

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 custody and control of Contractor:
 - 1. General Aggregate (Except Products - Completed Operations) \$ 2,000,000.00
 - 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
9293 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 Subcontractors, if such Subcontractors are permitted by the Contract Documents, to make payments to Subcontractors 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
Town Commission

ATTEST:

By: _____
Daniel Dietch, Mayor

Town Clerk

____ day of _____, 20__

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

Town Manager

By: _____
Town Attorney

____ day of _____, 20__

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)