence of Paragraph 6.12. and substitute the following:

"These shall be available to ENGINEER for examination during construction and shall be delivered "to ENGINEER for OWNER upon Substantial Completion of the Work."

At the end of Paragraph 6.13.B, add the following sentences:

"The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 Subpart P trench safety standards are in effect during the period of construction of the Project. In compliance with current State of Florida statutes, the Contractor or subcontractor performing trench excavation work on the Project shall comply with the applicable trench safety standards."

In the sixth line of Paragraph 6.20.A., change the parenthetical insert to read as follows:

"...(including but not limited to fees and charges of ENGINEER, other engineers, architects, attorneys and other professionals, particularly including, but not limited to reasonable ENGINEER's attorney's fees, and court costs)..."

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

Change the first sentence of Paragraph 9.01.A. to read as follows:

"If OWNER and ENGINEER agree, ENGINEER will be OWNER's representative during the construction period."

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

Add the following:

"10.06. Without invalidating the agreement, Owner may, at any time execute appropriate Change Orders for additions and/or deletions in the work of up to 25% of the total contract amount, without a change in the contract unit prices bid."

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

Replace 13.03.B. with:

"All testing shall be paid for by the Contractor."

Add the following sentence to Paragraph 13.07.A.:

"Specific and special warranties specified in the Contract Documents are in addition to, and not in lieu of, the contractors general warranty. CONTRACTOR shall not be relieved of general warranty obligations by the specification of specific products or procedures."

13.09. In the first sentence of the paragraph OWNER, change the first line from "If Contractor fails within a reasonable time after written notice of Engineer..." to read:

"If Contractor fails within ten (10) calendar days after written notice of Engineer..."

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

In the first sentence of Paragraph 14.02.A.1., change the phrase "At least twenty days before each progress payment is scheduled (but not more often than once a month), ..." to read:

"By no later than the first day of the month, ...".

Following Paragraph 14.02.A.3 add:

4. An original Partial Release of Lien is required from the General Contractor along with the application for Payment No. 1 and for each subsequent application thereafter. For each application for payment (excluding Application No. 1) the Contractor shall submit with the application Partial Releases of Liens for all Notice to Owners that have been received for the project by the Owner and Engineer".
5. With each Application for Payment, the Contractor shall submit supporting records and other evidence, in a form and amount acceptable to the City and the Engineer, to demonstrate the expenses incurred and the Work performed. This shall include, but not be limited to documentation related to the purchase of Owner-Provided Material and the reduction in the Contract Sum as a result of such expenditures.
6. Each application for Payment shall be based on the most recent schedule of values submitted by Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire guaranteed maximum Contract Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment.
7. Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of: (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Contract Price allocated to that portion of the Work in the schedule of values.
8. Subject to the provisions of the Contract Documents, the amount of progress payments shall be computed as follows:
 - a) take that portion of the Contract Price properly allocable to the computed Work as determined by multiplying the percentage of completion of each portion of the Work in the schedule of values. Pending final determination of the costs to the Owner of changes

in the Work, amounts not in dispute shall be included in the Application for Payment along with Change Order, Work Change Directive or Written Amendment indicating the parties' agreement with all or part of such costs for additional Work.

- b) add the portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or, if approved in advance by Owner, suitably stored off-site at a location agreed upon in writing.
- c) add the Contractor's Fee, less the ten percent (10%) Retainage. The Contractor's Fee shall be computed upon the Cost of the Work described in the preceding clauses at the rate in accordance with Paragraph 11.01.C or, if the Contractor's Fee is stated as a fixed sum, then it shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding clauses bears to a reasonable estimate of the probable Cost of Work upon completion.
- d) subtract the aggregate of the previous payments made by the Owner;
- e) subtract the shortfall, if any, indicated by the Contractor in the supporting records and other evidence as mutually agreed between the Owner or Engineer and Contractor to demonstrate expenditures incurred to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Owner, or designee;
- f) subtract the amounts, if any, for which the Architect has withheld or nullified Certificate for Payment in accordance with the provisions of the Contract Documents."

