



TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Vice Mayor Edward P. MacDougall
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Councilmember Peggy R. Bell

Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Santamaria
Town Manager Steven Alexander

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Wednesday, February 18, 2009, 7:00 PM
South Dade Regional Library
10750 SW 211th Street, 1st Floor
Cutler Bay, Florida 33189

1. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE**
2. **PROCLAMATIONS, AWARDS, PRESENTATIONS**
3. **APPROVAL OF MINUTES**

A. Council Meeting – January 21, 2009

TAB 1

4. **REPORTS**

A. TOWN MANAGER'S REPORT

B. TOWN ATTORNEY'S REPORT

C. BOARD/COMMITTEE REPORTS AND COUNCIL ANNOUNCEMENTS

a. Communications Committee Presentation

5. **CONSENT AGENDA**

ANY ITEMS SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED OR PULLED BY A COUNCILMEMBER OR THE TOWN MANAGER.

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE PROVISION OF STORMWATER IMPROVEMENT PROJECT; AUTHORIZING THE ISSUANCE OF A INVITATION TO BID (ITB) FOR CUTLER RIDGE

TAB 2

ELEMENTARY AREA ROADWAY AND DRAINAGE IMPROVEMENTS;
AND PROVIDING FOR AN EFFECTIVE DATE.

- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE PROVISION OF STORMWATER IMPROVEMENT PROJECT; AUTHORIZING THE ISSUANCE OF A INVITATION TO BID (ITB) FOR SAGA BAY DRAINAGE BASINS 1.3 AND 1.4 ROADWAY AND DRAINAGE IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 3

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING RESOLUTION 08-22 RELATING TO THE CREATION OF THE TOWN COMMUNICATIONS COMMITTEE; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 4

- D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE TOWN'S COMPREHENSIVE PARKS MASTER PLAN; AND PROVIDING AN EFFECTIVE DATE.

TAB 5

- E.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE ADMINISTRATIVE ORDER "FEE SCHEDULE FOR THE PLANNING AND ZONING DIVISION" RELATING TO THE REVISION OF THE TOWN OF CUTLER BAY PLANNING AND ZONING DIVISION FEE SCHEDULE; PROVIDING FOR AN EFFECTIVE DATE.

TAB 6

6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)

ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL BE SWORN-IN PRIOR TO GIVING TESTIMONY AND MAY BE SUBJECT TO CROSS EXAMINATION. ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD.

7. ORDINANCES FOR FIRST READING (PUBLIC HEARING NOT REQUIRED)

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATING TO CERTIFICATES OF RE-OCCUPANCY FOR THE SALE OF HOMES THAT HAVE ALREADY BEEN OCCUPIED; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE. **(MEERBOTT)**

TAB 7

8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)

9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED)

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REVISING FEES FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION FRANCHISEES; PROVIDING FOR A DUMPSTER REGISTRATION FEE PAID BY THE FRANCHISEE FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION ACTIVITIES; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 8

B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-10 ENTITLED, "FLOODPLAIN MANAGEMENT REGULATIONS"; UPDATING DEFINITIONS; REVISING TOWN STANDARDS TO CONFORM TO FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) GUIDELINES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 9

C. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATING TO THE PROTECTION OF TREES WITHIN THE TOWN; PROVIDING FOR THE REGULATION OF THE SAFEGUARDING, MAINTENANCE, AND REMOVAL OF TREES WITHIN THE RIGHT-OF-WAY OF THE TOWN OF CUTLER BAY; SETTING FORTH TOWN RIGHTS AND RESPONSIBILITIES; SETTING FORTH THE DUTIES OF THE TOWN; DESCRIBING PRIVATE LANDOWNER RIGHTS AND RESPONSIBILITIES; CREATING A PUBLIC EDUCATION PROGRAM; SETTING UP A SYSTEM FOR PERMITTING AND BOND REQUIREMENTS; PROVIDING FOR PENALTIES AND NOTIFICATION; SETTING FORTH TOWN INDEMNIFICATION GUIDELINES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

TAB 10

D. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING" ARTICLE VI "SIGNS" SECTION 33-96.5 RELATING TO THE MAXIMUM HEIGHT FOR FLAG POLES IN RESIDENTIAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE. **(MEERBOTT)**

TAB 11

E. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCES 08-

TAB 12

11 AND 08-12 TO PROVIDE FOR AN EXTENSION TO THE MORATORIUMS ON DEVELOPMENT WITHIN THE TOWN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

- F. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, UPDATING REGULATIONS RELATED TO TEMPORARY STORAGE UNITS AND FREIGHT CARGO CONTAINERS; CREATING PERMIT REQUIREMENTS; CREATING ANNUAL REGISTRATION FEE; CLARIFYING FEE REQUIREMENT RETROACTIVE TO PASSAGE OF INITIAL ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 13

10. PUBLIC COMMENTS

THE PRESIDING OFFICER SHALL HAVE THE DISCRETION TO LIMIT THE LENGTH OF PUBLIC COMMENTS IN THE INTEREST OF TIME IN ORDER TO ALLOW ALL PERSONS WHO WISH TO SPEAK AN OPPORTUNITY TO DO SO.

11. MAYOR AND COUNCIL COMMENTS

12. OTHER BUSINESS

13. ADJOURNMENT

- A. Town Hall Closed
Monday, February 16th Town Hall will be closed in observance of the President's Day holiday.
- B. Founder's Day Celebration
Saturday, February 21st from 11:00am to 3:00 pm, Cutler Ridge Park, 10100 SW 200 ST
- C. Parks Committee Meeting
Tuesday, February 24th at 7:00 p.m.
Cutler Ridge Park, 10100 SW 200th ST
- D. Regular Council Meeting
Wednesday, March 18th at 7:00 p.m.
South Dade Regional Library, 10750 SW 211th ST, 1st Floor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 1

**TOWN OF CUTLER BAY
TOWN COUNCIL MEETING
MINUTES**

Wednesday, January 21, 2009, 7:00 PM
South Dade Regional Library
10710 SW 211th Street, 1st Floor
Cutler Bay, Florida 33189

1. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:00 PM. Present were the following:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Santamaria
Town Manager Steven J. Alexander

2. PROCLAMATIONS, AWARDS, PRESENTATIONS:

A. Dr. Ted Greer from the Children's Network presented a plaque to Mayor Vrooman for his participation in the walk-a-thon. Ms. Susan Rice from the Children's Network addressed the Council.

B. The mayor presented a proclamation of service and recognition to the Palmetto Raiders Football organization.

3. APPROVAL OF MINUTES:

A. Councilmember Sochin made a motion approving the minutes of the meeting on November 18, 2008. The motion was seconded by Councilmember Meerbott and adopted by a unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

4. REPORTS

A. TOWN MANAGER'S REPORT

The manager reported that Commissioner Dennis Moss recently became the Chairperson of the County Board of Commission. He mentioned that the holiday circulator was a huge success in the community and the manager thanked everyone who participated in its success. He discussed that Lakes by the Bay Park cost estimates are still underway with the County. The manager was happy to announce that a traffic circle was going to be built at the intersection of Caribbean Boulevard and Southwest 192 Drive after Miami-Dade County conducted a traffic study where a car was reported driving through a home on the corner. The manager also reported that the federal stimulus package is almost complete and will be sent out soon to the Senate at the federal level for review. The

manager then introduced Fausto Gomez of Gomez Barker Associates, who then continued to discuss the legislative session in Tallahassee, FL.

- B.** TOWN ATTORNEY'S REPORT
- C.** BOARD AND COMMITTEE REPORTS, COUNCIL ANNOUNCEMENTS

Councilmember Bell announced that there will be a Parks Advisory Committee meeting on January 27th at 7:00 p.m. at Cutler Ridge Park.

Councilmember Meerbott mentioned that he attended a Chamber South Transportation Committee on January 13th. He was happy to report that there is a great interest in improving the transportation in southern Miami.

Mayor Vrooman reported that the Communications Committee is completing their report and will provide a report at the February meeting.

5. CONSENT AGENDA:

- A.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO TECHNOLOGY SERVICES; AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR A COMPREHENSIVE GOVERNMENT ERP SOFTWARE SYSTEM FOR THE TOWN OF CUTLER BAY; AND PROVIDING FOR AN EFFECTIVE DATE.
- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE ADOPTION OF THE TOWN OF CUTLER BAY STREET TREE MASTER PLAN; AND PROVIDING AN EFFECTIVE DATE.
- D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE REPLACEMENT AND INSTALLATION OF SIDEWALKS IN THE TOWN; AUTHORIZING THE ISSUANCE OF AN INVITATION TO BID (ITB) FOR THE REPLACEMENT AND INSTALLATION OF SIDEWALKS; AND PROVIDING FOR AN EFFECTIVE DATE.
- E.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO ROADWAY RESURFACING AND DRAINAGE IMPROVEMENTS IN THE TOWN; AUTHORIZING THE ISSUANCE OF AN REQUEST FOR PROPOSALS (RFP) FOR ROADWAY RESURFACING AND DRAINAGE IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.
- F.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE PROVISION

OF STREET SWEEPER SERVICES; AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR STREET SWEEPER SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

- G.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE PROVISION OF VEHICLE REPAIR AND MAINTENANCE SERVICES; AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR VEHICLE REPAIR AND MAINTENANCE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

- I.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF CUTLER BAY FLORIDA, ACCEPTING GRANT FROM THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME; AND PROVIDING FOR AN EFFECTIVE DATE.

Vice Mayor MacDougall pulled Items C and H.

Councilmember Meerbott made a motion to approve the Consent Agenda as amended with pulled Items C and H. The motion was seconded by Councilmember Bell and Resolutions 09-01 through 09-02, 09-04 through 09-07 and 09-09 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AMENDMENT TO THE CONTRACT WITH GOMEZ BARKER ASSOCIATES, THE APPROPRIATIONS AND INTERGOVERNMENTAL CONSULTING SERVICE THAT REPRESENTS THE TOWN BEFORE THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE STATE GOVERNMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

After some discussion, Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Councilmember Meerbott and Resolution 09-03 was approved by 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes; and Councilmember Sochin voting No.

The town clerk read the following resolution by title:

- H.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO FEDERAL REPRESENTATION FOR THE TOWN; AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR FEDERAL

REPRESENTATION SERVICES FOR THE TOWN OF CUTLER BAY; AND PROVIDING FOR AN EFFECTIVE DATE.

The town manager provided a brief oral presentation on the resolution.

After brief discussion, Vice Mayor MacDougall made a motion to approve the resolution. The motion was seconded by Councilmember Meerbott and Resolution 09-08 was approved by a 4-1 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes; Councilmember Sochin voting No.

6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)

ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL BE SWORN-IN PRIOR TO GIVING TESTIMONY AND MAY BE SUBJECT TO CROSS EXAMINATION. ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD.

All witnesses giving testimony were sworn-in by the clerk. The clerk read the following resolution, by title:

The clerk read the following resolution by title:

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING A WAIVER FROM THE PROVISIONS OF ORDINANCE 07-01 RELATING TO THE OLD CUTLER ROAD OVERLAY ZONING DISTRICT FOR PROPERTIES LOCATED AT 8420 S.W. 197 STREET AND 19781 S.W. 84 COURT; AND PROVIDING FOR AN EFFECTIVE DATE.**

Planning Director David Hennis gave an oral report recommending approval of the applicant's request for a waiver.

Maria Valiente, 1131 Stillwater Drive, the applicant, addressed the Council.

The mayor opened the public hearing. Stephen Zarzecki, 9640 Martinique Drive, addressed the Council.

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Sochin and Resolution 09-10 was approved by a 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Councilmember Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following resolution by title:

- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING SITE PLAN APPROVAL FOR TWO (2) SINGLE FAMILY HOMES LOCATED AT 19781 S.W. 84 COURT (FOLIO# 36-6003-037-0040) AND 8420 S.W. 197 STREET (FOLIO#36-6003-037-0070); AND PROVIDING FOR AN EFFECTIVE DATE.**

Planning Director David Hennis gave an oral report recommending approval of the applicant's request for site plan approval.

Maria Valiente, 1131 Stillwater Drive, the applicant, addressed the Council.

The mayor opened the public hearing. There were no speakers.

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Bell and Resolution 09-11 was approved by a 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Councilmember Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

7. ORDINANCES FOR FIRST READING (PUBLIC HEARING NOT REQUIRED)

The clerk read the following ordinance, on first reading, by title:

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REVISING FEES FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION FRANCHISEES; PROVIDING FOR A DUMPSTER REGISTRATION FEE PAID BY THE FRANCHISEE FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION ACTIVITIES; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

After some discussion, Councilmember Sochin made a motion to approve the ordinance. The motion was seconded by Councilmember Meerbott and the ordinance was approved by unanimous 4-1 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, and Mayor Vrooman voting Yes; and Vice Mayor MacDougall voting No.

The clerk read the following ordinance, on first reading, by title:

- B.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-10 ENTITLED, "FLOODPLAIN MANAGEMENT REGULATIONS"; UPDATING DEFINITIONS; REVISING TOWN STANDARDS TO CONFORM TO FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) GUIDELINES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Meerbott made a motion to approve the ordinance. The motion was seconded by Vice Mayor MacDougall and the ordinance was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following ordinance, on first reading, by title:

- C. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATING TO THE PROTECTION OF TREES WITHIN THE TOWN; PROVIDING FOR THE REGULATION OF THE SAFEGUARDING, MAINTENANCE, AND REMOVAL OF TREES WITHIN THE RIGHT-OF-WAY OF THE TOWN OF CUTLER BAY; SETTING FORTH TOWN RIGHTS AND RESPONSIBILITIES; SETTING FORTH THE DUTIES OF THE TOWN; DESCRIBING PRIVATE LANDOWNER RIGHTS AND RESPONSIBILITIES; CREATING A PUBLIC EDUCATION PROGRAM; SETTING UP A SYSTEM FOR PERMITTING AND BOND REQUIREMENTS; PROVIDING FOR PENALTIES AND NOTIFICATION; SETTING FORTH TOWN INDEMNIFICATION GUIDELINES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

Vice Mayor MacDougall made a motion to approve the ordinance. The motion was seconded by Councilmember Sochin and the ordinance was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)

The clerk read the following ordinance, on first reading, by title:

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCES 08-11 AND 08-12 TO PROVIDE FOR AN EXTENSION TO THE MORATORIUMS ON DEVELOPMENT WITHIN THE TOWN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

Councilmember Bell made a motion to approve the ordinance. The motion was seconded by Councilmember Sochin and the ordinance was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED):

The clerk read the following ordinance, on second reading, by title:

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE ANNUAL UPDATE TO THE CAPITAL IMPROVEMENTS ELEMENT WITHIN THE

TOWN'S COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY;
AND PROVIDING AN EFFECTIVE DATE.

Planning director, David Hennis, provided a brief report on the ordinance.

The mayor opened the public hearing. There were no speakers.

Vice Mayor MacDougall made a motion to approve the ordinance. The motion was seconded by Councilmember Sochin and the ordinance was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following ordinance, on second reading, by title:

- B.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING A 10 YEAR WATER SUPPLY FACILITIES WORK PLAN AND AMENDING THE TOWN'S COMPREHENSIVE PLAN (GROWTH MANAGEMENT PLAN) TO STRENGTHEN COORDINATION BETWEEN WATER SUPPLY AND LOCAL LAND USE PLANNING AS REQUIRED BY FLORIDA LAW; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Planning director, David Hennis, provided a brief report on the ordinance.

The mayor opened the public hearing. There were no speakers.

Councilmember Meerbott made a motion to approve the ordinance. The motion was seconded by Councilmember Bell and the ordinance was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following ordinance, on second reading, by title:

- C.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING" ARTICLE VI "SIGNS" SECTION 33-96.5 RELATING TO THE MAXIMUM HEIGHT FOR FLAG POLES IN RESIDENTIAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

Planning director, David Hennis, provided a brief report on the ordinance.

The mayor opened the public hearing. Tom Condon, 19641 Holiday Road and Art Nanni, 18843 Southwest 92 Avenue, addressed the Council.

After much discussion, Councilmember Meerbott made a motion to defer the ordinance until the next meeting. The motion was seconded by Councilmember Bell and the ordinance was deferred by 4-1 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes; Councilmember Sochin voting No.

The clerk read the following ordinance, on second reading, by title:

- D.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATED TO MALLS AND BUSINESSES WITH PARKING LOTS CONTAINING 25 OR MORE PARKING SPACES; PROVIDING FOR INSTALLATION OF SECURITY CAMERA SYSTEMS FOR PARKING LOT SURVEILLANCE; PROVIDING FOR A PROCEDURE FOR MALLS AND BUSINESSES TO KEEP RECORDINGS FOR 30 DAYS; PROVIDING FOR AN EXEMPTION FOR CONVENIENCE BUSINESSES ALREADY GOVERNED BY SIMILAR FLORIDA STATUTES; PROVIDING TECHNICAL SPECIFICATIONS FOR A SECURITY CAMERA SYSTEM; CREATING A GRACE PERIOD FOR COMPLIANCE FOR EXISTING MALLS AND BUSINESSES; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES SECTION OF THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THESE SECTIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

Commander Julie Miller addressed the Council. The town manager provided a brief report on the ordinance.

The mayor opened the public hearing. John Breder, 9861 Southwest 184 Street, Joyce Benhendent, 20433 Old Cutler Road, Cyndie Rogg, 20434 Old Cutler Road, Samantha Hunter Padgett, 227 South Adams Street, Bill Stawgar, 2600 Citadell Plaza Drive, Rosi Alvarez, 7740 Southwest 184 Terrace, John Herin, 150 West Flagler Street, and Jaime Reyes, 9670 Southwest 215 Lane, addressed the Council.

Councilmember Bell made a motion to defer the ordinance indefinitely. The motion was seconded by Vice Mayor MacDougall, but after some discussion, Vice Mayor MacDougall withdrew his second. The mayor called the motion for a second. There was no second and so the motion died for lack of a second.

After much discussion, Councilmember Meerbott made a motion to defer the ordinance indefinitely. The mayor called the motion for a second. There was no second and so the motion died for a lack of a second.

After an extensive discussion, Councilmember Bell offered the following amendment to the ordinance:

- In Section 2, (7), remove the sentence, "Each Retail Business Center shall have 36 months from the effective date of this ordinance to comply with Section 5(c).

In addition to the Bell amendment, Mayor Vrooman offered the following amendment to the ordinance:

- Adding paragraph (12) to Section 2, which provides for a Town grant program that would read as such: Town Grant for Participating Entities. Owners or other responsible persons in control of existing Retail Business Centers subject to the requirements of this ordinance may apply to the Town for the reimbursement of a portion of the funds expended installing the security camera system to be constructed. Within 18 months of the effective date of this ordinance. Owners or responsible persons in control of existing Retail Business Centers who pay ad valorem taxes on said property may be eligible for a grant up to 25% of the actual cost of the equipment associated with their security camera system for an amount totaling not more than \$25,000 per Retail Business Center with total Town expenditures not to exceed \$100,000.00 per year. The Town Manager shall be responsible for creating the specific guidelines for this grant program.

The town attorney added that if the ordinance is approved with the foregoing amendments Section 2. (5)c would be deleted and in Section 2. (7) any reference to (5)c would be deleted.

Councilmember Sochin made a motion to approve the ordinance with the inclusion of the Bell amendment and Vrooman amendment. The motion was seconded by Councilmember Bell and the ordinance was approved as amended by 3-2 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Mayor Vrooman voting Yes; Councilmember Meerbott and Vice Mayor MacDougall voting No.

The clerk read the following ordinance, on second reading, by title:

- E. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, UPDATING REGULATIONS RELATED TO TEMPORARY STORAGE UNITS AND FREIGHT CARGO CONTAINERS; CREATING PERMIT REQUIREMENTS; CREATING ANNUAL REGISTRATION FEE; CLARIFYING FEE REQUIREMENT RETROACTIVE TO PASSAGE OF INITIAL ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.**

Planning director, David Hennis, provided a brief report on the ordinance.

The mayor opened the public hearing. There were no speakers.

Councilmember Meerbott made a motion to reduce all registration fees to \$100.00. The motion was seconded by Councilmember Bell and the motion failed by a 2-3 roll call vote. The vote was as follows: Councilmembers Bell and Meerbott voting Yes; Councilmember Sochin, Vice Mayor MacDougall and Mayor Vrooman voting No.

After some discussion, Councilmember Bell made a motion to defer the ordinance until the next meeting. The motion was seconded by Councilmember Meerbott and the ordinance was deferred by 4-1 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes; Councilmember Sochin voting No.

The clerk read the following ordinance, on second reading, by title:

- F.** AN ORDINANCE OF THE MAYOR AND TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 08-18 WHICH ORDINANCE ADOPTED AN OPERATING AND CAPITAL OUTLAY BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 BY REVISING SAID BUDGET TO APPROPRIATE \$60,000 DESIGNATED AS CONTINGENCY RESERVES AND PROVIDE SUCH FUNDS BE ALLOCATED TO THE PARKS BUDGET AND AUTHORIZING THE TOWN MANAGER TO MAKE EXPENDITURES CONSISTENT THEREWITH AND DO ALL THINGS NECESSARY TO CARRY OUT THE INTENT OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Bell provided a brief report on the ordinance.

The mayor opened the public hearing. Barbara Condon, 19641 Holiday Road, Louise Lockwood, 9071 Ridgeland Drive, John Borgi, 20415 Southwest 89 Avenue, Steve Zarzecki, 9640 Martinique Drive, Jaime Reyes, 9750 Southwest 215 Lane.

Councilmember Meerbott made a motion to approve the ordinance. The motion was seconded by Councilmember Bell and the ordinance was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The mayor recessed the council meeting at 9:45 p.m. The mayor reconvened the council meeting at 10:00 p.m.

10. PUBLIC COMMENTS

THE PRESIDING OFFICER SHALL HAVE THE DISCRETION TO LIMIT THE LENGTH OF PUBLIC COMMENTS IN THE INTEREST OF TIME IN ORDER TO ALLOW ALL PERSONS WHO WISH TO SPEAK AN OPPORTUNITY TO DO SO.

The following individuals spoke: Bill Meiklejohn, 9331 Sterling Drive and Arthur Nanni, 18843 Southwest 93 Avenue.

11. MAYOR AND COUNCIL COMMENTS

Councilmember Sochin requested from the council that if there should be a need to travel to Tallahassee to discuss the federal stimulus plan that he would like to go. The request was approved by a 3-2 voice vote. The vote was as follows: Councilmembers Bell and Sochin and Mayor Vrooman voting Yes; Councilmember Meerbott and Vice Mayor MacDougall voting No.

Mayor Vrooman mentioned that the Town needs to continue to strengthen its relationships with public figures at the local and state level, but also at the federal level.

12. OTHER BUSINESS: None at this time.

13. ADJOURNMENT

The next council meeting will be held on February 18, 2009 at South Dade Regional Library.

The meeting was officially adjourned at 11:50 P.M.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 18th day of February, 2009.*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 2



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: February 18, 2009

Re: **INVITATION TO BID – CUTLER RIDGE ELEMENTARY AREA ROADWAY AND DRAINAGE IMPROVEMENTS**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO ROADWAY RESURFACING AND DRAINAGE IMPROVEMENTS IN THE CUTLER RIDGE ELEMENTARY SCHOOL AREA; AUTHORIZING THE ISSUANCE OF AN INVITATION TO BID (ITB) FOR ROADWAY RESURFACING AND DRAINAGE IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

As a result of the Town opting-out of the Miami-Dade County's Stormwater Utility (Resolution #07-18), the existing storm drainage structures were all transferred to the Town. The Town's adopted Stormwater Utility Master Plan (Resolution #08-50), has identified several neighborhoods with localized flooding and roadway resurfacing concerns. One of the identified projects is located in the area around Cutler Ridge Elementary School and is funded through a State of Florida Department of Environmental Protection (FDEP) appropriation – LP6819.

The intent of the proposed Invitation to Bid (ITB) is to alleviate the identified roadway flooding concerns, by installing a combination of exfiltration trenches, drainage wells, stormwater inlets, and piping. The project also includes roadway resurfacing and replacement of damaged sidewalk. The ITB is set-up in a Base Bid and Additive Bid format allowing for flexibility in award and construction of the project, and developed as a unit cost project to assure the Town only pays for actual work performed. The proposed schedule for the implementation of this project is 120 days for Base Bid work and an additional 30 days if the Alternate Bid work is also performed. Special consideration will be made to minimize disruptions to the residents during this project.

RECOMMENDATION

We recommend that the attached resolution be adopted.

RESOLUTION NO. 09-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE PROVISION OF STORMWATER IMPROVEMENT PROJECT; AUTHORIZING THE ISSUANCE OF A INVITATION TO BID (ITB) FOR CUTLER RIDGE ELEMENTARY AREA ROADWAY AND DRAINAGE IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay's (the "Town") adopted 2008-09 fiscal year Stormwater Utility Fund budget includes funding obtained from the Department of Environmental Protection (DEP) – LP6819 for stormwater drainage improvement projects; and

WHEREAS, the Town Council places a high priority of capturing and treating existing stormwater runoff pollutants within the Town's Stormwater system; and

WHEREAS, the Cutler Ridge Elementary surrounding area has been identified as a "priority" area in the Stormwater Utility Master Plan, which was adopted by Town Resolution Number 08-50; and

WHEREAS, Town staff has developed the attached Invitation to Bid (Exhibit "A") in order to obtain bids from qualified companies; and

WHEREAS, Town Ordinance Number 06-22 requires the Town Manager to obtain authorization from the Town Council to advertise solicitations for proposals and bids prior to advertising the solicitation; and

WHEREAS, the Town Council finds that this Resolution is in the best interest of the health, safety and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Authorization. The Town Manager is authorized to advertise and issue an Invitation to Bid for Cutler Ridge Elementary Area - Roadway and Drainage Improvements, in substantially the form attached hereto as Exhibit "A," on behalf of the Town.

Section 3. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____ 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____

**TOWN OF CUTLER BAY
INVITATION TO BID
09-07**



**CUTLER RIDGE ELEMENTARY AREA
ROADWAY & DRAINAGE IMPROVEMENTS**

**SUBMITTAL DATE: TBA
TIME: TBA**

**Cutler Ridge Elementary Area
Roadway & Drainage Improvements**

**FOR
THE TOWN OF CUTLER BAY**

CONTRACT DOCUMENTS

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INVITATION TO BID
09-07
CUTLER RIDGE ELEMENTARY AREA
ROADWAY & DRAINAGE IMPROVEMENTS
TOWN OF CUTLER BAY

The Town of Cutler Bay is requesting bids from qualified firms to provide Roadway and Drainage Improvements for the Town of Cutler Bay. **Interested firms should visit the Town’s website at www.cutlerbay-fl.gov to obtain the Invitation to Bid package.** Packages may also be picked up during normal business hours at the office of the Town Clerk, Erika Gonzalez-Santamaria, located at:

TOWN OF CUTLER BAY
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

Sealed submittals including one (1) original and four (4) copies of the submittals must be received no later than TBA and be clearly marked on the outside, “**ITB 09-07 Cutler Ridge Elementary Area Roadway and Drainage Improvements**”, by **Erika Gonzalez-Santamaria, Town Clerk, Town of Cutler Bay, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida, 33189**. Late submittals and electronic submittals will **not** be accepted.

Pursuant to Town Code, public notice is hereby given that a “Cone of Silence” is imposed concerning the Town’s competitive purchasing process, which generally prohibits communications concerning the ITB from the time of advertisement of the ITB until the Town Council meeting at which the Council considers the Town Manager’s recommendation to the Town Council concerning the competitive purchase transaction. Please see the detailed specifications for the public solicitation for services for a statement fully disclosing the requirements of the “Cone of Silence”.

Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor. Please see the detailed specifications of this solicitation for further details.

The Town of Cutler Bay reserves the right to accept or reject any and/or all bids or parts of bids, to workshop or negotiate any and all bids, to waive irregularities, and to request re-bids on the required materials or services.

Steven J. Alexander
Town Manager



TOWN OF CUTLER BAY

SECTION 2

INSTRUCTIONS TO BIDDERS

- 1.01. **SEALED BIDS**- Sealed bids for furnishing all goods and services necessary to complete the Work specified in these documents will be received at:

Date: TBA

Time: TBA

**Place: Town Hall
10720 Caribbean Blvd., Suite 105
Cutler Bay, Florida 33189**

- 1.02. **DEFINITION OF TERMS**- Certain terms used in these documents are defined as follows:

Bid\Proposal	The bid documents submitted by the Bidder.
Bidder	Any person, firm or corporation submitting a proposal for the Work covered by these specifications or his duly authorized representative.
Town	The Town Council of the Town of Cutler Bay or the Town Manager, if applicable.
Contractor	The person, firm or corporation with whom the Town has executed a contract for the Work.
Days	Days shall mean calendar days.
Responsible Bidder	In order to be considered a “responsible” bidder, the Bidder must possess integrity as well as adequate equipment and personnel to do the Work within the time limits that are established and adequate financial status to meet the obligations to perform the Work. The firm must not have defaulted on a prior contract or been disbarred by any agency.

Responsive Bidder	Any person, firm or corporation submitting a Bid for the Work whose Bid form is complete and includes all required attachments and enclosures, free from exclusions or special conditions and has no alternative Bids for any items, unless alternatives are requested in the specifications.
Work	The services required by the Contract Documents, including labor and materials.
Town Engineer	The Town's general engineering consultant and project manager for this contract: presently Kimley-Horn and Associates

- 1.03. **DELIVERY OF PROPOSALS**- All Bids, whether mailed or delivered in person, shall be submitted in a SEALED ENVELOPE bearing on the outside the following project information as well as the name of the Bidder and his address clearly marked:

**CUTLER RIDGE ELEMENTARY AREA
ROADWAY AND DRAINAGE IMPROVEMENTS**

and addressed to:

Town of Cutler Bay
10720 Caribbean Boulevard
Suite 105
Cutler Bay, Florida 33189
Attention: Town Clerk

All Bids must be received by the Town no later than TBA.

- 1.04. **BID GUARANTY**- A certified or cashiers check drawn on a national or state bank, or bid bond, in the amount of five percent (5%) of the bid, shall accompany each bid as a guarantee that the Bidder will, if award is made, execute an Agreement to do the Work for the amount proposed and furnish any required certificates of insurance and bond documents. The bid bond shall be from a surety with an A-rating or better under Best's Guidelines, made payable to: The Town of Cutler Bay.
- 1.05. **BID FORMS**- The Bidder shall submit an original Bid on the bid forms attached to this ITB. The Bidder shall fill in all the blank spaces completely for each and every unit item for which a Bid is tendered. The Bidder shall state the price, typewritten or in ink, for which he proposes to do each item of Work. The Bid shall include: 1) Agreement/Contract; 2) Bid Forms; 3) Certificate or Evidence of Insurance; 4) Bid Guarantee; 5) Qualifications Statement; 6) Sworn Statement on Public Entity Crime Form; 7) Addenda acknowledgement, if applicable; 8) Anti-Kickback

Affidavit; 9) Non-Collusive Affidavit; 10) Drug Free Workplace form; and 11) a Corporate Resolution evidencing authorization to submit Bid, if applicable.

- 1.06. **SIGNATURE ON BID**- The Bidder shall sign the Bid as follows: If the Bid is made by an individual, the Bidder's name and address shall be shown. If made by a firm or partnership, the name and address of each member of the firm or partnership shall be shown. If made by a corporation, the person signing the Bid shall show the name of the state under the laws of which the corporation is chartered, also the names and business addresses of its corporate officers. The Bid shall bear the seal of the corporation attested by the secretary. Anyone signing the Bid as agent shall include in the Bid legal evidence of his/her authority to do so.
- 1.07. **COST OF BIDS** – All expenses involved with the preparation and submission of Bids to the Town or any work performed in connection therewith, shall be borne by the Bidder(s). No payment shall be made for any responses received, nor for any other effort required of or made by the Bidder(s) prior to commencement of work as defined by the Agreement duly approved by the Town Council.
- 1.08. **QUALIFICATION OF BIDDERS**- Each Bidder shall submit a completed Qualification Statement utilizing the form attached.
- 1.09. **RIGHT TO REJECT BIDS**- The Town of Cutler Bay reserves the right to accept or reject any and/or all Bids or parts of Bids, to workshop or negotiate any and all Bids, to waive irregularities, and to request re-Bids on the required materials or services.
- 1.10. **AWARD OF CONTRACT**-
- 1.10.1. The Award of the Agreement will be to the lowest Responsive and Responsible Bidder, whose qualifications indicate the Award will be in the best interest of the Town and whose Bid complies with the requirements of these specifications. In no case will the Award be made until all necessary investigations have been made into the responsibility of the Bidder(s) and the Town Manager is satisfied that the Bidder is qualified to do the Work and have the necessary organization, capital and equipment to carry out the Work in the specified timeframes. In evaluating responsibility, the Town may also consider previous contracts with the Town, past performance and experience with other contracts, compatibility of the project team with Town personnel, and any other criteria deemed relevant by the Town.
- 1.10.2. If the Town accepts a Bid, the Town will provide a written notice of Award to the lowest Responsive and Responsible Bidder, who meets the requirements of Section 1.10.1.
- 1.10.3. If the successful Bidder to whom an Agreement is awarded forfeits the Award by failing to meet the conditions of subsection 1.12, the Town may, at the Town's sole option, award the Agreement to the next lowest Responsive and Responsible Bidder or reject all Bids or re-advertise the Work.
- 1.10.4. The Town, at its sole discretion, may consider the lowest bidder as the bidder who has the lowest bid Amount for: Cutler Ridge Elementary Area Roadway and Drainage Improvements.

- 1.11. **RETURN OF THE BID GUARANTY**- All Bid Guarantees of unsuccessful Bidders will be returned after the Agreement is awarded and executed.
- 1.12. **EXECUTION OF CONTRACT**- The successful Bidder(s) shall, within ten (10) days of receipt of a written notice of the Award of the Agreement, deliver to the Town a fully executed Agreement and all requested certificates of insurance and bonds.
- 1.13. **FORFEITURE OF BID GUARANTY FOR FAILURE TO EXECUTE CONTRACT**- The failure of the successful Bidder(s) to execute an Agreement and submit required insurance certificates and bonds as specified in subsection 1.12 will result in forfeit of the Award. Each Bidder agrees in advance that the Town will sustain certain damages too difficult to accurately ascertain. Accordingly, if the Award is forfeited under this Section, the amount of the Bid Guaranty of the forfeiting Bidder will be retained by the Town, not as forfeiture or a penalty, but as liquidated damages.
- 1.14. **TIME AND AWARD**- The Bidder agrees to abide by the overall and unit prices quoted in the Bid for up to ninety (90) days from the date of bid opening to allow for the Town review, award, and execute the Agreement.
- 1.15. **INTERPRETATION AND CLARIFICATION**- All questions about the meaning or intent of the Bid Documents and specifications shall be directed in writing to the Town Clerk's Office, Erika Gonzalez-Santamaria at 10720 Caribbean Blvd., Suite # 105, Cutler Bay, Florida 33189. Interpretation or Clarifications considered necessary by the Town in response to such questions will be issued by means of addenda electronically mailed or delivered to all parties that are on record with the Town Clerk as having requested and received the Bid Documents. Provided however that it is each Bidder's sole responsibility to be informed of any changes to the ITB in the form of written addenda and the Town shall not be responsible for any Bidder's failure to receive same. The Town has the right to rely on all Bids received and the submittal of a Bid shall represent the Bidder's acknowledgement that he has read and understood the ITB and any addenda thereto. Written questions must be received no less than seven (7) business days prior to bid opening. Only questions answered by written addenda shall be binding. Oral and other interpretation or clarifications shall be without legal effect.
- 1.16. **BID MODIFICATIONS**- No modifications shall be submitted by Bidder or accepted by the Town.
- 1.17. **WITHDRAWAL OF A BID**- A Bidder may withdraw his Bid at any date and time prior to the time the Bids are scheduled to be opened. Notice of withdrawal should be made in writing to the Town Clerk's Office, Erika Gonzalez-Santamaria, at 10720 Caribbean Blvd., Suite # 105, Cutler Bay, Florida 33189.
- 1.18. **OPENING OF BIDS**- Bids will be publicly opened and read aloud at the appointed time and place stated in the Invitation to Bid/Request for Proposals. Late Bids will not be considered. No responsibility will be attached to any Town Staff for the premature opening of a Bid not properly addressed and identified. Bidders or their authorized agents are invited to be present at the bid opening.

1.19. **PUBLIC ENTITY CRIMES ACT**- In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the Town, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Town in excess of the threshold amount provided in Section 287.917, Florida Statutes, for Category Two for a period of 36 months form the date of being placed on the convicted vendor list. Violation of this section by the Contractor shall result in rejection of the Bid, termination of the contract, and may cause Contractor debarment.

1.20. **TOWN LICENSES, PERMITS AND FEES**- In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, each license, permit, or fee a Contractor will have to pay the Town before or during the Work or the percentage method or unit method of all licenses, permits and fees required by the Town and payable to the Town by virtue of the Work as part of the Agreement are as follows:

1) Contractor shall have and maintain during the term of the Agreement all appropriate Town licenses, and fees for which shall be paid in full in accordance with the Town's Fee structure for such licenses. **THERE WILL NOT BE ANY PERCENTAGE REDUCTION OR WAIVING OF TOWN LICENSE FEES.**

2) During the performance of the Agreement there may be times when the Contractor will be required to obtain a Town permit for the Work. It is the responsibility of the Contractor to insure that he or she has the appropriate Town permits to perform such Work as may become necessary during the performance of the Agreement. Any fees related to Town required permits in connection with the Agreement will be the responsibility of the Contractor and will not be reimbursed by the Town.

Licenses, permits, and fees that may be required by County, State or Federal entities are not included in the above list.

1.21. **INSURANCE.** The Bidder shall be required to provide and maintain insurance coverage of such types and amounts as specified in Section 2.10 of the Agreement. The Bidder shall include with his or her Bid either Certificates of Insurance evidencing same or documentation from his or her insurer evidencing the insurability of the Bidder to meet the insurance requirements.

1.22. **BONDS.** A Performance and a Payment Bond for the entire base bid amount shall be required in connection with this contract.

1.23. **FAMILIARITY WITH LAWS**- The Bidder is assumed to be familiar with all applicable Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect the Work.

- 1.24. **EXAMINATION OF BIDDER'S FACILITIES** - The Town, as part of its evaluation may perform an examination of the Bidder's facilities. The Town Manager or designee, as part of the evaluation, may perform this examination.

The term facilities as used in this solicitation shall include, but shall not be limited to, all properties operated by the Bidder, all equipment used in the performance of business by the Bidder, and/or any other evidence, tangible or intangible, that the Town may deem necessary to substantiate the technical and other qualifications, and the abilities of the Bidder to perform the Work.

The examination shall include, but shall not be limited to, appearance and cleanliness of facilities, appearance and cleanliness of equipment, "road worthiness" of vehicles, appearance and visibility of all signage on vehicles, and possession and distribution of mandatory equipment. Vehicles shall be examined for compliance with State of Florida Statutes, as well as applicable County and Town Ordinances. Additionally, examination may include verification of some of the (physical) minimum requirements for Bidders. Additionally, the Town reserves the right to perform such examinations on the successful Bidder as often as it deems necessary, to ensure proper performance of the proposed Agreement.

- 1.25 **ALLOWANCES** – Included in the contract sum is an allocation account for unforeseen conditions, potential construction changes and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town in accordance with the Contract Documents.

- 1.26 **CAMPAIGN FINANCE RESTRICTIONS ON VENDORS-** Ordinance 06-11; Town Code Chapter 8A. Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor.

Vendors' Campaign Contribution Disclosure:

1. General requirements:

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official of the Town, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

2. Disqualification

(A) As per Section 7.6 of the Town Charter, if a Vendor of products or services who directly or through a member of the person's immediate family or through a political action committee or through any other person makes a campaign contribution to a Town candidate and fails to disclose it then he/she/it shall be barred from selling any product or service to the town for a period of two years following the swearing in of the subject elected official.

1.27 **CONE OF SILENCE**- Notwithstanding any other provision of these specifications, the provisions of Town "Cone of Silence" are applicable to this transaction. The entirety of these provisions can be found in the Town's Purchasing Ordinance, Town Ordinance 06-22. The "Cone of Silence," as used herein, means a prohibition on any communication regarding a particular Request for Proposal ("RFP"), Request for Qualification ("RFQ") or bid, between:

A potential vendor, service provider, proposer, bidder, lobbyist, or consultant; and

The Town Council, Town's professional staff including, but not limited to, the Town Manager and his or her staff, any member of the Town's selection or evaluation committee.

The Cone of Silence shall be imposed upon each RFQ, RFP and bid after the advertisement of said RFQ, RFP, or bid. The Cone of Silence shall terminate at the beginning of the Town Council meeting at which time the Town Manager makes his or her written recommendation to the Town Council. However, if the Town Council refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be re-imposed until such time as the Manager makes a subsequent written recommendation.

The Cone of Silence shall not apply to:

- (1) oral communications at pre-bid conferences;
- (2) oral presentations before selection or evaluation committees;
- (3) public presentations made to the Town Council during any duly noticed public meeting;
- (4) communication in writing at any time with any Town employee, unless specifically prohibited by the applicable RFQ, RFP or bid documents. The bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;
- (5) communications regarding a particular RFQ, RFP or bid between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's Purchasing Agent or Town employee designated responsible for administering the

procurement process for such RFQ, RFP or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

- (6) communications with the Town Attorney and his or her staff;
- (7) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;
- (8) any emergency procurement of goods or services pursuant to Town Code;
- (9) responses to the Town's request for clarification or additional information;
- (10) contract negotiations during any duly noticed public meeting;
- (11) communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff are in writing or are made at a duly noticed public meeting.

Please contact the Town Attorney for any questions concerning Cone of Silence compliance. Violation of the Cone of Silence by a particular bidder or proposer shall render any RFQ award, RFP award or bid award to said bidder or proposer voidable by the Town Council and/or Town Manager.

1.28 **LOBBYIST REGISTRATION**- Proposers must also comply with all Town Charter sections and Code provisions that pertain to lobbyists, including Section 7.6 of the Town Charter and implementing ordinance(s), including Sec. 2-11(s) of the Town Code and Ordinance 07-02. Please contact the Town Clerk at (305) 234-4262 for additional information.

1.28.1 **PROTEST PROCEDURES**- With respect to a protest of the terms, conditions, and specifications contained in a solicitation (RFP, RFQ, or Bid), including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in accordance with Town Ordinance 06-22.

[THIS SPACE LEFT BLANK INTENTIONALLY]

TOWN OF CUTLER BAY

SECTION 3

CONTRACT BETWEEN OWNER AND CONTRACTOR

THIS CONTRACT is dated as of the _____ day of _____ in the year 2009 (which shall be the Effective Date of the Contract) by and between the Town of Cutler Bay (hereinafter called "OWNER" or "TOWN") 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:

Provide labor and equipment required to construct roadway and drainage improvements within the Cutler Ridge Elementary Area located in the Town of Cutler Bay. Work shall include but not be limited to the installation of catch basins, manholes, pipes, exfiltration trench, stabilized subgrade, limerock, asphalt, striping, sidewalks, manholes and utility cover adjustments, sodding/swale restoration, and driveway restoration. Utilization of these services will require close coordination with the Town and Engineer.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

TOWN OF CUTLER BAY

CUTLER RIDGE ELEMENTARY AREA

ROADWAY AND DRAINAGE IMPROVEMENTS ("THE PROJECT")

Article 2. ENGINEER. The Project has been designed by the following:

ENGINEER

Kimley-Horn and Associates, Inc.
5200 N.W. 33rd Avenue, Suite 109
Fort Lauderdale, FL 33309

who is hereinafter called "ENGINEER" and who will assume all duties and responsibilities and will 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 TIME.

- 3.1 If awarded the Base Bid Work, the contractor may not mobilize prior to TBA. The Work will be substantially completed by TBA and within 90 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 120 calendar days after the date when the Contract Time commences to run.
- 3.2 If awarded the Base Bid and Additive Bid Work, the contractor may not mobilize for the Base Bid Work prior to TBA. The Base Bid Work will be substantially completed by TBA, and the Base Bid and Additive Bid Work will be substantially completed within 150 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and 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 Time commences to run.
- 3.3 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Contract and that OWNER will suffer financial loss and other damages if the Work is not substantially or finally complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially or finally complete on time. CONTRACTOR acknowledges and agrees that the actual delay damages which OWNER will suffer in the event of delay in achieving Substantial Completion or Final Completion of the Work are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair and reasonable estimate of the delay damages which the OWNER is expected to suffer in the event of such delay. 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 and 00/100 dollars (\$1,000.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion until the Work is substantially complete. Liquidated damages shall be deducted from the CONTRACTOR's Applications for Payment. However, if at the time of the CONTRACTOR's Final Application for Payment, CONTRACTOR is owed insufficient amounts to fully cover the deduction for liquidated damages, then CONTRACTOR shall pay any amount due within 10 days of written demand by OWNER.

Article 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents and the Schedule of Values provided for payment request purposes in current funds as follows:

Contract Price \$ _____

Contract Price (in words) _____

- 4.2 Included in the Agreement Sum is an allowance account of \$20,000.00 for the Base Bid Form and an allowance account of \$30,000.00 for the Additive Bid Form for unforeseen conditions, potential construction changes and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town Manager in accordance with the Contract Documents. Money may only be taken from this account at the prior approval of the Engineer and pursuant to any procedures outlined by the Town Manager.

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. 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 before the 28th day of each month during construction as provided below. The Application for Payment shall be in AIA format. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided in paragraph 14.01 of the General Conditions and the requirements of the Contract Documents.

- 5.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to: 90% of the Work completed and 90% of materials and equipment not

incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions.

5.2. Final Payment. Upon Final Completion and acceptance of the Work in accordance with paragraph 14.07.B.1 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.B.1.