In Paragraph 14.02.B., change the beginning of the sentence: from "Ten days..." to read:

"Forty-five days..."

In Paragraph 14.02.C.1, insert the following:

- 2. The Contractor shall promptly pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Subsubcontractors, if such Subsubcontractors are permitted by the Contract Documents, to make payments to Subsubcontractors in the same manner.
- 3. Neither the Owner nor the Engineer shall have an obligation to pay or see to the payment of money to a Subcontractor, except as provided by law.
- 4. Payment by Contractor to material suppliers shall be treated in the manner as provided in Paragraph 14.02.C.2.
- 5. Except with the Owner's prior approval, payments to Subcontractors shall be subject to Retainage of not less than ten percent (10%). The Owner and the

- Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.
6. Upon mutual agreement by Owner and Contractor, payment in full may be made to those Subcontractors whose Work is fully completed during the early stages of the Project. Notwithstanding Paragraphs 14.02.A.8 and 14.02.C.5 above, at such times as the Work as set forth in the schedule of values has been 50% completed, and upon mutual agreement of the Owner and Contractor, no further Retainage shall be withheld from progress payments with respect to such portion of the Work. Agreement as to any such reduction in retained amounts will not constitute a waiver of or otherwise prejudice the Owner's right to subsequently reinstate full retainage, as to that subcontractor, should circumstances justify such action in the Owner's sole judgment.
 7. Upon Substantial Completion of the entire Work of the Contractor, a sum, sufficient to increase payments to the Contractor to one hundred percent (100%) of the Contract Sum, less amounts, if any for incomplete Work and unsettled claims, shall be paid to Contractor with the next sequential payment application after Substantial Completion is obtained.

Delete Paragraph 14.05 and replace with the following:

- A. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented by the insurer, in accordance with Paragraph 5.06.A.5 and as authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, Retainage, if any, security, maintenance, heat, utilities, damage to Work and insurance, and have agreed in writing concerning the period for correction of Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a comprehensive list to the Engineer of the items to be completed or corrected prior to final payment. The Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and the Contractor, or if no agreement is reached, by decision of the Engineer.
- B. Immediately or prior to such partial occupancy or use, the Owner, Contractor, and Engineer shall jointly inspect the area to be occupied or the portion of the Work to be used in order to determine and record the condition of the Work.
- C. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the Work not complying with the Contract Documents."

After the least sentence in Paragraph 14.04.B, insert the following:

“C. Once 1) the definitive certificate of completion has been issued to the Owner and the Contractor and 2) once consent of the surety, if any, has been obtained, the Owner shall make payment of Retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.”

After the last sentence in the Paragraph 14.04.B, insert the following:

“Final payment, constituting the entire unpaid balance of the Contract Price, shall be made by the Owner to the Contractor when the Contractor has fully performed the Contract except for Contractor’s responsibility to correct Work as provided in Paragraphs 13.06 and 13.07, and to satisfy other requirements, if any, which extend beyond final payment and after the Engineer sends written notice to Owner that the Work is acceptable and in accordance with Paragraphs 14.07.B and 14.07.C.”

Delete Paragraph 14.07.A.2 and 14.07.A.3 insert the following:

“The final Application for Payment shall be accompanied (except as previously delivered) by: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise been satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to be expired until at least 30 days’ prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of the surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases, and waivers of liens, claims, security interests of encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (6) all documentation as required by the Contract Documents, and (7) acceptance by the Owner and governing agencies. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Owner may require that the Contractor furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, including all reasonable attorneys’ fees and costs. The final payment will become due when the Contractor submits the information above to the Engineer.”

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

In the twentieth line of Paragraph 15.02.B., insert the following after the words...such excess...;":

(including but not limited to fees and charges of ENGINEER, other engineers, architects, attorneys and other professionals, particularly including, but not limited to reasonable Engineer's attorney's fees, and court costs)..."

ARTICLE 16 - DISPUTE RESOLUTION

Delete this Article in its entirety.