Article 6. INTEREST. Not Applicable

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into the Contract, CONTRACTOR makes the following representations:

7.1. CONTRACTOR has thoroughly and to its full satisfaction familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. CONTRACTOR has: (a) examined the Contract Documents, Project Specifications and Drawings thoroughly to its full satisfaction and has undertaken the responsibility to determine, within the scope of CONTRACTOR's competence as a licensed General Contractor, that the Project Specifications and Drawings are fit and proper for the performance of the Work and to the best of CONTRACTOR's knowledge are: (i) free from material errors, omissions, and/or inconsistencies; and (ii) are in compliance with applicable laws, statutes, building codes, ordinances, rules and regulations, recognizing however, that CONTRACTOR is not responsible for the design of the Project; (b) visited the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work; (c) examined the Project Site to its full satisfaction, including any existing work or improvements in place, and has determined that the same are fit and proper to receive the Work in their present condition and CONTRACTOR waives all claims that same are not in accordance with all data and information with respect to the Project as specified in the Drawings and Project Specifications and/or as provided by OWNER and Engineer; (d) familiarized himself with federal, state and local laws, ordinances, rules, policies, and regulations that may in any manner affect cost, progress or performance of the Work; (e) studied and carefully correlated CONTRACTOR's observations with the Contract Documents; and (f) at CONTRACTOR's own expense, made or obtained any additional examinations, investigations, explorations, tests and studies, and

obtained any additional information and data which pertain to the physical conditions (surface, sub-surface and underground facilities) at or contiguous to the Project or otherwise which may affect cost, progress, performance or furnishing of the Work and which CONTRACTOR deems necessary to determine its Contract Price for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

- 7.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4. CONTRACTOR has correlated and considered the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents and in reaching the Contract Price and Contract Time.
- 7.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR. CONTRACTOR shall not rely on any conflicts, errors or discrepancies that CONTRACTOR knew or should have known exist in the Contract Documents as a basis for a claim for an extra to the Contract Price or Contract Time.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents that comprise the entire Contract between OWNER and CONTRACTOR are attached to this Contract, made a part hereof and consist of the items listed in the general conditions and the following:

- 8.1. This Contract
- 8.2. Invitation to Bid
- 8.3. Bid Form
- 8.4. Standard General Conditions

- 8.5. Supplementary Conditions
- 8.6. Detailed Specifications as included in this package and as referenced
- 8.7. Code of Silence/Campaign Contribution Ordinance/Lobbyist Registration Requirements
- 8.8. Addendum Acknowledgement
- 8.9. Anti-Kickback Affidavit
- 8.10. Non-Collusive Affidavit
- 8.11. Sworn Statement
- 8.12. Qualification Statement
- 8.13. Performance Bond
- 8.14. Payment Bond
- 8.15. Drug-Free Work Place Form
- 8.16. Construction Plans titled – “Roadway Resurfacing and Miscellaneous Drainage Improvements”
- 8.17. Any Modifications, including Work Authorizations, duly delivered after execution of the Contract.
- 8.18. Project Geotechnical Report
- 8.19. DEP Form 62-621.300(4)(b)

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 9. MISCELLANEOUS

- 9.1. Terms used in this Contract which are defined in Article 1 of the General Conditions shall 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 hereto 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 himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4. This Contract may be executed in counterparts.
- 9.5. The OWNER shall retain the ownership of all shop drawings and design drawings once payment therefore is made.
- 9.7. OWNER and CONTRACTOR hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action or proceeding based upon the Contract Documents or arising out of, under, or in connection with the Work or the Project.
- 9.8. The law of the State of Florida shall govern the contract between the Town of Cutler Bay and the successful bidder and any action shall be brought in Miami-Dade County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.
- 9.9. INDEMNIFICATION- The parties agree that 1% of the total compensation paid to the Contractor for the performance of this agreement shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section and in the Terms and Conditions.

To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) 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 there from and (b) is caused in whole or in part by any willful and wanton or negligent or gross negligent acts or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

In any and all claims against the Town or any of their consultants, agents or employees by any employee of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone

for whose acts any of them may be liable, the indemnification obligation under the above paragraph 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 or other person or organization under workers or workman's compensation acts, disability benefit acts or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that all of the Contract Documents on this project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.

The official title of the Town is "Town of Cutler Bay". This official title shall be used in all insurance, or other legal documentation. Town of Cutler Bay is to be included as "Additional Insured" with respect to liability arising out of operations performed for Town of Cutler Bay by or on behalf of Contractor or acts or omissions of Contractor in connection with such operation.

- 9.10 WARRANTIES OF CONTRACTOR- The CONTRACTOR hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws necessary to perform the Specified Services.
- 9.11 DEFAULT/FAILURE TO PERFORM- The Town shall be the sole judge of nonperformance, which shall include any failure on the part of the successful bidder to accept the award, to furnish required documents, and/or to fulfill any portion of this contract within the time stipulated.

Upon default by the successful bidder to meet any terms of this agreement, the Town will notify the bidder three (3) days (weekends and holidays excluded) to remedy the default. Failure on the contractor's part to correct the default within the required three (3) days shall result in the contract being terminated and upon the Town notifying in writing the contractor of its intentions and the effective date of the termination. The following shall constitute default:

- A) Failure to perform the work required under the contract and/or within the time required or failing to use the subcontractors, entities and personnel as identified and set forth, and to the degree specified in the contract.
- B) Failure to begin the work under this contract within the time specified.
- C) Failure to perform the work with sufficient workers and equipment or with sufficient materials to ensure timely completion.
- D) Neglecting or refusing to remove materials or perform new work where prior work has been rejected as non conforming with the terms of the contract.
- E) Becoming insolvent, being declared bankrupt, or committing act of bankruptcy or insolvency, or making an assignment renders the successful bidder incapable of performing the work in accordance with and as required by the contract.
- F) Failure to comply with any of the terms of the contract in any material respect.

In the event of litigation or arbitration arising from a default by the contractor, the contractor shall also be liable for all damages caused by its default which damages may include but not be limited to any and all costs incurred by the Town in completing the project, and damages arising out of the contractor's failure to adhere to the contract requirements and all attorney's fees and costs incurred by the Town in seeking legal relief for the default.

- 9.12 OTHER CAUSES FOR TERMINATION- The Town of Cutler Bay reserves the right to cancel this contract by written notice to the contractor effective the date specified in the notice should any of the following apply:
- A) The Town has determined that such cancellation will be in the best interest of the Town to cancel the contract for its own convenience. In the event the contract is terminated for the Town's convenience the contractor will be paid for all labor and materials provided as of the termination date. No consideration will be given for anticipated lost revenue, overhead, mobilization or demobilization or the canceled portions of the contract.
 - B) Funds are not available to cover the cost of the services. The Town's obligation is contingent upon the availability of appropriate funds.
- 9.13 ANTI-DISCRIMINATION- The bidder certifies compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin. Furthermore the bidder shall comply with all other State and local laws and policies that prohibit discrimination.
- 9.14 If any provision of this Contract or any Authorization under this Contract or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of the is Contract, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.
- 9.15 Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified.
- 9.16 Contractor shall abide by the applicable provisions of Chapter 119, Florida Statutes (Public Records).

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IN WITNESS WHEREOF, the parties hereto have signed 6 copies of this Contract. At least one counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on OWNER'S behalf.

OWNER
Town of Cutler Bay

ADDRESS
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

BY

Steven J. Alexander

Town Manager

WITNESS _____

(CORPORATE SEAL)

CONTRACTOR

ADDRESS

BY _____

Print Name

Title

WITNESS _____

(CORPORATE SEAL)

TOWN OF CUTLER BAY

SECTION 4

CUTLER RIDGE ELEMENTARY AREA ROADWAY AND DRAINAGE IMPROVEMENTS

BIDDER'S REPRESENTATION

Bid of _____

(name)

(address)

to furnish all materials, equipment, and labor and to perform all the Work in accordance with the Contract Documents for:

**CUTLER RIDGE ELEMENTARY AREA ROADWAY AND DRAINAGE IMPROVEMENTS
("THE PROJECT")**

TO: Town of Cutler Bay
Attention: Town Clerk
10720 Caribbean Blvd., Suite # 105
Cutler Bay, Florida 33189

The undersigned, as Bidder, hereby declares that the only person or persons interested in the Bid, as principal or principals, is or are named herein and that no other person than herein mentioned has any interests in the Bid of the Agreement to which the Work pertains; that this Bid is made without connection or arrangement with any other person, company, or parties making Bids or Proposals and that the Bid is in all respects fair and made in good faith without collusion or fraud.

The Bidder further declares that he or she has examined the geographic location and sites of the Work; that he has made sufficient investigations to fully satisfy himself that such sites are suitable for this Work; and he assumes full responsibility therefore; that he has examined the specifications for the Work and from his own experience or from professional advice that the specifications are sufficient for the Work to be done and he has examined the other Contract Documents relating thereto, including the Instructions to Bidders, the Agreement, Bid, Detailed Scope of Work/Specifications, Qualification Statement, Public Entity Crime Form, and Insurance requirements and he has read all addenda prior to the opening of Bids, and that he has satisfied himself fully, relative to all matters and conditions with respect to the Work to which this Bid pertains.

This project includes an Additive Bid Form that reflects estimated quantities for additional work on roadway sections not included in the Base Bid. The Base Bid and Additive Bid items are defined below.

The Bidder proposes and agrees, if this Bid is accepted, to timely execute the Agreement with the Town in the form attached and to furnish all necessary materials, all equipment, all necessary machinery, tools, apparatus, means of transportation, and labor necessary to complete the Work specified in the Bid and the Agreement, and called for by the specifications and in the manner specified and to timely submit all required bonds and insurance certificates.

NOTE: THIS SCHEDULE OF BID ITEMS IS MERELY ILLUSTRATIVE OF THE MINIMUM AMOUNT/QUANTITY OF WORK TO BE PERFORMED UNDER THE CONTRACT. IN THE CASE OF ANY CONFLICT BETWEEN THIS SCHEDULE OF BID ITEMS AND THE DETAILED SPECIFICATIONS, THE DETAILED SPECIFICATIONS WILL PREVAIL.

The Bidder further proposes and agrees to comply in all respects with the time limits for commencement and completion of the Work as stated in the Agreement.

The Bidder agrees to execute the Agreement and furnish the executed Agreement, all required bonds, insurance certificates, and other required information to Town within ten (10) ten calendar days after written notice of the Award of contract. Failure on the part of the Bidder to timely comply with this provision shall give Town all rights and remedies set forth in the Instructions to Bidders.

The undersigned agrees to accept as full compensation therefore the total of the lump sum prices and extended unit prices items named in the following schedule. It is understood that the unit prices quoted or established for a particular item are to be used for computing the amount to be paid to the Contractor, based on the Work actually performed as determined by the Agreement and the Town. However, in utilizing the schedule, the Bidder agrees that in no event shall compensation paid to the Bidder under the Agreement exceed the dollar amount of the Bidder's Bid amount, as set forth in the attached Bid.

It is intended that all Work to be performed under this Bid shall commence approximately thirty (30) days after Agreement execution.

In no event shall Town be obligated to pay for Work not performed or materials not furnished.

Bidder's Certificate of Competency No. _____

Bidder's Occupational License No. _____

WITNESS

By: _____
Signature of Authorized Agent

(SEAL)

BID FORM

The following Bid Proposal is presented to assist the Town in evaluating the Bid. The Bid Amounts will include all items described in the Bid Documents (Detailed Specifications). Payment shall be made on the basis of Work actually performed and completed.

The Base Bid Amount includes all work on the following roadway sections:

- Coral Sea Road

BASE BID AMOUNT \$ _____

BASE BID AMOUNT (IN WORDS) _____

The Additive Bid Amount includes all work on the remaining roadway sections not included as part of the Base Bid Amount:

- Coral Ridge Drive
- Bahia Drive

ADDITIVE BID AMOUNT \$ _____

ADDITIVE BID AMOUNT (IN WORDS) _____

If the Additive Bid is not awarded as part of the initial contract, the Contractor is required to maintain the validity of the Additive Bid unit prices for a period of four (4) months from the Notice to Proceed date.

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT \$ _____

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT (IN WORDS) _____

The following two (2) exhibits are general illustrations of the proposed Base Bid and Additive Bid roadway sections for reference.

Taxpayer Identification Number: _____

BIDDER: _____
(Company Name)

(Signature of Authorized Representative)

(Printed Name and Title)

(Company Address)

(Company Phone Number)

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BASE BID FORM

The following Base Bid Form is presented to assist the Town in evaluating the Bid. This Base Bid Form reflects estimated quantities for the Base Bid roadway sections as described above. After award, the Town reserves the right to modify estimated quantities subject to the unit price, and eliminate line items if necessary. In the event of discrepancy or approved quantity change, the Unit Price for each item will govern. Payment shall be made for the items listed on the Bid Form on the basis of the Work actually performed and completed.

<u>Bid Item No.</u>	<u>DESCRIPTION</u>	<u>Estimated Quantity</u>	<u>UNIT</u>	<u>Unit Price</u>	<u>Value</u>
101-1	Mobilization	1	EA		
102-1	Maintenance of Traffic	1	EA		
104-10	Baled Hay or Straw or Filter Fabric Inlet Protection – Per Inlet	7	EA		
110-1	Clearing and Grubbing	1	LS		
331-2	Type S-3 Asphaltic Concrete (Overbuild areas indicated in plans)	620	SY		
331-72	Type S-3 Asphaltic Concrete Surface Course	2060	SY		
425-1	Inlets (Ditch Bottom – Type C)	4	EA		
425-2	Manholes (Type P-7)	4	EA		
425-4	Core Drilling Existing Inlets	3	EA		
425-6	Adjusting Valve Boxes/ Manholes	6	EA		
430-99	Polyethylene Pipe (15” Pipe)	400	LF		
443-70	French Drain (15” Pipe)	185	LF		
444-1	Drainage Well (Coral Sea Road)	1	EA		
520-1	Concrete Curb & Gutter (Type F)	250	LF		
522-1	Concrete Sidewalk (4” Thickness)	500	SY		
522-2	Concrete Sidewalk (6” Thickness)	150	SY		
524-1	Concrete Aprons	20	SY		
575-1	Replace Existing Asphalt & Base w/ Topsoil and Sod	550	SY		
711-1	Signing and Pavement Markings (Cutler Ridge Drive, Coral Sea Road & Bahia Drive)	1	LS		
737-71	Advanced utility Exploration (soft Digs)	4	EA		
SR-1	Swale Restoration	1	LS		
A-1	Allowances	1	LS	\$20,000	\$20,000

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BASE BID AMOUNT \$ _____

BASE BID AMOUNT (IN WORDS) _____

Bid Item Notes:

1. Bid Item 101-1 is a lump sum pay item for all mobilization costs and also includes the construction of two (2) project signs that shall be displayed at approaches to the project area. The intent is that the signs will be freestanding. The sign shall display on both sides the project name, Town Logo, elected officials, engineer, and contact information. A detail of the sign is included in the plans. Shop drawings must be submitted for approval prior to ordering the projects signs. Photos of the actual project signs must be submitted for approval prior to installation of the project signs.
2. Bid Item 102-1 is a lump sum pay item for a Maintenance of Traffic and includes all pedestrian access maintenance. All crosswalks and sidewalks shall remain open and free of obstructions. Temporary painting for roadways and crosswalks shall be maintained throughout the project.
3. Bid Item 110-1 is a lump sum pay item that includes the removal and disposal of all existing asphalt/concrete pavement and soil/planting as required for the project.
4. Bid Item 331-72 includes all costs associated with resurfacing the entire project area upon completion of the entire trench/pavement restoration phase. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
5. Bid Item 331-2 includes all costs associated with asphalt overbuild areas as shown n the plans or identified in the field. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
6. Bid Items 443-70 and 430-99 includes all costs associated with the trench excavation, protection of trench, management of excavated material, trench backfill and compaction, testing, and asphalt restoration per the plans and details.
7. Bid Item 524-1 includes all costs associated with installing concrete aprons at new and existing catch basins. This bid item shall also include costs associated with retaining walls if required by adjacent grades.
8. Bid Items 425-1, 425-2 and 425-4 includes all costs associated with installing inlets and manholes, modifying/core drilling/removing existing inlets, and all drainage pipe connections per the plans.
9. Bid Item 737-71 includes all necessary advanced explorations to verify and determine existing pipe invert elevations, material, and locations where conflicts with the proposed drainage system may occur (soft digs). Work shall also include verification and determination of interior dimensions and elevations (including pipe inverts) of any existing affected drainage structure. If a conflict is determined or a discrepancy with the plans is found, the Contractor is to notify the Engineer and provide all pertinent field information to assist the resolution of the conflict. This work is to be carried out in advance of construction.
10. Bid Item SR-1 is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons (concrete pavers), mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.

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ADDITIVE BID FORM

The following Additive Bid Form is presented to assist the Town in evaluating the Bid. This Additive Bid Form reflects estimated quantities for additional work on roadway sections not included in the Base Bid as described above. After award, the Town reserves the right to modify estimated quantities subject to the unit price, and eliminate some or all line items if necessary. In the event of discrepancy or approved quantity change, the Unit Price for each item will govern. Payment shall be made for the items listed on the Bid Form on the basis of the Work actually performed and completed.

<u>Bid Item No.</u>	<u>DESCRIPTION</u>	<u>Estimated Quantity</u>	<u>UNIT</u>	<u>Unit Price</u>	<u>Value</u>
101-1	Mobilization	1	EA		
102-1	Maintenance of Traffic	1	EA		
104-10	Baled Hay or Straw or Filter Fabric Inlet Protection – Per Inlet	20	EA		
110-1	Clearing and Grubbing	1	LS		
331-72	Type S-3 Asphaltic Concrete Surface Course	6250	SY		
331-2	Type S-3 Asphalt Concrete- (Overbuild Areas indicated in plans)	880	SY		
425-1	Inlets (Ditch Bottom – Type C)	14	EA		
425-2	Manholes (Type P-7)	13	EA		
425-4	Core Drilling Existing Inlets	3	EA		
425-6	Adjusting Valve Boxes/Manholes	18	EA		
430-99	Polyethylene Pipe Culvert (15” Pipe) (Bahia Drive and Cutler Ridge Drive)	640	LF		
443-70	French Drain (15-inch pipe) (Bahia Drive and Cutler Ridge Drive)	1050	LF		
444-1	Drainage Well (Bahia Drive and Cutler Drive)	2	EA		
522-1	Concrete Sidewalk (4” Thickness)	400	SY		
524-1	Concrete Aprons	60	SY		
575-1	Replace Existing Asphalt & Base w/ Topsoil and Sod	360	SY		
737-7	Advanced Utility Exploration (soft Digs)	10	EA		

SR-1	Swale Restoration	1	LS		
A-1	Allowances	1	LS	\$30,000	\$30,000

ADDITIVE BID AMOUNT \$ _____

ADDITIVE BID AMOUNT (IN WORDS) _____

If the Additive Bid is not awarded as part of the initial contract, the Contractor is required to maintain the validity of the Additive Bid unit prices for a period of four (4) months from the Notice to Proceed date.

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT \$ _____

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT (IN WORDS) _____

Bid Item Notes:

1. Bid Item 101-1 is a lump sum pay item for all mobilization costs and also includes the construction of two (2) project signs that shall be displayed at approaches to the project area. The intent is that the signs will be freestanding. The sign shall display on both sides the project name, Town Logo, elected officials, engineer, and contact information. A detail of the sign is included in the plans. Shop drawings must be submitted for approval prior to ordering the projects signs. Photos of the actual project signs must be submitted for approval prior to installation of the project signs.
2. Bid Item 102-1 is a lump sum pay item for a Maintenance of Traffic and includes all pedestrian access maintenance. All crosswalks and sidewalks shall remain open and free of obstructions. Temporary painting for roadways and crosswalks shall be maintained throughout the project.
3. Bid Item 110-1 is a lump sum pay item that includes the removal and disposal of all existing asphalt/concrete pavement and soil/planting as required for the project.
4. Bid Item 331-72 includes all costs associated with resurfacing the entire project area upon completion of the entire trench/pavement restoration phase. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
5. Bid Item 331-2 includes all costs associated with asphalt overbuild areas identified in the field. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
6. Bid Items 443-70 and 430-99 includes all costs associated with the trench excavation, protection of trench, management of excavated material, trench backfill and compaction, testing, and asphalt restoration per the plans and details.
7. Bid Item 524-1 includes all costs associated with installing concrete aprons at new and existing catch basins. This bid item shall also include costs associated with retaining walls if required by adjacent grades.
8. Bid Items 425-1, 425-2 and 425-4 includes all costs associated with installing inlets and manholes, modifying/core drilling existing inlets, and all drainage pipe connections per the plans.
9. Bid Item 737-71 includes all necessary advanced explorations to verify and determine existing pipe invert elevations, material, and locations where conflicts with the proposed drainage system may occur (soft digs). Work

shall also include verification and determination of interior dimensions and elevations (including pipe inverts) of any existing affected drainage structure. If a conflict is determined or a discrepancy with the plans is found, the Contractor is to notify the Engineer and provide all pertinent field information to assist the resolution of the conflict. This work is to be carried out in advance of construction.

10. Bid Item SR-1 is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.

TRENCH SAFETY

Bidder acknowledges that included in the various items of the Bid and in the Total Bid Price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Fla.) effective October 1, 1990. The Bidder identifies the costs included in the Total Bid Price to be summarized below.

	TRENCH SAFETY MEASURE (DESCRIPTION)	UNITS OF MEASURE UNIT (LF, SY)	UNIT (QUANTITY)	EXTENDED COST	COST
A.	_____	_____	_____	_____	_____
B.	_____	_____	_____	_____	_____
C.	_____	_____	_____	_____	_____

Failure to complete the above shall result in the Bid being declared non-responsive.

[THIS SPACE LEFT BLANK INTENTIONALLY]

TOWN OF CUTLER BAY

SECTION 5

SUPPLEMENTARY CONDITIONS

1.01 GENERAL:

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect. If there is a conflict between the Contract, General Conditions (No. 1910-8, 1996 edit.) and these Supplementary Conditions, the terms of the Supplementary Conditions shall control.

The Contractor shall note physically by cross out or cross reference notations all changes in the General Conditions called for in the Supplementary Conditions before submitting his Bid.

ARTICLE 1 - DEFINITIONS - Page 6

SC-1.01.A

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) have the meanings assigned to them in the General Conditions, unless otherwise indicated.

Amend paragraph SC-1.01.A.28 by replacing the terminology Notice of Award with Notice of Intent to Award.

Amend paragraph SC-1.01.A.29 by replacing it with the following paragraph:

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 a particular specified portion of the Work under the Contract Documents. It is anticipated that multiple Notices to Proceed will be issued by OWNER on an as-needed basis. OWNER is not limited in the number of separate Notices to Proceed it may issue other than by the total Contract Time and total Contract Price. Each portion of the Work shall be separately described in an applicable Notice to Proceed which shall govern that portion of the required Work and indicate substantial completion and final completion requirements. Failure to comply with such dates will be subject to liquidated damages.

Amend paragraph SC-1.01.A.42 by replacing it with the following paragraph:

Subcontractor – An individual or entity having a direct contract with CONTRACTOR. Sub-Subcontractor is an individual or entity having a direct contract with any Subcontractor for the performance of a part of Work at the Project.

Amend paragraph SC-1.01.A.30 by replacing it with the following paragraph:

OWNER – The individual, entity, public body, Town Manager, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

Add SC-1.01.A.51 as the following paragraph:

Promptly – The period of time not exceeding five business days.

ARTICLE 2 - PRELIMINARY MATTERS - Page 9

SC-2.03

Amend paragraph 2.03.A by replacing it with the following paragraph:

The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if one or more Notices to Proceed are given, on the day indicated in a particular Notice to Proceed. Multiple Notices to Proceed may be given at any time during the term of this Agreement. Each Notice to Proceed shall govern Contract Times for that portion of the Work covered in the applicable Notice to Proceed.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS - Page 13

SC-4.04

Amend paragraph 4.04.B.2 by replacing the last sentence with the following:

If OWNER or 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, a Claim may be made as provided in paragraph 10.05.

ARTICLE 5 - BONDS AND INSURANCE - Page 15

SC-5.01

Amend paragraph 5.01.C by adding the following language at the end of the paragraph:

Any additional costs shall be borne by the Contractor.

SC-5.04

Add the new paragraphs immediately after paragraph 5.04 of the General Conditions.

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

5.04.A.1 and 5.04.A.2 Workers' Compensation, etc. under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

1. Comprehensive General Liability:
 - (a) Coverage to include Premise/Operations, Broad Form Property Damage, Contractual and Personal Injury, and XCU (where applicable).
 2. Limits:
 - (a) General Aggregate \$1,000,000
 - (b) Each Occurrence \$1,000,000
 - (c) Personal Injury \$1,000,000
 3. Coverage is to be written on an "occurrence" basis.
 4. Owners and Contractors Protection:
 - (a) Bodily Injury:

Annual Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
 - (b) Property Damage:

Annual Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
 5. Worker's Compensation shall be in accordance with the provisions of the laws of the State of Florida.
- 5.04.A.6 Comprehensive Automobile Liability:
 - (a) Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.
 - (b) Limits:

Combined Single Limit	\$1,000,000
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- 5.04.B.1 Umbrella:
 - (a) Limits:

- Aggregate \$1,000,000
- (b) Cover all claims arising out of the contractor's operations or premises, anyone directly or indirectly employed by the Contractor or Subcontractor, and the Contractor's obligations under indemnification under this Contract.

5.04.B.8 The Town of Cutler Bay, shall be included as a named insured party under the Contractors Liability Insurance. The following paragraph is required to appear unaltered on the Certificate of Insurance.

"The Town of Cutler Bay, Florida is hereby named Additional Insured under the terms of this policy."

5.04.B.9 A thirty (30) day Notice of Cancellation is required and must be stated on the Certificate of Insurance.

5.04.B10 The Certificate of Insurance shall be issued to the Town of Cutler Bay, Florida at the following address:

Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

5.06 Delete this section in its entirety.

5.07 Delete this section in its entirety.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES - INDEMNIFICATION - Page 18

SC-6.01

Add the new paragraphs immediately after paragraph 6.01.B of the General Conditions.

The Contractor shall perform all work in compliance with all applicable safety codes. A competent English speaking superintendent will be on the job at all times during working hours, and will be subject to call during off-duty hours for emergency situations. The superintendent shall have overall charge of the work with complete authority regarding the Contractor's workmen, equipment and material purchases. The superintendent shall have complete authority to act on behalf of the Contractor. This person must be sufficiently qualified and have read and understood the Drawings, Specifications and all Contract Documents.

SC-6.02

Modify paragraph 6.02.B to allow work on Saturday per the following new paragraph added immediately after paragraph 6.02.B of the General Conditions.

The Project sites being located in a single-family residential area, there shall be no undue noise created, whether by workers arriving at the sites or by actual construction work, before 9:00 a.m. or after 6:00 p.m. Monday through Saturday. No work shall be performed on Sunday or legal holidays as defined by the Town. There are no public sanitary facilities nearby the work sites, and the Contractor must therefore make arrangements for portable sanitary facilities as authorized by the Town.

SC-6.06

Amend paragraph 6.06.A by replacing the last sentence of the paragraph with the following sentence:

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, except as required by 6.06.B and the Instruction to Bidders.

Amend paragraph 6.06.B by adding the words "Instructions to Bidders" before Supplementary Conditions where ever it appears.

Amend paragraph 6.06.B by deleting the following sentence from the paragraph:

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 or Written Amendment signed.

Amend paragraph 6.06.B by adding the following language at the end of the last sentence of the paragraph:

nor does such acceptance create a contractual relationship between the OWNER and any subcontractor, supplier, individual or entity.

SC-6.09

Amend paragraph 6.09.C by replacing the first sentence of the paragraph with the following sentence:

Changes in Laws or Regulations which become effective after the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times.

Add the new paragraphs immediately after paragraph 6.09.C. of the General Conditions:

All vehicles used in connection with the Contractor's operations will be required to have identification signs.

SC-6.11

Amend paragraph 6.11.A.2 by adding the following language at the end of the last sentence:

, as set forth on the Resident Complaint Resolution Protocol attached hereto and made a part of the Contract Documents.

Add the new paragraphs immediately after paragraph 6.11.B. of the General Conditions:

Adjacent residents must have access to their driveways at all times. All barricades and warning signs for any traffic lane closures will be provided and maintained by the Contractor. Cost of all barricades and signs shall be the responsibility of the Contractor. Any off-duty officers as may be required in the maintenance of traffic shall be provided by the Contractor at the Contractor's expense.

SC-6.12

Amend paragraph 6.12.A by replacing the first sentence of the paragraph with the following sentence:

CONTRACTOR shall maintain in a safe place at the Project one record copy of all Drawings, Project Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, AsBuilts, and written interpretations and clarifications in good order and annotated to show changes made during construction.

SC-6.13

Amend paragraph 6.13.A.3 by replacing it with the following paragraph:

other property at the Project or adjacent thereto, including, but not limited, to trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in course of construction.

SC-6.20

Amend the paragraphs 6.20.A.1 and 6.20.A.2 by replacing them with the following paragraph.

To the fullest extent permitted by Laws and Regulations, the Parties agree that in consideration of the first \$1,000.00 dollars to be paid by Owner to Contractor hereunder and other specific consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor shall indemnify, defend and hold harmless the OWNER and ENGINEER and their consultants, agents, officers and employees, and the elected officials of the Owner, from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professional and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) 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 and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is implied by Law and Regulations regardless of the negligence of any such party.

Amend paragraphs 6.20.B by replacing it with the following paragraph:

In any and all claims against OWNER and ENGINEER and their consultants, agents, officers and employees, and the elected officials of the Owner by any CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20 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 or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 8 - OWNER'S RESPONSIBILITIES - Page 26

SC-8.02

Amend paragraph 8.02.A by replacing it with the following paragraph:

In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION - Page 27

SC-9.03

Amend paragraph 9.03.A by adding the following language at the end of the paragraph:

The ENGINEER will provide a Resident Project Representative for this Project with duties, responsibilities and limitations of authority as outlined in Exhibit "B" attached at the end of these Supplementary Conditions. The Resident Project Representative will not be a full time Representative, but will work such periods of time so as to cover the project in accordance with Exhibit "B".

SC-9.05

Amend paragraph 9.05.A by deleting the following sentence from the end of the paragraph:

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, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

SC-9.08

Amend paragraph 9.08.A by replacing the word "decision" in the second sentence with the word "recommendation" and adding the words "recommendation will be submitted to the Town Manager whose" into the third sentence between the words "written" and "decision".

SC-9.09

Amend paragraph 9.09.B by replacing the word "decision" with "recommendation" in the second paragraph and deleting the words "OWNER or" from the last sentence.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS - Page 29

SC-10.01

Amend paragraph 10.01.A by replacing the first sentence of the paragraph with the following sentence:

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 Written Amendment, a Change Order, a Work Change Directive, or a Field Directive.

Amend paragraph 10.05.D by adding the following sentence at the end of the paragraph:

Adherence to the terms of paragraph 10.05 is a condition precedent to bringing any further action in litigation.

SC-10.05

Amend paragraph 10.05.B by replacing it with the following paragraph:

B. TOWN MANAGER'S Decision: ENGINEER will render a formal recommendation to the TOWN MANAGER for a binding decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. TOWN MANAGERS decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR:

Delete paragraphs 10.05.B.1 and 10.05.B.2.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCE; UNIT PRICE WORK - Page 30

SC-11.01

Amend paragraph 11.01.A.1 by deleting the word Saturday from the last sentence of the paragraph.

Delete paragraph 11.01.A.4 in its entirety.

SC-11.03.C

Amend paragraph 11.03.C by replacing it with the following paragraph:

C. A Claim may be made for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

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

SC-12.01.C

Amend paragraph 12.01.C.2.a. by replacing the entire sentence with the following sentence:

for costs incurred under paragraph 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 10 percent;

SC-12.01.C

Modify paragraph 12.01.C.2.c. to change the fee as follows in the first sentence:

Will be paid a fee of 10 percent of the costs incurred by such Subcontractor under paragraph 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;

SC-12.06.B

Amend paragraph 12.06.B by replacing the entire paragraph with the following paragraph:

Contractor will not be entitled to any adjustment in the Contract Price for delays extended general conditions, extended overhead, loss of productivity, acceleration or any damages or other compensation whatsoever in the event of any delays in the progress of the Work on account of hindrances or delays from any cause whatsoever. Such causes of delay include but are not limited to differing site conditions, difficulty in acquiring building permits, limited access to the Project, failure to approve plans and shop drawings on time, delays caused by governmental action, inaction or regulation, subsurface conditions, material shortages or delay in delivery of materials. It is the specific intent hereunder that an extension of time will be the sole and exclusive remedy for delay of any type, description of category. However, if occasioned by an act of God, or by any act or omission on the part of the OWNER such act, hindrance or delay may entitle the CONTRACTOR to an extension of time in which to complete the Work which shall be determined by the ENGINEER, provided that the CONTRACTOR will give notice as provided herein. The foregoing limitations on adjustments to Contract Price also apply to any causes of delay which affect any subcontractor, materialman, supplier or laborer on the Project. In no event, if any such events of delay occur, shall any subcontractor, materialman, supplier or laborer be entitled to additional compensation for delays including claims for extended general conditions, extended overhead and the like against the OWNER or Engineer.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK - Page 34

SC-13.04

Amend paragraph 13.04.A by replacing it with the following paragraph:

If any Work is covered contrary to the Technical Specifications, Drawings or Contract Documents, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

Amend paragraph 13.04.B by adding the following language at the end of the second sentence:

,or direct payment if remaining Contract funds are not sufficient.

SC-13.09

Amend paragraph 13.09.C by adding the following language at the end of the first sentence:

, or direct payment if remaining Contract funds are not sufficient.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION - Page 36

SC-14.02.A.2

Amend paragraph 14.02.A.2 by deleting the existing paragraph and replacing it with the following paragraph:

With each Application for Payment, the CONTRACTOR shall include a Partial Waiver Upon Progress Payment or Statutory Waiver and Final Release, as appropriate from each and every materialman, supplier and or laborer ("Potential Lienor") who has provided labor, services or materials for the Project. Contractor shall submit its own Statutory Waiver and Partial Release of Lien or Statutory Waiver and Final Release of Lien, as appropriate, with each Application for Payment. Moreover, CONTRACTOR shall ensure that no construction liens, or any encumbrances in the nature thereof or any other encumbrances whatsoever (including equitable lien claims), shall be filed or maintained by the CONTRACTOR or by any Potential Lienor in connection with any Work for which OWNER has made payment or for which payment is not yet due. As a condition precedent to the receipt of each progress payment from the OWNER, CONTRACTOR must furnish the Partial Waiver Upon Progress Payment Statutory Waiver and Final Release from each Potential Lienor, in the form prescribed by OWNER and/or ENGINEER, together with a Contractor's Affidavit and Partial Release, in the form prescribed by the OWNER and/or ENGINEER. Further, as a condition precedent to the receipt of the final payment, the CONTRACTOR shall provide OWNER with a Statutory

Waiver and Final Release from each Potential Lienor in the form prescribed by OWNER and/or the ENGINEER, together with a Contractor's Affidavit and Final Release. Each Release given to the OWNER shall waive and release any lien rights of the Potential Lienor to the extent payment is made with respect to any Work performed through the date of the Release. For any Potential Lienor who has served a Notice to Owner and/or Notice to Contractor, but who has not provided labor, services or materials during the period of time covered by an Application for Payment, the CONTRACTOR shall provide a Zero Dollar Release in the form prescribed by OWNER and/or ENGINEER. CONTRACTOR shall comply with all requirements of Florida Statutes, Chapter 713. CONTRACTOR agrees to indemnify, defend and hold the OWNER harmless from and against any and all liens or other claims whatsoever filed against the OWNER or the OWNER'S property by any Potential Lienor for worked performed or materials or services furnished in connection with the Work for which CONTRACTOR has been paid or for which payment is not yet due at the time the Lien is recorded. In the event a Claim of Lien is recorded against the OWNER'S property, the CONTRACTOR shall cause the same to be satisfied within ten (10) days following the date of recordation of the Claim of Lien, or in the alternative, shall cause the Claim of Lien to be transferred to a Bond. In the event any Liens are not cleared of record within ten (10) days of recordation, OWNER shall have the right to settle, satisfy, or transfer such Lien to a Bond at CONTRACTOR'S sole cost and expense and OWNER may offset any such cost against the next payment due to CONTRACTOR, or CONTRACTOR shall make a direct payment if remaining Contract funds are not sufficient. OWNER shall not be limited to and is entitled to all other remedies available at law or in equity. The provisions of this paragraph shall be deemed an independent covenant of the CONTRACTOR and shall be effective with respect to all Work performed and materials and services furnished under the Contract Documents, Change Orders or any other agreement for work with respect to the Project.

SC-14.02.D.1.b

Amend paragraph 14.02.D.1.b by deleting the existing paragraph and replacing it with the following:

Liens have been recorded in connection with the Work or the Project.

SC-14.07

Amend paragraph 14.07.A.1 by replacing it with the following paragraph:

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 operation instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), final releases, final

affidavits, Asbuilts, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

Amend paragraph 14.07.A.2 by adding the following language at the end of the first sentence:

or claims made against the Bonds provided by CONTRACTOR under the Contract Documents.

Delete paragraph 14.07.A.3 in its entirety.

SC-14.09

Amend paragraph 14.09.A.1 by replacing it with the following paragraph:

a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens or Claims against the Bonds, 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

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION - Page 40

SC-15.03

Delete paragraph 15.03.A.3 in its entirety.

Delete paragraph 15.03.A.4 in its entirety.

SC-15.04

Amend paragraph 15.04.A. by deleting the last sentence of the paragraph.

EXHIBIT "B"

**A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS
OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE**

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the Work of the Contractor.

Through more extensive on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control or supervisory control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.

2. Conferences and Meetings: Attend meetings with CONTRACTOR, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

3. Liaison:

a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operation affect OWNER's on-site operations.

b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

4. Shop Drawings and Samples:

a. Record date of receipt of Shop Drawings and samples.

- b. Receive samples that are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
 - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if ENGINEER has not approved the submittal.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
- a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
6. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
7. Modifications: Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
8. Records:
- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

- b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.

9. Reports:

- a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
- b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
- d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.

10. Payment Requests: Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values. Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

12. Completion:

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be completed or corrected.

- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawings or sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

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TOWN OF CUTLER BAY

SECTION 6

ROADWAY & DRAINAGE IMPROVEMENTS
DETAILED SPECIFICATIONS

TECHNICAL SPECIFICATIONS INDEX

SECTION	DESCRIPTION	PAGES
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DIVISION I
SPECIAL PROVISIONS
FOR
ROADWAY & DRAINAGE IMPROVEMENTS,
IN
THE TOWN OF CUTLER BAY

It is the intent of these Contract Documents that Division I, II and III of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” dated 2000 be used as the basis for the work as amended by the following Supplemental Technical Specification. Where such wording refers to the State of Florida and its Department of Transportation and Personnel, such wording is hereby replaced with wording which provides proper substitute terminology; thereby making such Standard Specifications for Roads and Bridge Construction, Standard Technical Specifications of the Town of Cutler Bay.

It is the intent to include Division I of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” as referenced above as a supplement to the General Conditions (Engineers Joint Contract Documents Committee) and Supplementary Conditions for this Contract.

Further the applicable portions of the Town of Cutler Bay Code and Florida Building Code shall apply to the project.

Supplemental Technical Specifications that pertain to the pertinent items of construction are located in Division II.

SECTION 01020

ALLOWANCES

PART 1 SCOPE OF WORK

1.01 DEFINITION

- A. Included in the contract sum is an allocation account for unforeseen conditions, potential construction changes and quantity adjustments, and additional work that the Town may deem necessary if ordered and authorized by the Town in accordance with the contract documents.

1.02 ALLOWANCE ACCOUNT

- A. Monies in the allocation account will be used on issuance of work authorizations for over run of unit bid items provided such over runs are pre-approved in writing by the Town, and off duty police officers.
- B. At the closeout of the contract, monies remaining in the allowance account will be credited to the Town by change order.

1.03 SELECTION OF PRODUCTS UNDER ALLOWANCES

- A. Engineer's Duties:
 - 1. Consult with the Contractor in consideration of products and supplier or installers or changes in quantities of bid items.
 - 2. Make selection in consultation with the Owner. Obtain Owner's written decision, designating:
 - a. Product, model and/or class of materials.
 - b. Accessories and attachments.
 - c. Supplier and installer as applicable.
 - d. Cost to Contractor, delivered to the site or installed, as applicable.
 - e. Warranties
 - f. Quantities
 - 3. Transmit Owner's decision to the Contractor.
 - 4. Prepare work authorizations or change orders.

B. Contractor's Duties:

1. Assist Engineer and Owner in determining qualified suppliers, quantities or subcontractor.
2. Obtain proposals from a minimum of three (3) suppliers and/or subcontractors when requested by Engineer.
3. Make appropriate recommendations for consideration of the Engineer.
4. Notify Engineer promptly of:
 - a. Any reasonable objections Contractor may have against any supplier, or party under consideration for installation.
 - b. Any effect on the construction schedule anticipated by selection under consideration.

1.04 CONTRACTOR RESPONSIBILITY FOR PURCHASE, DELIVERY AND INSTALLATION

- A. On notification of selection, execute purchase agreement with designated suppliers and/or subcontractors.
- B. Arrange for and process shop drawings, product data and samples, as required.
- C. Make all arrangements for delivery.
- D. Upon delivery, promptly inspect products for damage or defects.
- E. Submit claims for transportation damage.
- F. Install and finish products in compliance with requirements of referenced specification sections, including restoration.
- G. Noise Control
 1. Contractor will use discretion whenever engaging in activities that might produce excessive noise and disturb residents in and around work areas.
 2. The Town shall have the right to impose reasonable limitations on the Contractor to prevent excessive noise and disturb residents in and around work areas.
- H. Access to Property: The Contractor shall at all times maintain meaningful access to a given property for residents of that property.
- I. Staging of Work: All staging for work by the Contractor within the Town shall be first approved by the Town's department of public works.

1.05 ADJUSTMENT OF COSTS

- A. Should the net cost be more or less than the specified amount of the allowance, the contract sum will be adjusted accordingly by change order. Should work be changed by change order:
 - 1. The amount of the change order will recognize any changes in handling costs at the site, equipment, labor, installation costs, overhead, profit, and other expenses caused by the change order.
 - 2. For products specified under a unit cost in the change order schedule of values, the unit cost shall apply to the additional quantities actually used.
- B. Submit any claims for anticipated additional costs at the site, or other expenses caused by the selection under the allowance, prior to execution of the work.
- C. Failure to submit claims within the designated time will constitute a waiver of claims for additional costs.
- D. At contract closeout, reflect all approved changes in contract amounts in the final statement of accounting.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

3.01 MEASURE AND PAYMENT

- A. The cost shall include a fixed amount per the Bid Form.
- B. Use of the allocation account shall be for unforeseeable conditions, for construction changes and for availability adjustments, if ordered and authorized by the Town. At the closeout of contract, monies remaining in the contingency allowance will be credited to the Owner by change order.
- C. The fixed amount is indicted as a lump sum under Allowance pay item A-1.

END OF SECTION

SECTION 01030

SWALE RESTORATION AND AUDIO VISUAL PRECONSTRUCTION RECORD

PART 1 SCOPE OF WORK

1.01 DEFINITION

- A. Included in the contract sum is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction.
- B. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.

1.02 SITE RESTORATION

- A. The Contractor shall remove all excess material and shall clean up and restore the swale area impacted by any construction activity adjacent to drainage work to its original condition or better. All damage to swale areas, as a result of WORK under this Contract, done to existing structures, pavement, driveways, paved areas, curbs and gutters, sidewalks, shrubbery, grass, trees, utility poles, utility pipe lines, conduits, drains, catch basins, flagstones, rocked, graveled or stabilized areas or driveways, and including all obstructions not specifically named herein, shall be repaired or replaced, as determined by the ENGINEER. Site restoration shall be done in a timely manner as the WORK progresses.

1.03 AUDIO-VISUAL PRECONSTRUCTION RECORD

- A. Prior to beginning the work, the Contractor shall have a continuous color audio-video recording taken along the entire length of the project, where construction will be performed, to serve as a record of preconstruction conditions. No construction shall begin prior to review and approval of the audio-video covering the construction area by the Engineer. The Engineer shall have the authority to reject all or any portion of the audio-video not conforming to the specifications and order that it be redone at no additional charge. The Contractor shall reschedule the unacceptable coverage within five days after being notified.

- B. Contractor shall provide the Engineer and the Owner with one complete set of disks for each project area.
- C. All equipment, accessories, materials and labor to perform this service shall be furnished by the Contractor.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 MEASURE AND PAYMENT

- A. Compensation for the swale restoration as described on the plans and in this specification shall be included in the lump sum price bid for Swale Restoration.
- B. Compensation for the audio-video preconstruction record shall be included in the lump sum price bid for Swale Restoration Pay Item SR-1.

END OF SECTION

[THIS SPACE LEFT BLANK INTENTIONALLY]

SECTION 15200

UTILITY RELOCATIONS

PART 1 SCOPE OF WORK

1.01 DEFINITION

- A. Included in the contract sum is an allowance account for unforeseen conditions that require the relocation of existing utilities. The Contractor shall verify the location of existing utilities prior to installing proposed drainage pipe and French drain. If a conflict between the proposed drainage pipe location and the existing utility is identified, that cannot be avoided by adjusting the elevations of the pipe, the Contractor shall immediately notify the Engineer. Upon direction from the Engineer, the Contractor shall coordinate with the utility provider to have the conflicting utilities relocated or deflected by provider personnel.

1.02 ALLOWANCE ACCOUNT

- A. Monies in the allocation account will be used on issuance of a work authorization, pre-approved in writing by the Town throughout
- B. At the closeout of the contract, monies remaining in the allowance account will be credited to the Town by change order.

1.03 PROCEDURE FOR COMPLETING UTILITY RELOCATIONS

- A. Engineer's Duties:
 - 1. Consult with the Contractor in considering options related to conflicts between existing utilities and proposed drainage pipe or French drain.
 - 2. Provide written authorization to request cost estimate.
 - 3. Transmit Owner's decision to the Contractor.
 - 4. Prepare work authorization.
- B. Contractor's Duties:
 - 1. Identify potential conflicts between proposed drainage pipe or French drain and existing utilities by verifying utility locations in the field prior to installation of proposed drainage pipe and notify Engineer of conflicts immediately upon discovery. The Contractor and Engineer shall explore options to avoid the conflicts with the utilities as the first step.

2. Obtain cost estimates and schedules for relocation or deflection of existing utilities from provider as directed by the Engineer and provide copies of the requested information to the Engineer upon receipt.
3. If authorized by Engineer, coordinate with provider to have utility relocations/deflections constructed by provider personnel. This includes payment of any deposits or fees associated with the proposed deflections.
4. Notify Engineer promptly of:
 - a. Any effect on the construction schedule anticipated as a result of utility relocation/deflection.