ARTICLE 17 – MISCELLANEOUS

Add 17.05.B:

"The venue for any cause of action shall be Miami-Dade County."

After Article 17 add the following article:

ARTICLE 18 – OWNER-PROVIDED MATERIALS

The Contractor and Owner desire to enter into an arrangement whereby certain purchases under the Contract may be made by the Owner as a result of Owner's status of being exempt from sales and use tax.

1. Notwithstanding anything in the Contract to the contrary, the Owner shall directly purchase all materials and equipment identified in the Contract Documents as required for incorporation into the Project ("Owner-Provided Materials"). The Owner does hereby grant to the Contractor the full authority as an agent of the Owner to prepare, place and execute Purchase Orders for and in the name of the Owner for all Owner-Provided Materials. The Contractor as agent of the Owner shall sign such Purchase Orders.
2. The Owner will be liable for the timely payment for all Owner-Provided Materials. The Contractor will submit requisitions for orders of Owner-Provided Materials to the Owner for approval when required. Vendors will render statements ("OPM Invoices") to the Owner for any Owner-Provided Materials purchased. The Owner will provide copies of all OPM Invoices to the Contractor upon approval by the Owner. After reviewing the OPM Invoices, the Contractor will return these OPM Invoices with proper back up to the Owner for payment. The Owner shall make payment directly to the respective vendors as provided in the OPM Invoices. The Owner will send such vendor payments along with Contractor payment to the Contractor who will, as Owner's agent, distribute such vendor payments to the respective vendors in return for Releases of Lien. The Owner will provide Contractor with any tax exemption certificates or other documents required or useful to provide to the vendors of Owner-Provided Materials to evidence the tax-exempt status of the Owner.

3. The Contract Price and shall be reduced by the sum of all Costs of the Work paid by the Owner for Owner-Provided Materials plus any applicable sales and use tax amounts initially included in the Contract Sum and GMP for such Owner-Provided Materials.
4. The Contractor shall maintain separate accounting records for all transactions carried out under the authority of this Agreement. Such records shall be open to the Owner during normal business hours of the Contractor.
5. The Contractor shall select, obtain approvals, submit samples, price shop drawings, pursue, receive, inspect, and accept or reject all Owner-Provided Materials purchased in the manner described herein per the Contract. The Contractor shall remain responsible for the proper installation of all Owner-Provided Materials and will continue to warrant its installation of these Owner-Provided Materials as provided in the Contract. This Agreement will not be an acceptable excuse for delay to the construction schedule.
6. The authority granted the Contractor hereunder may be revoked by the Owner at any time upon written notice delivered to the Contractor at its offices at: _____, during normal business hours.
7. The Owner agrees that the Contractor's Fee as set forth in the Contract shall not be reduced as a result of any Owner-Provided Materials deduct change orders; i.e., the Contractor's Fee shall continue to apply to the total sum of all remaining Costs of the Work plus the costs of all Owner-Provided Materials and plus the applicable tax amounts. Likewise, all agreed charging rates based on the Contract Price, including without limitation for bonds and insurance, shall continue to be charged based on the total sum of the Contract Price amount plus the costs of all Owner-Provided Materials and plus the applicable tax amounts."

END OF DOCUMENT

IN WITNESS WHEREOF, the parties hereto have made and executed this First Amended Supplemental Conditions on the respective dates under each signature: Town of Surfside through its Town Commission, signing by and through its Mayor, authorized to execute same by Commission action on the ____ day of _____, ____; and CONTRACTOR authorized to execute same.

TOWN OF SURFSIDE, through its
City Commission

ATTEST:

By: _____
Daniel Dietch, Mayor

_____ day of _____, 20__
Town Clerk

Approved as to form and legality by : _____
Office of the City Attorney Town Manager

_____ day of _____, 20__

By: _____
Town Attorney

ATTEST:

By _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Address for giving notices

License No. _____

Agent for service of process

(If CONTRACTOR is a corporation, attached
evidence of authority to sign).

_____ day of _____, 20__

(CITY SEAL)

SECTION 00900

Addendum

END OF SECTION