1.05 ADJUSTMENT OF COSTS

- A. Should the net cost be more or less than the specified amount of the allowance, the contract sum will be adjusted accordingly by change order. Should work be changed by change order:
 1. The amount of the change order will recognize any changes in handling costs at the site, equipment, labor, installation costs, overhead, profit, and other expenses caused by the change order.
 2. For products specified under a unit cost in the change order schedule of values, the unit cost shall apply to the additional quantities actually used.
- B. Submit any claims for anticipated additional costs at the site, or other expenses caused by the selection under the allowance, prior to execution of the work.
- C. Failure to submit claims within the designated time will constitute a waiver of claims for additional costs.
- D. At contract closeout, reflect all approved changes in contract amounts in the final statement of accounting.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 MEASURE AND PAYMENT

- C. Included in the contract sum is an allowance account for unforeseen conditions that require the relocation of existing utilities. At the closeout of the contract, monies remaining in the allowance account shall be credited to the Village by change order.
- D. The fixed amount is indicted as a lump sum under Allowance pay item A-1.

END OF SECTION

[THIS SPACE LEFT BLANK INTENTIONALLY]

DIVISION II
SECTION 101
MOBILIZATION

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.02 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 101-1 Description This section is expanded to include the following:

The Town shall identify the location of the construction staging area and construction field office (if necessary). The designated area will be within the limits of the Town. The Contractor shall take pictures or make a video record of the existing conditions of the site prior to making any modifications. The Contractor shall install fencing, gates and take all other measures, as necessary, to make said site secure. No automobiles shall be permitted to park in said staging area except for delivery and pickup purposes.

The Contractor shall be responsible for obtaining electrical and water service to the field office. The Contractor will be required to furnish all materials and connections necessary for the connection of these services from the point of connection to the existing system to the field office and pay all fees and deposits as required by the utility owner. The installation and connections shall be in accordance with the requirements of the utility owner, the Building Inspection Division of the Town of Cutler Bay and all other agencies or authorities which may have jurisdiction.

At the conclusion of the project, the Contractor shall be responsible for the removal of the field office, utility connections, and the clean up and restoration of the field office and construction staging site, to its original condition. The pictures and/or videotape, obtained at the beginning of the project, will be used to evaluate the restoration of the site. The Contractor shall obtain and furnish to the Engineer a letter from the owners of the site stating they are satisfied with the clean up and restoration of their property, and releasing the Contractor from the need of any further action.

All cost for work, materials, obtaining permits, permit fees and incidental costs as specified above and required for project completion are to be included in the cost of this section unless otherwise specified.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

END OF SECTION

[THIS SPACE LEFT BLANK INTENTIONALLY]

SECTION 102

MAINTENANCE OF TRAFFIC

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

A. 1.02 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 102-1.1 Description This section is expanded to include the following:

Due to the proximity of the project area to Cutler Bay Elementary School, it is the Town's intent that all major construction activities take place during the summer recess. The last day of school prior to the summer recess is June 9, 2009. The first day of school after the summer recess is August 17, 2009. Therefore, the work in Coral Sea Road and Bahia Drive adjacent to the school property shall be substantially completed before August 16, 2009. The Contractor shall provide access to properties adjacent to the construction area at all times.

Two weeks prior to any construction, the Contractor shall provide a maintenance of traffic plan and a written schedule to the Engineer showing anticipated construction activity, timing, location, and anticipated disruptions due to occur. The maintenance of traffic plan and schedule shall be updated every two weeks during construction. The original schedule and updates shall be provided to the Engineer no later than noon each Friday for use, by the Engineer and Town, in assisting the Contractor to inform the residents of pending disruptions. However, this does not relieve the Contractor of any and all reasonable communications with the affected property owners.

The Contractor may be asked to attend meetings with the Property Owners and offer his opinions during the course of the meeting, but the Town/Engineer will chair the meeting.

Article 102-4.1 Where Required – This sub-article is amended to include:

Except as delineated in the Contract Documents, traffic may be detoured only upon approval of the Town.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

All cost for work, materials, permits and incidental costs as specified above are to be included in the cost of other bid items. The direct cost for off-duty police officers as required under Town Ordinance 02-19 will be paid for under the Allowance Bid Item.

END OF SECTION

SECTION 104

PREVENTION, CONTROL, AND ABATEMENT OF EROSION AND WATER POLLUTION

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.02 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 104-5 Preconstruction Conference

The Contractor shall comply with the National Pollutant Discharge Elimination System (NPDES) Permit requirements for the project, submitting the required documents to the U.S. Environmental Protection Agency (EPA) pursuant to the requirements of 40 CFR Part 122.26. This would include, but not be limited to, completing and submitting a Notice of Intent (NOI) and a Notice of Termination (NOT) to the U.S. EPA in accordance with the project schedule. Copies of the preprinted forms are attached as Appendix A.

Refusal by the Contractor to place his signature on any required documents or certification statements will be considered as default of the Contract. The Contractor that performs any earth disturbing activities in the absence of any required signed documents or certifications statements may also be considered by the U.S. EPA to be in violation of the Clean Air Act.

The contractor shall furnish the Engineer the name and telephone number of the person who will be responsible for monitoring and maintaining the erosion control devices.

The Contractor shall be responsible for compliance with the approved Erosion Control Plan.

All cost for work, materials, obtaining permits, permit fees and incidental costs as specified above and required for project completion are to be included in the cost of this section unless otherwise specified.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

END OF SECTION

SECTION 300

PRIME AND TACK COAT FOR BASE AND SURFACE COURSE

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.03 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 300-9 – Basis of Payment - Delete the text of this article and insert the following:

No separate payment will be made for prime coat and tack coat materials but the cost of same, including furnishing, heating, hauling and applying (including sand or screening covering where required), shall be included for payment in the contract unit price either per ton or per square yard of base or asphalt pavement or in the unit price for pothole repair.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

END OF SECTION

SECTION 425

INLETS, MANHOLES AND JUNCTION BOXES

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.04 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 425-6.8 Adjusting Existing Structures – Replace the last sentence of the first paragraph as follows and delete the text of the entire second paragraph:

The materials and construction methods for this work shall conform to the requirements specified above and shall also meet the standards and requirements of the utility company that owns the structure that will be adjusted.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

END OF SECTION

Section 7

Appendix A

Project Geotechnical Report

DEP Form 62-621.300(4)(b)

TOWN OF CUTLER BAY

SECTION 8

ADDENDUM ACKNOWLEDGEMENT FORM

Addendum # Date Received

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

BIDDER: _____
(Company Name)

(Signature)

(Printed Name & Title)

END OF SECTION

TOWN OF CUTLER BAY

SECTION 9

ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA }
 }
COUNTY OF MIAMI-DADE }

SS:

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the Town of Cutler Bay, its elected officials, and _____ or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Title: _____

Sworn and subscribed before this

_____ day of _____, 20__

Notary Public, State of Florida

(Printed Name)

My commission expires: _____

END OF SECTION

TOWN OF CUTLER BAY

SECTION 10

NON-COLLUSIVE AFFIDAVIT

State of _____ }
County of _____ } SS:

_____ being first duly sworn, deposes and says that:

- a) He/she is the _____, (Owner, Partner, Officer, Representative or Agent) _____, the Bidder that has submitted the attached Proposal;
b) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
c) Such Proposal is genuine and is not collusive or a sham Proposal;
d) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices in the attached Proposal or of any other Bidder, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;

The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

Witness

Witness

By: _____

(Printed Name)

(Title)

TOWN OF CUTLER BAY

SECTION 12

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

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 the Town of Cutler Bay

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)9g), 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 the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States 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 or 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 than an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
- a. A predecessor or successor of a person convicted of a public entity crime; or
 - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those 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 goofs 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 the management of an entity.
6. Based on information and belief, the statement that 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 officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, not any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- _____ This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- _____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **[attach a copy of the final order]**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 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 HAT 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 of Entity Submitting Sworn Statement

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 notary public)

END OF SECTION

TOWN OF CUTLER BAY

SECTION 13

SUPPLEMENT TO BID/TENDER FORM

THIS FORM MUST BE SUBMITTED WITH BID FOR BID TO BE DEEMED RESPONSIVE.

QUALIFICATION STATEMENT

The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your company in detail.
2. The address of the principal place of business is:
3. Company telephone number:
4. Number of employees:
5. Number of employees assigned to this project:
6. Company Identification numbers for the Internal Revenue Service:

7. Miami-Dade County and Town of Cutler Bay Occupational License Number, if applicable, and expiration date.

8. How many years has your organization been in business?

9. What similar engagements is your company presently working on?

10. Have you ever failed to complete any work awarded to you? If so, where and why?

11. Give names, addresses and telephone numbers of three individuals, corporations, agencies, or institutions for which you have performed work:

11.1. _____
(name) (address) (phone #)

11.2. _____
(name) (address) (phone #)

11.3. _____
(name) (address) (phone #)

12. List the following information concerning all contracts in progress as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

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

(Continue list on insert sheet, if necessary.)

13. Has the Bidder or his or her representative inspected the proposed project and does the Bidder have a complete plan for its performance?
14. Will you subcontract any part of this work? If so, give details including a list of each subcontractor(s) that will perform work in excess of ten percent (10%) of the contract amount and the work that will be performed by each such subcontractor(s).

The foregoing list of subcontractor(s) may not be amended after award of the contract without the prior written approval of the Contract Administrator, whose approval shall not be unreasonably withheld.

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

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

17. What equipment will you rent for the proposed work?

18. State the name of your proposed project manager and give details of his or her qualifications and experience in managing similar work.

19. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)
 - 19.1 The correct name of the Bidder is:

 - 19.2. The business is a (Sole Proprietorship) (Partnership) (Corporation).

- 19.3. The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:
- 19.4. List all organizations which were predecessors to Bidder or in which the principals or officers of the Bidder were principals or officers.
- 19.5. List and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Bidder, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description the disposition of each such petition.
- 19.6. List and describe all successful Bid, Performance or Payment Bond claims made to your surety(ies) during the last five (5) years. The list and descriptions should include claims against the bond of the Bidder and its predecessor organization(s).
- 19.7. List all claims, arbitrations, administrative hearings and lawsuits brought by or against the Bidder or its predecessor organization(s) during the last five (5) years. The list shall include all case names; case, arbitration or hearing identification numbers; the name of the project over which the dispute arose; and a description of the subject matter of the dispute.

NAME

RELATIONSHIPS

Signature of entity submitting supplement form

STATE OF FLORIDA)
)SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 2006.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

[THIS SPACE LEFT BLANK INTENTIONALLY]

TOWN OF CUTLER BAY

SECTION 14
PERFORMANCE BOND

PROJECT TITLE: Cutler Ridge Elementary Area Roadway and Drainage Improvements (the "Project")

CONTRACTOR:

CONTRACT NO:

CONTRACT DATED:

STATE OF § _____

§ _____

COUNTY OF § _____

KNOW ALL MEN BY THESE PRESENTS: That by this Bond, we, _____ of the City of _____, County of _____, and State of _____, as Principal, and _____, authorized, licensed and admitted to do business under the laws of the State of Florida to act as Surety on bonds, as Surety, are held and firmly bound unto The Town of Cutler Bay, as Obligee, in the penal sum of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Agreement with Obligee, dated the _____ day of _____, 20____, for the construction of the Public Works Improvements (the "Contract"), which Agreement is by reference made a part of this Bond.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION, IS SUCH THAT, if the said Principal shall faithfully perform said Agreement and shall in all respects fully and faithfully observe and perform all and singular the covenants, conditions, warranties and agreements in and by said Agreement agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Agreement, then this obligation shall be void; otherwise it shall remain in full force and effect.

Whenever Principal shall be declared by Obligee to be in default under the Agreement, Obligee having performed Obligee's obligations thereunder, the Surety shall promptly remedy the default, or shall promptly:

- (1) Complete the Agreement in accordance with its terms and conditions; or
- (2) Obtain a bid or bids for completion of the Agreement in accordance with its terms and conditions and upon determination by Surety of the lowest responsive, responsible bidder, or, if Obligee elects, upon determination by Obligee and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and Surety for completion of the Agreement in accordance with its terms and conditions, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding the amounts set forth in the first paragraph hereof.

The term "balance of the Contract price" as used in this Bond, shall mean the total amount payable by Obligee to Principal under the Agreement and amendments thereto, less the amount paid by Obligee to Principal and less amounts withheld by Obligee pursuant to its rights under the Contract.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the work to be performed thereunder and further agrees to all of the terms contained in the Agreement.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, successors, executors or administrators of the Obligee.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this ____ day of _____, 20__.

Witness: _____

Witness: _____

Principal

Surety

By: _____

By: _____

Name: _____
(Print)

Name: _____
(Print)

Title: _____

Title: _____

Address: _____

Address: _____

The name and address of the Resident Agent for service of process on Surety is:

Name: _____

Address: _____

Phone: _____

END OF SECTION

TOWN OF CUTLER BAY

SECTION 15
PAYMENT BOND

PROJECT TITLE: Cutler Ridge Elementary Area Roadway and Drainage Improvements (the “Project”)

CONTRACTOR:

AGREEMENT NO:

AGREEMENT DATED:

STATE OF

§ _____

§ _____

COUNTY OF

§ _____

BY THIS BOND (the “Bond”), We as _____, called CONTRACTOR, and _____, hereinafter called SURETY, are bound to TOWN OF CUTLER BAY, FLORIDA, a Florida municipal corporation, hereinafter called Town, in the amount of _____ Dollars for payment of which CONTRACTOR and SURETY bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by CONTRACTOR and Town, for the following:

Agreement Title:

Cutler Ridge Elementary Area Roadway and Drainage Improvements (the “Project”)

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

Promptly makes payments to all claimants as defined in Section 255.05(1), Florida Statutes, supplying CONTRACTOR with labor, material, or supplies, used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the Agreement;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract Documents and compliance or noncompliance with formalities, connected with the Agreement or with the changes, do not affect Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the Town.

Claimants must comply with notice requirements set forth in Section 255.05(2), Florida Statutes. No action shall be instituted against the CONTRACTOR or Surety under this bond after one (1) year from the performance of the labor or completion of the delivery of the materials or supplies.

IN WITNESS WHEREOF, this instrument is executed this the _____ day of _____, 20____.

WHEN THE PRINCIPAL IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(Witness) By: _____
(Individual Principal)

(Witness) Business Address _____

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:

Signed, sealed and delivered in the presence of:

(Witness) Business Name and Address

(Witness) By: _____
Signature of Individual

WHEN A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

(Witness) Name and Address of Partnership

(Witness) By: _____
(Partner)

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

(Corporate Seal) _____
(Corporate PRINCIPAL Name)

Business Address

Secretary

By: _____
President

ATTEST:

(Surety Seal)

(Corporate SURETY)

Business Address

(Secretary)

By: _____
(Surety)

Florida Resident Agent

ATTORNEY-IN-FACT

By: _____

Name _____
(Type)

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

NOTE 2: If both the Principal and Surety are Corporations, the respective Corporate Seals shall be affixed and attached

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

The Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other.

END OF SECTION

TOWN OF CUTLER BAY

SECTION 16

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Section 287.087, Florida Statutes, hereby certifies that
_____ does:

(Name of Business)

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

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

Proposers Signature

Date

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



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 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 User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the 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. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

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*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR 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 Substantial Completion; and (ii) 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. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *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.

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

23. *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.

24. *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.

25. *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.

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

27. *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.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *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.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *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.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *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.

36. *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.

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. *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.

40. *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.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *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.

43. *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.

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

45. *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.

46. *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.

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

48. *Work*--The entire completed 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.

49. *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.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed 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 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 9.10 or any other provision of the Contract Documents.

B. Day

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

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or 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).

D. 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.

E. 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

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. 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. *CONTRACTOR's Review of Contract Documents:* 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; however, 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. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified

in the General Requirements), CONTRACTOR shall submit to ENGINEER for its 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 Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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.

C. *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.

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by 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.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten 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.B. CONTRACTOR shall have an additional ten 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 any specified Milestones and 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 Shop Drawing and Sample 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 called for by one is as binding as if called for 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, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees 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. 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 report it to ENGINEER in writing at once. 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; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy 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 in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) 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: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) 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 any of the Work under a direct or indirect contract with OWNER: (i) shall not 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 Consultant, including electronic media editions; and (ii) shall not 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. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL 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, 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, ENGINEER, or any of ENGINEER's Consultants 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 9.08 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 in respect of 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 within the time and 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, ENGINEER, and ENGINEER's Consultants 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, ENGINEER or any of ENGINEER's Consultants 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); 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, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other 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.E 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, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other 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.F 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 are not intended to 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 CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, 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 such 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 within 20 days thereafter substitute 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. 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: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) 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 so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, 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, and other 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 6.07, 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 thirty 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 (and 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, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other 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 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, 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, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, 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 or Written Amendment. 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, ENGINEER, ENGINEER's Consultants, 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, and other 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, and other 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, ENGINEER, ENGINEER's Consultants, 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, and other 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, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other 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 peril 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, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other 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 replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

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 2.05.C. 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, but 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. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto 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, lay out, and construct the Work 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, and CONTRACTOR will not permit overtime work or the performance of Work on 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 General Requirements, 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 warranties and guarantees specifically called for 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. 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 (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with

any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

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: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, 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 procedure 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 first 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 shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, 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 work on the Project) to adapt the design to the proposed substitute item and 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. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also 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, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and 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 procedure for review by ENGINEER will be similar to that provided in subparagraph 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 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 time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such 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 or Written Amendment signed. 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 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 shall it 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, ENGINEER, ENGINEER's Consultants, 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, and other 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. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants 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. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and 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 may 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, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants 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 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, Written Amendments, 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. 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 ENGINEER's Consultant, 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). 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 to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The 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.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample

submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, 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.

D. Submittal Procedures

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

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

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

d. CONTRACTOR 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 indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop

Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample 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 of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.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 approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. 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, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. 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.

B. 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 acceptance by OWNER or any failure to do so;

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

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

8. any correction of defective Work by OWNER.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other 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:

1. 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; and

2. is caused in whole or in part 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, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

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 Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them 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.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let 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 and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and 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. Unless otherwise provided in the Contract Documents, 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.

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 Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly 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 9.10, and 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 responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. 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 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. 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, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *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 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, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or 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.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

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

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

9.08 *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.

9.09 *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. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, 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. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *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 of 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 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement 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 Written Amendment, 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 (or Written Amendments) 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 and Disputes

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter 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. Notice of the amount or extent of the Claim, dispute, or other matter 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, dispute, or other matter). 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).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH 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 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, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, 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, 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 Cash 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 as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allow-

ances 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.

B. 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. 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 9.08.

B. 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.

C. 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. if 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 or by a Written Amendment. 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 (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) 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 (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) 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.

12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to 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.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

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, ENGINEER's Consultants, 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.B; 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. If it is found that such 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. If, however, such 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 Milestones), 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. 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).

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 Laws or Regulations or 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: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) 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. If CONTRACTOR does not promptly comply with the terms of such 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, and 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.

B. 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 or by Written Amendment.

C. 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.

D. 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 and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In

connection with such corrective and 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 (or Milestones) 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 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 arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

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

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

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 9.08, 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: (i) 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 (ii) 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 to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or 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 referred to 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 Written Amendment or 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 must 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. Promptly thereafter, 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. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and 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. 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 responsibility.

ties 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.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by OWNER at OWNER's option of 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, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If 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. 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. 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.

2. No 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: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) 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. 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 will become due and, when due, 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 and recommendation of ENGINEER, and without terminating the Agreement, 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 writing which are 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 allowed 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 the surety, if any) seven days written notice, terminate

the services of CONTRACTOR, 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), 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 finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. 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.

C. 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.

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, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for 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. for 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. for 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. for 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, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or 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. 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. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

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 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 if 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, and 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 Agreement.

17.05 *Controlling Law*

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

TAB 3



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: February 18, 2009

Re: **INVITATION TO BID – SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PAVING AND DRAINAGE IMPROVEMENTS IN THE SAGA BAY DRAINAGE BASINS 1.3 AND 1.4 AREA; AUTHORIZING THE ISSUANCE OF AN INVITATION TO BID (ITB) FOR PAVING AND DRAINAGE IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

As a result of the Town opting-out of the Miami-Dade County's Stormwater Utility (Resolution #07-18), the existing storm drainage structures were all transferred to the Town. The Town's adopted Stormwater Utility Master Plan (Resolution #08-50), has identified several neighborhoods with localized flooding and roadway resurfacing concerns. One of the identified projects is located in the Saga Bay Drainage Basins 1.3 and 1.4 area and is funded through a State of Florida Department of Environmental Protection (FDEP) appropriation – LP8912.

The intent of the proposed Invitation to Bid (ITB) is to alleviate the identified roadway flooding concerns, by installing a combination of exfiltration trenches, stormwater inlets, and piping. The project also includes roadway resurfacing. The ITB is set-up in a Base Bid and Additive Bid format allowing for flexibility in award and construction of the project, and developed as a unit cost project to assure the Town only pays for actual work performed. The proposed schedule for the implementation of this project is 120 days for Base Bid work and an additional 30 days if the Alternate Bid work is also performed. Special consideration will be made to minimize disruptions to the residents during this project.

RECOMMENDATION

We recommend that the attached resolution be adopted.

RESOLUTION NO. 09-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE PROVISION OF STORMWATER IMPROVEMENT PROJECT; AUTHORIZING THE ISSUANCE OF A INVITATION TO BID (ITB) FOR SAGA BAY DRAINAGE BASINS 1.3 AND 1.4 ROADWAY AND DRAINAGE IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay's (the "Town") adopted 2008-09 fiscal year Stormwater Utility Fund budget includes funding obtained from the Department of Environmental Protection (DEP) – LP8912 for stormwater drainage improvement projects; and

WHEREAS, the Town Council places a high priority of capturing and treating existing stormwater runoff pollutants within the Town's stormwater system; and

WHEREAS, the Saga Bay sub-basin 1.3 and 1.4 have been identified as a "priority" area in the Stormwater Utility Master Plan, which was adopted by Town Resolution Number 08-50; and

WHEREAS, Town staff has developed the attached Invitation to Bid (Exhibit "A") in order to obtain bids from qualified companies; and

WHEREAS, Town Ordinance Number 06-22 requires the Town Manager to obtain authorization from the Town Council to advertise solicitations for proposals and bids prior to advertising the solicitation; and

WHEREAS, the Town Council finds that this Resolution is in the best interest of the health, safety and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Authorization. The Town Manager is authorized to advertise and issue an Invitation to Bid for Saga Bay Basin 1.3 and 1.4 - Roadway and Drainage Improvements, in substantially the form attached hereto as Exhibit "A," on behalf of the Town.

Section 3. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____ 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____

**TOWN OF CUTLER BAY
INVITATION TO BID
09-08**



**SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS**

**SUBMITTAL DATE: TBA
TIME: TBA**

**Saga Bay Drainage Basins 1.3 and 1.4
Paving and Drainage Improvements**

FOR

THE TOWN OF CUTLER BAY

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INVITATION TO BID
09-08
SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS
TOWN OF CUTLER BAY

The Town of Cutler Bay is requesting bids from qualified firms to provide Roadway and Drainage Improvements for the Town of Cutler Bay. **Interested firms should visit the Town’s website at www.cutlerbay-fl.gov to obtain the Invitation to Bid package.** Packages may also be picked up during normal business hours at the office of the Town Clerk, Erika Gonzalez-Santamaria, located at:

**TOWN OF CUTLER BAY
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189**

Sealed submittals including one (1) original and four (4) copies of the submittals must be received no later than TBA and be clearly marked on the outside, “**ITB 09-08 Saga Bay Drainage Basins 1.3 and 1.4 Paving and Drainage Improvements**”, by **Erika Gonzalez-Santamaria, Town Clerk, Town of Cutler Bay, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida, 33189**. Late submittals and electronic submittals will **not** be accepted.

Pursuant to Town Code, public notice is hereby given that a “Cone of Silence” is imposed concerning the Town’s competitive purchasing process, which generally prohibits communications concerning the ITB from the time of advertisement of the ITB until the Town Council meeting at which the Council considers the Town Manager’s recommendation to the Town Council concerning the competitive purchase transaction. Please see the detailed specifications for the public solicitation for services for a statement fully disclosing the requirements of the “Cone of Silence”.

Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor. Please see the detailed specifications of this solicitation for further details.

The Town of Cutler Bay reserves the right to accept or reject any and/or all bids or parts of bids, to workshop or negotiate any and all bids, to waive irregularities, and to request re-bids on the required materials or services.

Steven J. Alexander
Town Manager



TOWN OF CUTLER BAY

SECTION 2

INSTRUCTIONS TO BIDDERS

- 1.01. **SEALED BIDS**- Sealed bids for furnishing all goods and services necessary to complete the Work specified in these documents will be received at:

Date: TBA

Time: TBA

**Place: Town Hall
10720 Caribbean Blvd., Suite 105
Cutler Bay, Florida 33189**

- 1.02. **DEFINITION OF TERMS**- Certain terms used in these documents are defined as follows:

Bid\Proposal	The bid documents submitted by the Bidder.
Bidder	Any person, firm or corporation submitting a proposal for the Work covered by these specifications or his duly authorized representative.
Town	The Town Council of the Town of Cutler Bay or the Town Manager, if applicable.
Contractor	The person, firm or corporation with whom the Town has executed a contract for the Work.
Days	Days shall mean calendar days.
Responsible Bidder	In order to be considered a “responsible” bidder, the Bidder must possess integrity as well as adequate equipment and personnel to do the Work within the time limits that are established and adequate financial status to meet the obligations to perform the Work. The firm must not have defaulted on a prior contract or been disbarred by any agency.
Responsive Bidder	Any person, firm or corporation submitting a Bid for the Work whose Bid form is complete and includes all required attachments and enclosures, free from exclusions or special

conditions and has no alternative Bids for any items, unless alternatives are requested in the specifications.

Work	The services required by the Contract Documents, including labor and materials.
Town Engineer	The Town's general engineering consultant and project manager for this contract: presently Kimley-Horn and Associates

- 1.03. **DELIVERY OF BIDS**- All Bids, whether mailed or delivered in person, shall be submitted in a SEALED ENVELOPE bearing on the outside the following project information as well as the name of the Bidder and his address clearly marked:

**SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS**

and addressed to:

Town of Cutler Bay
10720 Caribbean Boulevard
Suite 105
Cutler Bay, Florida 33189
Attention: Town Clerk

All Bids must be received by the Town no later than TBA.

- 1.04. **BID GUARANTY**- A certified or cashiers check drawn on a national or state bank, or bid bond, in the amount of five percent (5%) of the bid, shall accompany each bid as a guarantee that the Bidder will, if award is made, execute an Agreement to do the Work for the amount proposed and furnish any required certificates of insurance and bond documents. The bid bond shall be from a surety with an A-rating or better under Best's Guidelines, made payable to: The Town of Cutler Bay.
- 1.05. **BID FORMS**- The Bidder shall submit an original Bid on the bid forms attached to this ITB. The Bidder shall fill in all the blank spaces completely for each and every unit item for which a Bid is tendered. The Bidder shall state the price, typewritten or in ink, for which he proposes to do each item of Work. The Bid shall include: 1) Agreement/Contract; 2) Bid Forms; 3) Certificate or Evidence of Insurance; 4) Bid Guarantee; 5) Qualifications Statement; 6) Sworn Statement on Public Entity Crime Form; 7) Addenda acknowledgement, if applicable; 8) Anti-Kickback Affidavit; 9) Non-Collusive Affidavit; 10) Drug Free Workplace form; and 11) a Corporate Resolution evidencing authorization to submit Bid, if applicable.

- 1.06. **SIGNATURE ON BID-** The Bidder shall sign the Bid as follows: If the Bid is made by an individual, the Bidder's name and address shall be shown. If made by a firm or partnership, the name and address of each member of the firm or partnership shall be shown. If made by a corporation, the person signing the Bid shall show the name of the state under the laws of which the corporation is chartered, also the names and business addresses of its corporate officers. The Bid shall bear the seal of the corporation attested by the secretary. Anyone signing the Bid as agent shall include in the Bid legal evidence of his/her authority to do so.
- 1.07. **COST OF BIDS** – All expenses involved with the preparation and submission of Bids to the Town or any work performed in connection therewith, shall be borne by the Bidder(s). No payment shall be made for any responses received, nor for any other effort required of or made by the Bidder(s) prior to commencement of work as defined by the Agreement duly approved by the Town Council.
- 1.08. **QUALIFICATION OF BIDDERS-** Each Bidder shall submit a completed Qualification Statement utilizing the form attached.
- 1.09. **RIGHT TO REJECT BIDS-** The Town of Cutler Bay reserves the right to accept or reject any and/or all Bids or parts of Bids, to workshop or negotiate any and all Bids, to waive irregularities, and to request re-Bids on the required materials or services.
- 1.10. **AWARD OF CONTRACT-**
- 1.10.1. The Award of the Agreement will be to the lowest Responsive and Responsible Bidder, whose qualifications indicate the Award will be in the best interest of the Town and whose Bid complies with the requirements of these specifications. In no case will the Award be made until all necessary investigations have been made into the responsibility of the Bidder(s) and the Town Manager is satisfied that the Bidder is qualified to do the Work and have the necessary organization, capital and equipment to carry out the Work in the specified timeframes. In evaluating responsibility, the Town may also consider previous contracts with the Town, past performance and experience with other contracts, compatibility of the project team with Town personnel, and any other criteria deemed relevant by the Town.
- 1.10.2. If the Town accepts a Bid, the Town will provide a written notice of Award to the lowest Responsive and Responsible Bidder, who meets the requirements of Section 1.10.1.
- 1.10.3. If the successful Bidder to whom an Agreement is awarded forfeits the Award by failing to meet the conditions of subsection 1.12, the Town may, at the Town's sole option, award the Agreement to the next lowest Responsive and Responsible Bidder or reject all Bids or re-advertise the Work.
- 1.10.4. The Town, at its sole discretion, may consider the lowest bidder as the bidder who has the lowest bid Amount for: Saga Bay Drainage Basins 1.3 and 1.4 Paving and Drainage Improvements

- 1.11. **RETURN OF THE BID GUARANTY**- All Bid Guarantees of unsuccessful Bidders will be returned after the Agreement is awarded and executed.
- 1.12. **EXECUTION OF CONTRACT**- The successful Bidder(s) shall, within ten (10) days of receipt of a written notice of the Award of the Agreement, deliver to the Town a fully executed Agreement and all requested certificates of insurance and bonds.
- 1.13. **FORFEITURE OF BID GUARANTY FOR FAILURE TO EXECUTE CONTRACT**- The failure of the successful Bidder(s) to execute an Agreement and submit required insurance certificates and bonds as specified in subsection 1.12 will result in forfeit of the Award. Each Bidder agrees in advance that the Town will sustain certain damages too difficult to accurately ascertain. Accordingly, if the Award is forfeited under this Section, the amount of the Bid Guaranty of the forfeiting Bidder will be retained by the Town, not as forfeiture or a penalty, but as liquidated damages.
- 1.14. **TIME AND AWARD**- The Bidder agrees to abide by the overall and unit prices quoted in the Bid for up to ninety (90) days from the date of bid opening to allow for the Town review, award, and execute the Agreement.
- 1.15. **INTERPRETATION AND CLARIFICATION**- All questions about the meaning or intent of the Bid Documents and specifications shall be directed in writing to the Town Clerk's Office, Erika Gonzalez-Santamaria at 10720 Caribbean Blvd., Suite # 105, Cutler Bay, Florida 33189. Interpretation or Clarifications considered necessary by the Town in response to such questions will be issued by means of addenda electronically mailed or delivered to all parties that are on record with the Town Clerk as having requested and received the Bid Documents. Provided however that it is each Bidder's sole responsibility to be informed of any changes to the ITB in the form of written addenda and the Town shall not be responsible for any Bidder's failure to receive same. The Town has the right to rely on all Bids received and the submittal of a Bid shall represent the Bidder's acknowledgement that he has read and understood the ITB and any addenda thereto. Written questions must be received no less than seven (7) business days prior to bid opening. Only questions answered by written addenda shall be binding. Oral and other interpretation or clarifications shall be without legal effect.
- 1.16. **BID MODIFICATIONS**- No modifications shall be submitted by Bidder or accepted by the Town.
- 1.17. **WITHDRAWAL OF A BID**- A Bidder may withdraw his Bid at any date and time prior to the time the Bids are scheduled to be opened. Notice of withdrawal should be made in writing to the Town Clerk's Office, Erika Gonzalez-Santamaria, at 10720 Caribbean Blvd., Suite # 105, Cutler Bay, Florida 33189.
- 1.18. **OPENING OF BIDS**- Bids will be publicly opened and read aloud at the appointed time and place stated in the Invitation to Bid/Request for Proposals. Late Bids will not be considered. No responsibility will be attached to any Town Staff for the premature opening of a Bid not properly addressed and identified. Bidders or their authorized agents are invited to be present at the bid opening.

1.19. **PUBLIC ENTITY CRIMES ACT**- In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the Town, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Town in excess of the threshold amount provided in Section 287.917, Florida Statutes, for Category Two for a period of 36 months form the date of being placed on the convicted vendor list. Violation of this section by the Contractor shall result in rejection of the Bid, termination of the contract, and may cause Contractor debarment.

1.20. **TOWN LICENSES, PERMITS AND FEES**- In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, each license, permit, or fee a Contractor will have to pay the Town before or during the Work or the percentage method or unit method of all licenses, permits and fees required by the Town and payable to the Town by virtue of the Work as part of the Agreement are as follows:

1) Contractor shall have and maintain during the term of the Agreement all appropriate Town licenses, and fees for which shall be paid in full in accordance with the Town's Fee structure for such licenses. **THERE WILL NOT BE ANY PERCENTAGE REDUCTION OR WAIVING OF TOWN LICENSE FEES.**

2) During the performance of the Agreement there may be times when the Contractor will be required to obtain a Town permit for the Work. It is the responsibility of the Contractor to insure that he or she has the appropriate Town permits to perform such Work as may become necessary during the performance of the Agreement. Any fees related to Town required permits in connection with the Agreement will be the responsibility of the Contractor and will not be reimbursed by the Town.

Licenses, permits, and fees that may be required by County, State or Federal entities are not included in the above list.

1.21. **INSURANCE.** The Bidder shall be required to provide and maintain insurance coverage of such types and amounts as specified in Section 2.10 of the Agreement. The Bidder shall include with his or her Bid either Certificates of Insurance evidencing same or documentation from his or her insurer evidencing the insurability of the Bidder to meet the insurance requirements.

1.22. **BONDS.** A Performance and a Payment Bond for the entire base bid amount shall be required in connection with this contract.

1.23. **FAMILIARITY WITH LAWS**- The Bidder is assumed to be familiar with all applicable Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect the Work.

- 1.24. **EXAMINATION OF BIDDER'S FACILITIES** - The Town, as part of its evaluation may perform an examination of the Bidder's facilities. The Town Manager or designee, as part of the evaluation, may perform this examination.

The term facilities as used in this solicitation shall include, but shall not be limited to, all properties operated by the Bidder, all equipment used in the performance of business by the Bidder, and/or any other evidence, tangible or intangible, that the Town may deem necessary to substantiate the technical and other qualifications, and the abilities of the Bidder to perform the Work.

The examination shall include, but shall not be limited to, appearance and cleanliness of facilities, appearance and cleanliness of equipment, "road worthiness" of vehicles, appearance and visibility of all signage on vehicles, and possession and distribution of mandatory equipment. Vehicles shall be examined for compliance with State of Florida Statutes, as well as applicable County and Town Ordinances. Additionally, examination may include verification of some of the (physical) minimum requirements for Bidders. Additionally, the Town reserves the right to perform such examinations on the successful Bidder as often as it deems necessary, to ensure proper performance of the proposed Agreement.

- 1.25 **ALLOWANCES** – Included in the contract sum is an allocation account for unforeseen conditions, potential construction changes and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town in accordance with the Contract Documents.

- 1.26 **CAMPAIGN FINANCE RESTRICTIONS ON VENDORS-** Ordinance 06-11; Town Code Chapter 8A. Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor.

Vendors' Campaign Contribution Disclosure:

1. General requirements:

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official of the Town, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

2. Disqualification

(A) As per Section 7.6 of the Town Charter, if a Vendor of products or services who directly or through a member of the person's immediate family or through a political action committee or through any other person makes a campaign contribution to a Town candidate and fails to disclose it then he/she/it shall be barred from selling any product or service to the town for a period of two years following the swearing in of the subject elected official.

- 1.27 **CONE OF SILENCE**- Notwithstanding any other provision of these specifications, the provisions of Town "Cone of Silence" are applicable to this transaction. The entirety of these provisions can be found in the Town's Purchasing Ordinance, Town Ordinance 06-22. The "Cone of Silence," as used herein, means a prohibition on any communication regarding a particular Request for Proposal ("RFP"), Request for Qualification ("RFQ") or bid, between:

A potential vendor, service provider, proposer, bidder, lobbyist, or consultant; and

The Town Council, Town's professional staff including, but not limited to, the Town Manager and his or her staff, any member of the Town's selection or evaluation committee.

The Cone of Silence shall be imposed upon each RFQ, RFP and bid after the advertisement of said RFQ, RFP, or bid. The Cone of Silence shall terminate at the beginning of the Town Council meeting at which time the Town Manager makes his or her written recommendation to the Town Council. However, if the Town Council refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be re-imposed until such time as the Manager makes a subsequent written recommendation.

The Cone of Silence shall not apply to:

- (1) oral communications at pre-bid conferences;
- (2) oral presentations before selection or evaluation committees;
- (3) public presentations made to the Town Council during any duly noticed public meeting;
- (4) communication in writing at any time with any Town employee, unless specifically prohibited by the applicable RFQ, RFP or bid documents. The bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;
- (5) communications regarding a particular RFQ, RFP or bid between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's Purchasing Agent or Town employee designated responsible for administering the procurement process for such RFQ, RFP or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
- (6) communications with the Town Attorney and his or her staff;
- (7) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the

- Town Manager makes his or her written recommendation;
- (8) any emergency procurement of goods or services pursuant to Town Code;
 - (9) responses to the Town's request for clarification or additional information;
 - (10) contract negotiations during any duly noticed public meeting;
 - (11) communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff are in writing or are made at a duly noticed public meeting.

Please contact the Town Attorney for any questions concerning Cone of Silence compliance. Violation of the Cone of Silence by a particular bidder or proposer shall render any RFQ award, RFP award or bid award to said bidder or proposer voidable by the Town Council and/or Town Manager.

- 1.28 **LOBBYIST REGISTRATION**- Proposers must also comply with all Town Charter sections and Code provisions that pertain to lobbyists, including Section 7.6 of the Town Charter and implementing ordinance(s), including Sec. 2-11(s) of the Town Code and Ordinance 07-02. Please contact the Town Clerk at (305) 234-4262 for additional information.
- 1.28.1 **PROTEST PROCEDURES**- With respect to a protest of the terms, conditions, and specifications contained in a solicitation (RFP, RFQ, or Bid), including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in accordance with Town Ordinance 06-22.

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TOWN OF CUTLER BAY

SECTION 3

CONTRACT BETWEEN OWNER AND CONTRACTOR

THIS CONTRACT is dated as of the _____ day of _____ in the year 2009 (which shall be the Effective Date of the Contract) by and between the Town of Cutler Bay (hereinafter called "OWNER" or "TOWN") 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:

Provide labor and equipment required to construct roadway and drainage improvements within the Sage Bay Drainage Basins 1.3 and 1.4 area located in the Town of Cutler Bay. Work shall include but not be limited to the installation of catch basins, manholes, pipes, exfiltration trench, stabilized subgrade, limerock, asphalt, striping, manholes and utility cover adjustments, sodding/swale restoration, and driveway restoration. Utilization of these services will require close coordination with the Town and Engineer.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

TOWN OF CUTLER BAY

SAGA BAY DRAINAGE BASINS 1.3 AND 1.4

PAVING AND DRAINAGE IMPROVEMENTS ("THE PROJECT")

Article 2. ENGINEER. The Project has been designed by the following:

ENGINEER

Kimley-Horn and Associates, Inc.
5200 N.W. 33rd Avenue, Suite 109
Fort Lauderdale, FL 33309

who is hereinafter called "ENGINEER" and who will assume all duties and responsibilities and will 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 TIME.

- 3.1 If awarded the Base Bid Work, the contractor may not mobilize prior to TBA. The Work will be substantially completed by TBA and within 90 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 120 calendar days after the date when the Contract Time commences to run.
- 3.2 If awarded the Base Bid and Additive Bid Work, the contractor may not mobilize for the Base Bid Work prior to TBA. The Base Bid Work will be substantially completed by TBA, and the Base Bid and Additive Bid Work will be substantially completed within 150 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and 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 Time commences to run.
- 3.3 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Contract and that OWNER will suffer financial loss and other damages if the Work is not substantially or finally complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially or finally complete on time. CONTRACTOR acknowledges and agrees that the actual delay damages which OWNER will suffer in the event of delay in achieving Substantial Completion or Final Completion of the Work are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair and reasonable estimate of the delay damages which the OWNER is expected to suffer in the event of such delay. 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 and 00/100 dollars (\$1,000.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion until the Work is substantially complete. Liquidated damages shall be deducted from the CONTRACTOR's Applications for Payment. However, if at the time of the CONTRACTOR's Final Application for Payment, CONTRACTOR is owed insufficient amounts to fully cover the deduction for liquidated damages, then CONTRACTOR shall pay any amount due within 10 days of written demand by OWNER.

Article 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents and the Schedule of Values provided for payment request purposes in current funds as follows:

Contract Price \$ _____

Contract Price (in words) _____

- 4.2 Included in the Agreement Sum is an allowance account of \$20,000.00 for the Base Bid Form and an allowance account of \$30,000.00 for the Additive Bid Form for unforeseen conditions, potential construction changes and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town Manager in accordance with the Contract Documents. Money may only be taken from this account at the prior approval of the Engineer and pursuant to any procedures outlined by the Town Manager.

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. 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 before the 28th day of each month during construction as provided below. The Application for Payment shall be in AIA format. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided in paragraph 14.01 of the General Conditions and the requirements of the Contract Documents.
 - 5.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to: 90% of the Work completed and 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.
 - 5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions.

- 5.2. Final Payment. Upon Final Completion and acceptance of the Work in accordance with paragraph 14.07.B.1 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.B.1.

Article 6. INTEREST. Not Applicable

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into the Contract, CONTRACTOR makes the following representations:

- 7.1. CONTRACTOR has thoroughly and to its full satisfaction familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. CONTRACTOR has: (a) examined the Contract Documents, Project Specifications and Drawings thoroughly to its full satisfaction and has undertaken the responsibility to determine, within the scope of CONTRACTOR's competence as a licensed General Contractor, that the Project Specifications and Drawings are fit and proper for the performance of the Work and to the best of CONTRACTOR's knowledge are: (i) free from material errors, omissions, and/or inconsistencies; and (ii) are in compliance with applicable laws, statutes, building codes, ordinances, rules and regulations, recognizing however, that CONTRACTOR is not responsible for the design of the Project; (b) visited the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work; (c) examined the Project Site to its full satisfaction, including any existing work or improvements in place, and has determined that the same are fit and proper to receive the Work in their present condition and CONTRACTOR waives all claims that same are not in accordance with all data and information with respect to the Project as specified in the Drawings and Project Specifications and/or as provided by OWNER and Engineer; (d) familiarized himself with federal, state and local laws, ordinances, rules, policies, and regulations that may in any manner affect cost, progress or performance of the Work; (e) studied and carefully correlated CONTRACTOR's observations with the Contract Documents; and (f) at CONTRACTOR's own expense, made or obtained any additional examinations, investigations, explorations, tests and studies, and obtained any additional information and data which pertain to the physical conditions (surface, sub-surface and underground facilities) at or contiguous to the Project or otherwise which may affect cost, progress, performance or furnishing of the Work and which CONTRACTOR deems necessary to determine its Contract Price for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

- 7.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4. CONTRACTOR has correlated and considered the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents and in reaching the Contract Price and Contract Time.
- 7.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR. CONTRACTOR shall not rely on any conflicts, errors or discrepancies that CONTRACTOR knew or should have known exist in the Contract Documents as a basis for a claim for an extra to the Contract Price or Contract Time.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents that comprise the entire Contract between OWNER and CONTRACTOR are attached to this Contract, made a part hereof and consist of the items listed in the general conditions and the following:

- 8.1. This Contract
- 8.2. Invitation to Bid
- 8.3. Bid Form
- 8.4. Standard General Conditions
- 8.5. Supplementary Conditions
- 8.6. Detailed Specifications as included in this package and as referenced
- 8.7. Cone of Silence/Campaign Contribution Ordinance/Lobbyist Registration Requirements
- 8.8. Addendum Acknowledgement
- 8.9. Anti-Kickback Affidavit
- 8.10. Non-Collusive Affidavit

- 8.11. Sworn Statement
- 8.12. Qualification Statement
- 8.13. Performance Bond
- 8.14. Payment Bond
- 8.15. Drug-Free Work Place Form
- 8.16. Construction Plans titled – “Roadway Resurfacing and Miscellaneous Drainage Improvements”
- 8.17. Any Modifications, including Work Authorizations, duly delivered after execution of the Contract.
- 8.18. Project Geotechnical Report
- 8.19. DEP Form 62-621.300(4)(b)

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 9. MISCELLANEOUS

- 9.1. Terms used in this Contract which are defined in Article 1 of the General Conditions shall 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 hereto 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 himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4. This Contract may be executed in counterparts.
- 9.5. The OWNER shall retain the ownership of all shop drawings and design drawings once payment therefore is made.

- 9.7 OWNER and CONTRACTOR hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action or proceeding based upon the Contract Documents or arising out of, under, or in connection with the Work or the Project.
- 9.8 The law of the State of Florida shall govern the contract between the Town of Cutler Bay and the successful bidder and any action shall be brought in Miami-Dade County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.
- 9.9 INDEMNIFICATION- The parties agree that 1% of the total compensation paid to the Contractor for the performance of this agreement shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section and in the Terms and Conditions.

To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) 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 there from and (b) is caused in whole or in part by any willful and wanton or negligent or gross negligent acts or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

In any and all claims against the Town or any of their consultants, agents or employees by any employee of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph 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 or other person or organization under workers or workman's compensation acts, disability benefit acts or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that all of the Contract Documents on this project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.

The official title of the Town is “Town of Cutler Bay”. This official title shall be used in all insurance, or other legal documentation. Town of Cutler Bay is to be included as “Additional Insured” with respect to liability arising out of operations performed for Town of Cutler Bay by or on behalf of Contractor or acts or omissions of Contractor in connection with such operation.

- 9.10 WARRANTIES OF CONTRACTOR- The CONTRACTOR hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws necessary to perform the Specified Services.
- 9.11 DEFAULT/FAILURE TO PERFORM- The Town shall be the sole judge of nonperformance, which shall include any failure on the part of the successful bidder to accept the award, to furnish required documents, and/or to fulfill any portion of this contract within the time stipulated.

Upon default by the successful bidder to meet any terms of this agreement, the Town will notify the bidder three (3) days (weekends and holidays excluded) to remedy the default. Failure on the contractor’s part to correct the default within the required three (3) days shall result in the contract being terminated and upon the Town notifying in writing the contractor of its intentions and the effective date of the termination. The following shall constitute default:

- A) Failure to perform the work required under the contract and/or within the time required or failing to use the subcontractors, entities and personnel as identified and set forth, and to the degree specified in the contract.
- B) Failure to begin the work under this contract within the time specified.
- C) Failure to perform the work with sufficient workers and equipment or with sufficient materials to ensure timely completion.
- D) Neglecting or refusing to remove materials or perform new work where prior work has been rejected as non conforming with the terms of the contract.
- E) Becoming insolvent, being declared bankrupt, or committing act of bankruptcy or insolvency, or making an assignment renders the successful bidder incapable of performing the work in accordance with and as required by the contract.
- F) Failure to comply with any of the terms of the contract in any material respect.

In the event of litigation or arbitration arising from a default by the contractor, the contractor shall also be liable for all damages caused by its default which damages may include but not be limited to any and all costs incurred by the Town in completing the project, and damages arising out of the contractor’s failure to adhere to the contract requirements and all attorney’s fees and costs incurred by the Town in seeking legal relief for the default.

- 9.12 OTHER CAUSES FOR TERMINATION- The Town of Cutler Bay reserves the right to cancel this contract by written notice to the contractor effective the date specified in the notice should any of the following apply:
- A) The Town has determined that such cancellation will be in the best interest of the Town to cancel the contract for its own convenience. In the event the contract is terminated for the Town's convenience the contractor will be paid for all labor and materials provided as of the termination date. No consideration will be given for anticipated lost revenue, overhead, mobilization or demobilization or the canceled portions of the contract.
 - B) Funds are not available to cover the cost of the services. The Town's obligation is contingent upon the availability of appropriate funds.
- 9.13 ANTI-DISCRIMINATION- The bidder certifies compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin. Furthermore the bidder shall comply with all other State and local laws and policies that prohibit discrimination.
- 9.14 If any provision of this Contract or any Authorization under this Contract or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of the is Contract, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.
- 9.15 Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified.
- 9.16 Contractor shall abide by the applicable provisions of Chapter 119, Florida Statutes (Public Records).

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IN WITNESS WHEREOF, the parties hereto have signed 6 copies of this Contract. At least one counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on OWNER'S behalf.

OWNER
Town of Cutler Bay

ADDRESS
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

BY

Steven J. Alexander

Town Manager

WITNESS _____

(CORPORATE SEAL)

CONTRACTOR

ADDRESS

BY _____

Print Name

Title

WITNESS _____

(CORPORATE SEAL)

TOWN OF CUTLER BAY

SECTION 4

BIDDER'S REPRESENTATION

SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS

Proposal of _____
(name)

(address)

to furnish all materials, equipment, and labor and to perform all work in accordance with the Contract Documents for:

SAGA BAY DRAINAGE BASINS 1.3 AND 1.4
PAVING AND DRAINAGE IMPROVEMENTS (“THE PROJECT”)

TO: Town of Cutler Bay
Attention: Town Clerk
10720 Caribbean Blvd., Suite # 105
Cutler Bay, Florida 33189

The undersigned, as Bidder, hereby declares that the only person or persons interested in the Bid, as principal or principals, is or are named herein and that no other person than herein mentioned has any interests in the Bid of the Agreement to which the Work pertains; that this Bid is made without connection or arrangement with any other person, company, or parties making Bids or Proposals and that the Bid is in all respects fair and made in good faith without collusion or fraud.

The Bidder further declares that he or she has examined the geographic location and sites of the Work; that he has made sufficient investigations to fully satisfy himself that such sites are suitable for this Work; and he assumes full responsibility therefore; that he has examined the specifications for the Work and from his own experience or from professional advice that the specifications are sufficient for the Work to be done and he has examined the other Contract Documents relating thereto, including the Instructions to Bidders, the Agreement, Bid, Detailed Scope of Work/Specifications, Qualification Statement, Public Entity Crime Form, and Insurance requirements and he has read all addenda prior to the opening of Bids, and that he has satisfied himself fully, relative to all matters and conditions with respect to the Work to which this Bid pertains.

This project includes an Additive Bid Form that reflects estimated quantities for additional work on roadway sections not included in the Base Bid. The Base Bid and Additive Bid items are defined below.

The Bidder proposes and agrees, if this Bid is accepted, to timely execute the Agreement with the Town in the form attached and to furnish all necessary materials, all equipment, all necessary machinery, tools, apparatus, means of transportation, and labor necessary to complete the Work specified in the Bid and the Agreement, and called for by the specifications and in the manner specified and to timely submit all required bonds and insurance certificates.

NOTE: THIS SCHEDULE OF BID ITEMS IS MERELY ILLUSTRATIVE OF THE MINIMUM AMOUNT/QUANTITY OF WORK TO BE PERFORMED UNDER THE CONTRACT. IN THE CASE OF ANY CONFLICT BETWEEN THIS SCHEDULE OF BID ITEMS AND THE DETAILED SPECIFICATIONS, THE DETAILED SPECIFICATIONS WILL PREVAIL.

The Bidder further proposes and agrees to comply in all respects with the time limits for commencement and completion of the Work as stated in the Agreement.

The Bidder agrees to execute the Agreement and furnish the executed Agreement, all required bonds, insurance certificates, and other required information to Town within ten (10) ten calendar days after written notice of the Award of contract. Failure on the part of the Bidder to timely comply with this provision shall give Town all rights and remedies set forth in the Instructions to Bidders.

The undersigned agrees to accept as full compensation therefore the total of the lump sum prices and extended unit prices items named in the following schedule. It is understood that the unit prices quoted or established for a particular item are to be used for computing the amount to be paid to the Contractor, based on the Work actually performed as determined by the Agreement and the Town. However, in utilizing the schedule, the Bidder agrees that in no event shall compensation paid to the Bidder under the Agreement exceed the dollar amount of the Bidder's Bid amount, as set forth in the attached Bid.

It is intended that all Work to be performed under this Bid shall commence approximately thirty (30) days after Agreement execution.

In no event shall Town be obligated to pay for Work not performed or materials not furnished.

Bidder's Certificate of Competency No. _____

Bidder's Occupational License No. _____

WITNESS

By: _____
Signature of Authorized Agent

(SEAL)

BID FORM

The following Bid Proposal is presented to assist the Town in evaluating the Bid. The Bid Amounts will include all items described in the Bid Documents (Detailed Specifications). Payment shall be made on the basis of Work actually performed and completed.

The Base Bid Amount includes all work on the following roadway sections:

- S.W. 79th, 80th, and 81st Court
- S.W. 198th Terrace
- S.W. 199th Street

BASE BID AMOUNT \$ _____

BASE BID AMOUNT (IN WORDS) _____

The Additive Bid Amount includes all work on the remaining roadway sections not included as part of the Base Bid Amount:

- S.W. 79th Avenue

ADDITIVE BID AMOUNT \$ _____

ADDITIVE BID AMOUNT (IN WORDS) _____

If the Additive Bid is not awarded as part of the initial contract, the Contractor is required to maintain the validity of the Additive Bid unit prices for a period of four (4) months from the Notice to Proceed date.

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT \$ _____

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT (IN WORDS) _____

The following two (2) exhibits are general illustrations of the proposed Base Bid and Additive Bid roadway sections for reference.

Taxpayer Identification Number: _____

BIDDER: _____

(Company Name)

(Signature of Authorized Representative)

(Printed Name and Title)

(Company Address)

(Company Phone Number)

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BASE BID FORM

The following Base Bid Form is presented to assist the Town in evaluating the Bid. This Base Bid Form reflects estimated quantities for the Base Bid roadway sections as described above. After award, the Town reserves the right to modify estimated quantities subject to the unit price, and eliminate line items if necessary. In the event of discrepancy or approved quantity change, the Unit Price for each item will govern. Payment shall be made for the items listed on the Bid Form on the basis of the Work actually performed and completed.

<u>Bid Item No.</u>	<u>DESCRIPTION</u>	<u>Estimated Quantity</u>	<u>UNIT</u>	<u>Unit Price</u>	<u>Value</u>
101-1	Mobilization	1	EA		
102-1	Maintenance of Traffic	1	EA		
104-10	Baled Hay or Straw or Filter Fabric Inlet Protection – Per Inlet	9	EA		
110-1	Clearing and Grubbing	1	LS		
331-72	Type S-3 Asphaltic Concrete Surface Course	7,000	SY		
425-1	Inlets (Ditch Bottom – Type C)	1	EA		
425-2	Manholes (Type P-7)	7	EA		
425-3	Control Structure Inlet	3	EA		
425-6	Adjusting Valve Boxes/ Manholes	10	EA		
430-99	Polyethylene Pipe (15” Pipe)	120	LF		
443-70	French Drain (15” Pipe)	710	LF		
524-1	Concrete Aprons	25	SY		
711-1	Signing and Pavement Markings	1	LS		
737-71	Advanced utility Exploration (soft Digs)	4	EA		
SR-1	Swale Restoration	1	LS		
A-1	Allowances	1	LS	\$30,000	\$30,000

BASE BID AMOUNT \$ _____

BASE BID AMOUNT (IN WORDS) _____

Bid Item Notes:

1. Bid Item 101-1 is a lump sum pay item for all mobilization costs and also includes the construction of two (2) project signs that shall be displayed at approaches to the project area. The intent is that the signs will be freestanding. The sign shall display on both sides the project name, Town Logo, elected officials, engineer, and contact information. A detail of the sign is included in the plans. Shop drawings must be submitted for approval prior to ordering the projects signs. Photos of the actual project signs must be submitted for approval prior to installation of the project signs.
2. Bid Item 102-1 is a lump sum pay item for a Maintenance of Traffic and includes all pedestrian access maintenance. All crosswalks and sidewalks shall remain open and free of obstructions. Temporary painting for roadways and crosswalks shall be maintained throughout the project.
3. Bid Item 110-1 is a lump sum pay item that includes the removal and disposal of all existing asphalt/concrete pavement and soil/planting as required for the project.
4. Bid Item 331-72 includes all costs associated with resurfacing the entire project area upon completion of the entire trench/pavement restoration phase. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
5. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
6. Bid Items 443-70 and 430-99 includes all costs associated with the trench excavation, protection of trench, management of excavated material, trench backfill and compaction, testing, and asphalt restoration per the plans and details.
7. Bid Item 524-1 includes all costs associated with installing concrete aprons at new and existing catch basins. This bid item shall also include costs associated with retaining walls if required by adjacent grades.
8. Bid Items 425-1, 425-2, 425-3 and 425-4 includes all costs associated with installing inlets and manholes, modifying/core drilling/removing existing inlets, and all drainage pipe connections per the plans.
9. Bid Item 737-71 includes all necessary advanced explorations to verify and determine existing pipe invert elevations, material, and locations where conflicts with the proposed drainage system may occur (soft digs). Work shall also include verification and determination of interior dimensions and elevations (including pipe inverts) of any existing affected drainage structure. If a conflict is determined or a discrepancy with the plans is found, the Contractor is to notify the Engineer and provide all pertinent field information to assist the resolution of the conflict. This work is to be carried out in advance of construction.
10. Bid Item SR-1 is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons (concrete pavers), mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.

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ADDITIVE BID FORM

The following Additive Bid Form is presented to assist the Town in evaluating the Bid. This Additive Bid Form reflects estimated quantities for additional work on roadway sections not included in the Base Bid as described above. After award, the Town reserves the right to modify estimated quantities subject to the unit price, and eliminate some or all line items if necessary. In the event of discrepancy or approved quantity change, the Unit Price for each item will govern. Payment shall be made for the items listed on the Bid Form on the basis of the Work actually performed and completed.

<u>Bid Item No.</u>	<u>DESCRIPTION</u>	<u>Estimated Quantity</u>	<u>UNIT</u>	<u>Unit Price</u>	<u>Value</u>
101-1	Mobilization	1	EA		
102-1	Maintenance of Traffic	1	EA		
104-10	Baled Hay or Straw or Filter Fabric Inlet Protection – Per Inlet	4	EA		
110-1	Clearing and Grubbing	1	LS		
331-72	Type S-3 Asphaltic Concrete Surface Course	2300	SY		
425-1	Inlets (Ditch Bottom – Type C)	3	EA		
425-2	Manholes (Type P-7)	3	EA		
425-3	Control Structure Inlet	1	EA		
425-6	Adjusting Valve Boxes/ Manholes	4	EA		
430-99	Polyethylene Pipe (15” Pipe)	210	LF		
443-70	French Drain (15” Pipe)	200	LF		
524-1	Concrete Aprons	12	SY		
711-1	Signing and Pavement Markings	1	LS		
737-71	Advanced utility Exploration (soft Digs)	4	EA		
SR-1	Swale Restoration	1	LS		
A-1	Allowances	1	LS	\$30,000	\$30,000

ADDITIVE BID AMOUNT \$ _____

ADDITIVE BID AMOUNT (IN WORDS) _____

If the Additive Bid is not awarded as part of the initial contract, the Contractor is required to maintain the validity of the Additive Bid unit prices for a period of four (4) months from the Notice to Proceed date.

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT \$ _____

TOTAL BASE BID PLUS ADDITIVE BID AMOUNT (IN WORDS) _____

Bid Item Notes:

1. Bid Item 101-1 is a lump sum pay item for all mobilization costs and also includes the construction of two (2) project signs that shall be displayed at approaches to the project area. The intent is that the signs will be freestanding. The sign shall display on both sides the project name, Town Logo, elected officials, engineer, and contact information. A detail of the sign is included in the plans. . Shop drawings must be submitted for approval prior to ordering the projects signs. Photos of the actual project signs must be submitted for approval prior to installation of the project signs.
2. Bid Item 102-1 is a lump sum pay item for a Maintenance of Traffic and includes all pedestrian access maintenance. All crosswalks and sidewalks shall remain open and free of obstructions. Temporary painting for roadways and crosswalks shall be maintained throughout the project.
3. Bid Item 110-1 is a lump sum pay item that includes the removal and disposal of all existing asphalt/concrete pavement and soil/planting as required for the project.
4. Bid Item 331-72 includes all costs associated with resurfacing the entire project area upon completion of the entire trench/pavement restoration phase. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
5. Bid Item 331-2 includes all costs associated with asphalt overbuild areas identified in the field. All asphalt costs associated with the trench/pavement restoration phase shall be included in Bid Items 443-70 and 430-99.
6. Bid Items 443-70 and 430-99 includes all costs associated with the trench excavation, protection of trench, management of excavated material, trench backfill and compaction, testing, and asphalt restoration per the plans and details.
7. Bid Item 524-1 includes all costs associated with installing concrete aprons at new and existing catch basins. This bid item shall also include costs associated with retaining walls if required by adjacent grades.
8. Bid Items 425-1, 425-2 and 425-4 includes all costs associated with installing inlets and manholes, modifying/core drilling existing inlets, and all drainage pipe connections per the plans.
9. Bid Item 737-71 includes all necessary advanced explorations to verify and determine existing pipe invert elevations, material, and locations where conflicts with the proposed drainage system may occur (soft digs). Work shall also include verification and determination of interior dimensions and elevations (including pipe inverts) of any existing affected drainage structure. If a conflict is determined or a discrepancy with the plans is found, the Contractor is to notify the Engineer and provide all pertinent field information to assist the resolution of the conflict. This work is to be carried out in advance of construction.
10. Bid Item SR-1 is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.

TRENCH SAFETY

Bidder acknowledges that included in the various items of the Bid and in the Total Bid Price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Fla.) effective October 1, 1990. The Bidder identifies the costs included in the Total Bid Price to be summarized below.

TRENCH SAFETY MEASURE <u>(DESCRIPTION)</u>	UNITS OF MEASURE <u>(LF, SY)</u>	UNIT <u>(QUANTITY)</u>	UNIT <u>COST</u>	EXTENDED <u>COST</u>
A. _____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____

Failure to complete the above shall result in the Bid being declared non-responsive.

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TOWN OF CUTLER BAY

SECTION 5

SUPPLEMENTARY CONDITIONS

1.01 GENERAL:

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect. If there is a conflict between the Contract, General Conditions (No. 1910-8, 1996 edit.) and these Supplementary Conditions, the terms of the Supplementary Conditions shall control.

The Contractor shall note physically by cross out or cross reference notations all changes in the General Conditions called for in the Supplementary Conditions before submitting his Bid.

ARTICLE 1 - DEFINITIONS - Page 6

SC-1.01.A

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) have the meanings assigned to them in the General Conditions, unless otherwise indicated.

Amend paragraph SC-1.01.A.28 by replacing the terminology Notice of Award with Notice of Intent to Award.

Amend paragraph SC-1.01.A.29 by replacing it with the following paragraph:

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 a particular specified portion of the Work under the Contract Documents. It is anticipated that multiple Notices to Proceed will be issued by OWNER on an as-needed basis. OWNER is not limited in the number of separate Notices to Proceed it may issue other than by the total Contract Time and total Contract Price. Each portion of the Work shall be separately described in an applicable Notice to Proceed which shall govern that portion of the required Work and indicate substantial completion and final completion requirements. Failure to comply with such dates will be subject to liquidated damages.

Amend paragraph SC-1.01.A.42 by replacing it with the following paragraph:

Subcontractor – An individual or entity having a direct contract with CONTRACTOR. Sub-Subcontractor is an individual or entity having a direct contract with any Subcontractor for the performance of a part of Work at the Project.

Amend paragraph SC-1.01.A.30 by replacing it with the following paragraph:

OWNER – The individual, entity, public body, Town Manager, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

Add SC-1.01.A.51 as the following paragraph:

Promptly – The period of time not exceeding five business days.

ARTICLE 2 - PRELIMINARY MATTERS - Page 9

SC-2.03

Amend paragraph 2.03.A by replacing it with the following paragraph:

The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if one or more Notices to Proceed are given, on the day indicated in a particular Notice to Proceed. Multiple Notices to Proceed may be given at any time during the term of this Agreement. Each Notice to Proceed shall govern Contract Times for that portion of the Work covered in the applicable Notice to Proceed.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS - Page 13

SC-4.04

Amend paragraph 4.04.B.2 by replacing the last sentence with the following:

If OWNER or 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, a Claim may be made as provided in paragraph 10.05.

ARTICLE 5 - BONDS AND INSURANCE - Page 15

SC-5.01

Amend paragraph 5.01.C by adding the following language at the end of the paragraph:

Any additional costs shall be borne by the Contractor.

SC-5.04

Add the new paragraphs immediately after paragraph 5.04 of the General Conditions.

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

5.04.A.1 and 5.04.A.2 Workers' Compensation, etc. under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

1. Comprehensive General Liability:
 - (a) Coverage to include Premise/Operations, Broad Form Property Damage, Contractual and Personal Injury, and XCU (where applicable).
 2. Limits:
 - (a) General Aggregate \$1,000,000
 - (b) Each Occurrence \$1,000,000
 - (c) Personal Injury \$1,000,000
 3. Coverage is to be written on an "occurrence" basis.
 4. Owners and Contractors Protection:
 - (a) Bodily Injury:

Annual Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
 - (b) Property Damage:

Annual Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
 5. Worker's Compensation shall be in accordance with the provisions of the laws of the State of Florida.
- 5.04.A.6 Comprehensive Automobile Liability:
- (a) Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.
 - (b) Limits:

Combined Single Limit	\$1,000,000
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- 5.04.B.1 Umbrella:
- (a) Limits:

Aggregate	\$1,000,000
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 - (b) Cover all claims arising out of the contractor's operations or premises, anyone directly or indirectly employed by the Contractor or Subcontractor, and the Contractor's obligations under indemnification under this Contract.

5.04.B.8 The Town of Cutler Bay, shall be included as a named insured party under the Contractors Liability Insurance. The following paragraph is required to appear unaltered on the Certificate of Insurance.

"The Town of Cutler Bay, Florida is hereby named Additional Insured under the terms of this policy."

5.04.B.9 A thirty (30) day Notice of Cancellation is required and must be stated on the Certificate of Insurance.

5.04.B10 The Certificate of Insurance shall be issued to the Town of Cutler Bay, Florida at the following address:

Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

5.06 Delete this section in its entirety.

5.07 Delete this section in its entirety.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES - INDEMNIFICATION - Page 18

SC-6.01

Add the new paragraphs immediately after paragraph 6.01.B of the General Conditions.

The Contractor shall perform all work in compliance with all applicable safety codes. A competent English speaking superintendent will be on the job at all times during working hours, and will be subject to call during off-duty hours for emergency situations. The superintendent shall have overall charge of the work with complete authority regarding the Contractor's workmen, equipment and material purchases. The superintendent shall have complete authority to act on behalf of the Contractor. This person must be sufficiently qualified and have read and understood the Drawings, Specifications and all Contract Documents.

SC-6.02

Modify paragraph 6.02.B to allow work on Saturday per the following new paragraph added immediately after paragraph 6.02.B of the General Conditions.

The Project sites being located in a single-family residential area, there shall be no undue noise created, whether by workers arriving at the sites or by actual construction work, before 9:00 a.m. or after 6:00 p.m. Monday through Saturday. No work shall be performed

on Sunday or legal holidays as defined by the Town. There are no public sanitary facilities nearby the work sites, and the Contractor must therefore make arrangements for portable sanitary facilities as authorized by the Town.

SC-6.06

Amend paragraph 6.06.A by replacing the last sentence of the paragraph with the following sentence:

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, except as required by 6.06.B and the Instruction to Bidders.

Amend paragraph 6.06.B by adding the words "Instructions to Bidders" before Supplementary Conditions where ever it appears.

Amend paragraph 6.06.B by deleting the following sentence from the paragraph:

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 or Written Amendment signed.

Amend paragraph 6.06.B by adding the following language at the end of the last sentence of the paragraph:

nor does such acceptance create a contractual relationship between the OWNER and any subcontractor, supplier, individual or entity.

SC-6.09

Amend paragraph 6.09.C by replacing the first sentence of the paragraph with the following sentence:

Changes in Laws or Regulations which become effective after the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times.

Add the new paragraphs immediately after paragraph 6.09.C. of the General Conditions:

All vehicles used in connection with the Contractor's operations will be required to have identification signs.

SC-6.11

Amend paragraph 6.11.A.2 by adding the following language at the end of the last sentence:

, as set forth on the Resident Complaint Resolution Protocol attached hereto and made a part of the Contract Documents.

Add the new paragraphs immediately after paragraph 6.11.B. of the General Conditions:

Adjacent residents must have access to their driveways at all times. All barricades and warning signs for any traffic lane closures will be provided and maintained by the Contractor. Cost of all barricades and signs shall be the responsibility of the Contractor. Any off-duty officers as may be required in the maintenance of traffic shall be provided by the Contractor at the Contractor's expense.

SC-6.12

Amend paragraph 6.12.A by replacing the first sentence of the paragraph with the following sentence:

CONTRACTOR shall maintain in a safe place at the Project one record copy of all Drawings, Project Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, As Builts, and written interpretations and clarifications in good order and annotated to show changes made during construction.

SC-6.13

Amend paragraph 6.13.A.3 by replacing it with the following paragraph:

other property at the Project or adjacent thereto, including, but not limited, to trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in course of construction.

SC-6.20

Amend the paragraphs 6.20.A.1 and 6.20.A.2 by replacing them with the following paragraph.

To the fullest extent permitted by Laws and Regulations, the Parties agree that in consideration of the first \$1,000.00 dollars to be paid by Owner to Contractor hereunder and other specific consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor shall indemnify, defend and hold harmless the OWNER and ENGINEER and their consultants, agents, officers and employees, and the elected officials of the Owner, from and against all claims, damages, losses and expenses, direct, indirect or

consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professional and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) 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 and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is implied by Law and Regulations regardless of the negligence of any such party.

Amend paragraphs 6.20.B by replacing it with the following paragraph:

In any and all claims against OWNER and ENGINEER and their consultants, agents, officers and employees, and the elected officials of the Owner by any CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20 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 or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 8 - OWNER'S RESPONSIBILITIES - Page 26

SC-8.02

Amend paragraph 8.02.A by replacing it with the following paragraph:

In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION - Page 27

SC-9.03

Amend paragraph 9.03.A by adding the following language at the end of the paragraph:

The ENGINEER will provide a Resident Project Representative for this Project with duties, responsibilities and limitations of authority as outlined in Exhibit "B" attached at the end of these Supplementary Conditions. The Resident Project Representative will not be a full time Representative, but will work such periods of time so as to cover the project in accordance with Exhibit "B".

SC-9.05

Amend paragraph 9.05.A by deleting the following sentence from the end of the paragraph:

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, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

SC-9.08

Amend paragraph 9.08.A by replacing the word “decision” in the second sentence with the word “recommendation” and adding the words “recommendation will be submitted to the Town Manager whose” into the third sentence between the words “written” and “decision”.

SC-9.09

Amend paragraph 9.09.B by replacing the word “decision” with “recommendation” in the second paragraph and deleting the words “OWNER or” from the last sentence.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS - Page 29

SC-10.01

Amend paragraph 10.01.A by replacing the first sentence of the paragraph with the following sentence:

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 Written Amendment, a Change Order, a Work Change Directive, or a Field Directive.

Amend paragraph 10.05.D by adding the following sentence at the end of the paragraph:

Adherence to the terms of paragraph 10.05 is a condition precedent to bringing any further action in litigation.

SC-10.05

Amend paragraph 10.05.B by replacing it with the following paragraph:

B. TOWN MANAGER’S Decision: ENGINEER will render a formal recommendation to the TOWN MANAGER for a binding decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. TOWN

MANAGERS decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR:

Delete paragraphs 10.05.B.1 and 10.05.B.2.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCE; UNIT PRICE WORK - Page 30

SC-11.01

Amend paragraph 11.01.A.1 by deleting the word Saturday from the last sentence of the paragraph.

Delete paragraph 11.01.A.4 in its entirety.

SC-11.03.C

Amend paragraph 11.03.C by replacing it with the following paragraph:

C. A Claim may be made for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

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

SC-12.01.C

Amend paragraph 12.01.C.2.a. by replacing the entire sentence with the following sentence:

for costs incurred under paragraph 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 10 percent;

SC-12.01.C

Modify paragraph 12.01.C.2.c. to change the fee as follows in the first sentence:

Will be paid a fee of 10 percent of the costs incurred by such Subcontractor under paragraph 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;

SC-12.06.B

Amend paragraph 12.06.B by replacing the entire paragraph with the following paragraph:

Contractor will not be entitled to any adjustment in the Contract Price for delays extended general conditions, extended overhead, loss of productivity, acceleration or any damages or other compensation whatsoever in the event of any delays in the progress of the Work on

account of hindrances or delays from any cause whatsoever. Such causes of delay include but are not limited to differing site conditions, difficulty in acquiring building permits, limited access to the Project, failure to approve plans and shop drawings on time, delays caused by governmental action, inaction or regulation, subsurface conditions, material shortages or delay in delivery of materials. It is the specific intent hereunder that an extension of time will be the sole and exclusive remedy for delay of any type, description of category. However, if occasioned by an act of God, or by any act or omission on the part of the OWNER such act, hindrance or delay may entitle the CONTRACTOR to an extension of time in which to complete the Work which shall be determined by the ENGINEER, provided that the CONTRACTOR will give notice as provided herein. The foregoing limitations on adjustments to Contract Price also apply to any causes of delay which affect any subcontractor, materialman, supplier or laborer on the Project. In no event, if any such events of delay occur, shall any subcontractor, materialman, supplier or laborer be entitled to additional compensation for delays including claims for extended general conditions, extended overhead and the like against the OWNER or Engineer.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK - Page 34

SC-13.04

Amend paragraph 13.04.A by replacing it with the following paragraph:

If any Work is covered contrary to the Technical Specifications, Drawings or Contract Documents, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

Amend paragraph 13.04.B by adding the following language at the end of the second sentence:

,or direct payment if remaining Contract funds are not sufficient.

SC-13.09

Amend paragraph 13.09.C by adding the following language at the end of the first sentence:

, or direct payment if remaining Contract funds are not sufficient.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION - Page 36

SC-14.02.A.2

Amend paragraph 14.02.A.2 by deleting the existing paragraph and replacing it with the following paragraph:

With each Application for Payment, the CONTRACTOR shall include a Partial Waiver Upon Progress Payment or Statutory Waiver and Final Release, as appropriate from each and every materialman, supplier and or laborer ("Potential Lienor") who has provided labor, services or materials for the Project. Contractor shall submit its own Statutory Waiver and Partial Release of Lien or Statutory Waiver and Final Release of Lien, as appropriate, with each Application for Payment. Moreover, CONTRACTOR shall ensure that no construction liens, or any encumbrances in the nature thereof or any other encumbrances whatsoever (including equitable lien claims), shall be filed or maintained by the CONTRACTOR or by any Potential Lienor in connection with any Work for which OWNER has made payment or for which payment is not yet due. As a condition precedent to the receipt of each progress payment from the OWNER, CONTRACTOR must furnish the Partial Waiver Upon Progress Payment Statutory Waiver and Final Release from each Potential Lienor, in the form prescribed by OWNER and/or ENGINEER, together with a Contractor's Affidavit and Partial Release, in the form prescribed by the OWNER and/or ENGINEER. Further, as a condition precedent to the receipt of the final payment, the CONTRACTOR shall provide OWNER with a Statutory Waiver and Final Release from each Potential Lienor in the form prescribed by OWNER and/or the ENGINEER, together with a Contractor's Affidavit and Final Release. Each Release given to the OWNER shall waive and release any lien rights of the Potential Lienor to the extent payment is made with respect to any Work performed through the date of the Release. For any Potential Lienor who has served a Notice to Owner and/or Notice to Contractor, but who has not provided labor, services or materials during the period of time covered by an Application for Payment, the CONTRACTOR shall provide a Zero Dollar Release in the form prescribed by OWNER and/or ENGINEER. CONTRACTOR shall comply with all requirements of Florida Statutes, Chapter 713. CONTRACTOR agrees to indemnify, defend and hold the OWNER harmless from and against any and all liens or other claims whatsoever filed against the OWNER or the OWNER'S property by any Potential Lienor for worked performed or materials or services furnished in connection with the Work for which CONTRACTOR has been paid or for which payment is not yet due at the time the Lien is recorded. In the event a Claim of Lien is recorded against the OWNER'S property, the CONTRACTOR shall cause the same to be satisfied within ten (10) days following the date of recordation of the Claim of Lien, or in the alternative, shall cause the Claim of Lien to be transferred to a Bond. In the event any Liens are not cleared of record within ten (10) days of recordation, OWNER shall have the right to settle, satisfy, or transfer such Lien to a Bond at CONTRACTOR'S sole cost and expense and OWNER may offset any such cost against the next payment due to CONTRACTOR, or CONTRACTOR shall make a direct payment if remaining Contract funds are not sufficient. OWNER shall not be limited to and is entitled to all other remedies available at law or in equity. The provisions of this paragraph shall be deemed an independent covenant of the CONTRACTOR and shall be effective with respect to all Work performed and materials and services furnished under the Contract Documents, Change Orders or any other agreement for work with respect to the Project.

SC-14.02.D.1.b

Amend paragraph 14.02.D.1.b by deleting the existing paragraph and replacing it with the following:

Liens have been recorded in connection with the Work or the Project.

SC-14.07

Amend paragraph 14.07.A.1 by replacing it with the following paragraph:

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 operation instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), final releases, final affidavits, Asbuilts, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

Amend paragraph 14.07.A.2 by adding the following language at the end of the first sentence:

or claims made against the Bonds provided by CONTRACTOR under the Contract Documents.

Delete paragraph 14.07.A.3 in its entirety.

SC-14.09

Amend paragraph 14.09.A.1 by replacing it with the following paragraph:

a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens or Claims against the Bonds, 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

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION - Page 40

SC-15.03

Delete paragraph 15.03.A.3 in its entirety.

Delete paragraph 15.03.A.4 in its entirety.

Amend paragraph 15.04.A. by deleting the last sentence of the paragraph.

EXHIBIT "B"

**A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS
OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE**

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the Work of the Contractor.

Through more extensive on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control or supervisory control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.

2. Conferences and Meetings: Attend meetings with CONTRACTOR, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

3. Liaison:
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operation affect OWNER's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and samples.
 - b. Receive samples that are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
 - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if ENGINEER has not approved the submittal.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
6. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.

7. Modifications: Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
 - c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.
9. Reports:
 - a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
 - d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
10. Payment Requests: Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values. Work completed and materials and equipment delivered at the site but not incorporated in the Work.
11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

12. Completion:

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawings or sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

TOWN OF CUTLER BAY

SECTION 6

PAVING AND DRAINAGE IMPROVEMENTS
DETAILED SPECIFICATIONS

TECHNICAL SPECIFICATIONS INDEX

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
ROADWAY DIVISION I:		
	Special Provisions	
01020	Allowances	
01030	Swale Restoration and Audio Visual Preconstruction Record	
15200	Utility Relocations	
ROADWAY DIVISION II:		
101	Mobilization	
102	Maintenance of Traffic	
104	Prevention, Control, and Abatement of Erosion and Water Pollution	
300	Prime and Tack Coat for Base And Surface Course	
425	Inlets, Manholes and Junction Boxes	

DIVISION I
SPECIAL PROVISIONS
FOR
PAVING AND DRAINAGE IMPROVEMENTS,
IN
THE TOWN OF CUTLER BAY

It is the intent of these Contract Documents that Division I, II and III of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” dated 2000 be used as the basis for the work as amended by the following Supplemental Technical Specification. Where such wording refers to the State of Florida and its Department of Transportation and Personnel, such wording is hereby replaced with wording which provides proper substitute terminology; thereby making such Standard Specifications for Roads and Bridge Construction, Standard Technical Specifications of the Town of Cutler Bay.

It is the intent to include Division I of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” as referenced above as a supplement to the General Conditions (Engineers Joint Contract Documents Committee) and Supplementary Conditions for this Contract.

Further the applicable portions of the Town of Cutler Bay Code and Florida Building Code shall apply to the project.

Supplemental Technical Specifications that pertain to the pertinent items of construction are located in Division II.

SECTION 01020

ALLOWANCES

PART 1 SCOPE OF WORK

1.01 DEFINITION

- A. Included in the contract sum is an allocation account for unforeseen conditions, potential construction changes and quantity adjustments, and additional work that the Town may deem necessary if ordered and authorized by the Town in accordance with the contract documents.

1.02 ALLOWANCE ACCOUNT

- A. Monies in the allocation account will be used on issuance of work authorizations for over run of unit bid items provided such over runs are pre-approved in writing by the Town, and off duty police officers.
- B. At the closeout of the contract, monies remaining in the allowance account will be credited to the Town by change order.

1.03 SELECTION OF PRODUCTS UNDER ALLOWANCES

- A. Engineer's Duties:
 - 1 Consult with the Contractor in consideration of products and supplier or installers or changes in quantities of bid items.
 - 2. Make selection in consultation with the Owner. Obtain Owner's written decision, designating:
 - a. Product, model and/or class of materials.
 - b. Accessories and attachments.
 - c. Supplier and installer as applicable.
 - d. Cost to Contractor, delivered to the site or installed, as applicable.
 - e. Warranties
 - f. Quantities
 - 3. Transmit Owner's decision to the Contractor.
 - 4. Prepare work authorizations or change orders.

- B. Contractor's Duties:
1. Assist Engineer and Owner in determining qualified suppliers, quantities or subcontractor.
 2. Obtain proposals from a minimum of three (3) suppliers and/or subcontractors when requested by Engineer.
 3. Make appropriate recommendations for consideration of the Engineer.
 4. Notify Engineer promptly of:
 - a. Any reasonable objections Contractor may have against any supplier, or party under consideration for installation.
 - b. Any effect on the construction schedule anticipated by selection under consideration.

1.04 CONTRACTOR RESPONSIBILITY FOR PURCHASE, DELIVERY AND INSTALLATION

- A. On notification of selection, execute purchase agreement with designated suppliers and/or subcontractors.
- B. Arrange for and process shop drawings, product data and samples, as required.
- C. Make all arrangements for delivery.
- D. Upon delivery, promptly inspect products for damage or defects.
- E. Submit claims for transportation damage.
- F. Install and finish products in compliance with requirements of referenced specification sections, including restoration.
- G. Noise Control
1. Contractor will use discretion whenever engaging in activities that might produce excessive noise and disturb residents in and around work areas.
 2. The Town shall have the right to impose reasonable limitations on the Contractor to prevent excessive noise and disturb residents in and around work areas.
- H. Access to Property: The Contractor shall at all times maintain meaningful access to a given property for residents of that property.
- I. Staging of Work: All staging for work by the Contractor within the Town shall be first approved by the Town's department of public works.

1.05 ADJUSTMENT OF COSTS

- A. Should the net cost be more or less than the specified amount of the allowance, the contract sum will be adjusted accordingly by change order. Should work be changed by change order:
 - 1. The amount of the change order will recognize any changes in handling costs at the site, equipment, labor, installation costs, overhead, profit, and other expenses caused by the change order.
 - 2. For products specified under a unit cost in the change order schedule of values, the unit cost shall apply to the additional quantities actually used.
- B. Submit any claims for anticipated additional costs at the site, or other expenses caused by the selection under the allowance, prior to execution of the work.
- C. Failure to submit claims within the designated time will constitute a waiver of claims for additional costs.
- D. At contract closeout, reflect all approved changes in contract amounts in the final statement of accounting.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

3.01 MEASURE AND PAYMENT

- A. The cost shall include a fixed amount per the Bid Form.
- B. Use of the allocation account shall be for unforeseeable conditions, for construction changes and for availability adjustments, if ordered and authorized by the Town. At the closeout of contract, monies remaining in the contingency allowance will be credited to the Owner by change order.
- C. The fixed amount is indicted as a lump sum under Allowance pay item A-1.

END OF SECTION

SECTION 01030

SWALE RESTORATION AND AUDIO VISUAL PRECONSTRUCTION RECORD

PART 1 SCOPE OF WORK

1.01 DEFINITION

- A. Included in the contract sum is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction.
- B. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.

1.02 SITE RESTORATION

- A. The Contractor shall remove all excess material and shall clean up and restore the swale area impacted by any construction activity adjacent to drainage work to its original condition or better. All damage to swale areas, as a result of WORK under this Contract, done to existing structures, pavement, driveways, paved areas, curbs and gutters, sidewalks, shrubbery, grass, trees, utility poles, utility pipe lines, conduits, drains, catch basins, flagstones, rocked, graveled or stabilized areas or driveways, and including all obstructions not specifically named herein, shall be repaired or replaced, as determined by the ENGINEER. Site restoration shall be done in a timely manner as the WORK progresses.

1.03 AUDIO-VISUAL PRECONSTRUCTION RECORD

- A. Prior to beginning the work, the Contractor shall have a continuous color audio-video recording taken along the entire length of the project, where construction will be performed, to serve as a record of preconstruction conditions. No construction shall begin prior to review and approval of the audio-video covering the construction area by the Engineer. The Engineer shall have the authority to reject all or any portion of the audio-video not conforming to the specifications and order that it be redone at no additional charge. The Contractor shall reschedule the unacceptable coverage within five days after being notified.

- B. Contractor shall provide the Engineer and the Owner with one complete set of disks for each project area.
- C. All equipment, accessories, materials and labor to perform this service shall be furnished by the Contractor.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 MEASURE AND PAYMENT

- A. Compensation for the swale restoration as described on the plans and in this specification shall be included in the lump sum price bid for Swale Restoration.
- B. Compensation for the audio-video preconstruction record shall be included in the lump sum price bid for Swale Restoration Pay Item SR-1.

END OF SECTION

SECTION 15200

UTILITY RELOCATIONS

PART 1 SCOPE OF WORK

1.01 DEFINITION

- A. Included in the contract sum is an allowance account for unforeseen conditions that require the relocation of existing utilities. The Contractor shall verify the location of existing utilities prior to installing proposed drainage pipe and French drain. If a conflict between the proposed drainage pipe location and the existing utility is identified, that cannot be avoided by adjusting the elevations of the pipe, the Contractor shall immediately notify the Engineer. Upon direction from the Engineer, the Contractor shall coordinate with the utility provider to have the conflicting utilities relocated or deflected by provider personnel.

1.02 ALLOWANCE ACCOUNT

- A. Monies in the allocation account will be used on issuance of a work authorization, pre-approved in writing by the Town throughout
- B. At the closeout of the contract, monies remaining in the allowance account will be credited to the Town by change order.

1.03 PROCEDURE FOR COMPLETING UTILITY RELOCATIONS

- A. Engineer's Duties:
 - 1. Consult with the Contractor in considering options related to conflicts between existing utilities and proposed drainage pipe or French drain.
 - 2. Provide written authorization to request cost estimate.
 - 3. Transmit Owner's decision to the Contractor.
 - 4. Prepare work authorization.
- B. Contractor's Duties:
 - 1. Identify potential conflicts between proposed drainage pipe or French drain and existing utilities by verifying utility locations in the field prior to installation of proposed drainage pipe and notify Engineer of conflicts immediately upon discovery. The Contractor and Engineer shall explore options to avoid the conflicts with the utilities as the first step.

2. Obtain cost estimates and schedules for relocation or deflection of existing utilities from provider as directed by the Engineer and provide copies of the requested information to the Engineer upon receipt.
3. If authorized by Engineer, coordinate with provider to have utility relocations/deflections constructed by provider personnel. This includes payment of any deposits or fees associated with the proposed deflections.
4. Notify Engineer promptly of:
 - a. Any effect on the construction schedule anticipated as a result of utility relocation/deflection.

1.05 ADJUSTMENT OF COSTS

- A. Should the net cost be more or less than the specified amount of the allowance, the contract sum will be adjusted accordingly by change order. Should work be changed by change order:
 1. The amount of the change order will recognize any changes in handling costs at the site, equipment, labor, installation costs, overhead, profit, and other expenses caused by the change order.
 2. For products specified under a unit cost in the change order schedule of values, the unit cost shall apply to the additional quantities actually used.
- B. Submit any claims for anticipated additional costs at the site, or other expenses caused by the selection under the allowance, prior to execution of the work.
- C. Failure to submit claims within the designated time will constitute a waiver of claims for additional costs.
- D. At contract closeout, reflect all approved changes in contract amounts in the final statement of accounting.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 MEASURE AND PAYMENT

- C. Included in the contract sum is an allowance account for unforeseen conditions that require the relocation of existing utilities. At the closeout of the contract, monies remaining in the allowance account shall be credited to the Village by change order.
- D. The fixed amount is indicted as a lump sum under Allowance pay item A-1.

END OF SECTION

DIVISION II
SECTION 101
MOBILIZATION

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.02 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 101-1 Description This section is expanded to include the following:

The Town shall identify the location of the construction staging area and construction field office (if necessary). The designated area will be within the limits of the Town. The Contractor shall take pictures or make a video record of the existing conditions of the site prior to making any modifications. The Contractor shall install fencing, gates and take all other measures, as necessary, to make said site secure. No automobiles shall be permitted to park in said staging area except for delivery and pickup purposes.

The Contractor shall be responsible for obtaining electrical and water service to the field office. The Contractor will be required to furnish all materials and connections necessary for the connection of these services from the point of connection to the existing system to the field office and pay all fees and deposits as required by the utility owner. The installation and connections shall be in accordance with the requirements of the utility owner, the Building Inspection Division of the Town of Cutler Bay and all other agencies or authorities which may have jurisdiction.

At the conclusion of the project, the Contractor shall be responsible for the removal of the field office, utility connections, and the clean up and restoration of the field office and construction staging site, to its original condition. The pictures and/or videotape, obtained at the beginning of the project, will be used to evaluate the restoration of the site. The Contractor shall obtain and furnish to the Engineer a letter from the owners of the site stating they are satisfied with the clean up and restoration of their property, and releasing the Contractor from the need of any further action.

All cost for work, materials, obtaining permits, permit fees and incidental costs as specified above and required for project completion are to be included in the cost of this section unless otherwise specified.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

END OF SECTION

SECTION 102

MAINTENANCE OF TRAFFIC

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

A. 1.02 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 102-1.1 Description This section is expanded to include the following:

The Contractor shall provide access to properties adjacent to the construction area at all times.

Two weeks prior to any construction, the Contractor shall provide a maintenance of traffic plan and a written schedule to the Engineer showing anticipated construction activity, timing, location, and anticipated disruptions due to occur. The maintenance of traffic plan and schedule shall be updated every two weeks during construction. The original schedule and updates shall be provided to the Engineer no later than noon each Friday for use, by the Engineer and Town, in assisting the Contractor to inform the residents of pending disruptions. However, this does not relieve the Contractor of any and all reasonable communications with the affected property owners.

The Contractor may be asked to attend meetings with the Property Owners and offer his opinions during the course of the meeting, but the Town/Engineer will chair the meeting.

Article 102-4.1 Where Required – This sub-article is amended to include:

Except as delineated in the Contract Documents, traffic may be detoured only upon approval of the Town.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

All cost for work, materials, permits and incidental costs as specified above are to be included in the cost of other bid items. The direct cost for off-duty police officers as required under Town Ordinance 02-19 will be paid for under the Allowance Bid Item.

END OF SECTION

SECTION 104

PREVENTION, CONTROL, AND ABATEMENT OF EROSION AND WATER POLLUTION

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.02 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 104-5 Preconstruction Conference

The Contractor shall comply with the National Pollutant Discharge Elimination System (NPDES) Permit requirements for the project, submitting the required documents to the U.S. Environmental Protection Agency (EPA) pursuant to the requirements of 40 CFR Part 122.26. This would include, but not be limited to, completing and submitting a Notice of Intent (NOI) and a Notice of Termination (NOT) to the U.S. EPA in accordance with the project schedule. Copies of the preprinted forms are attached as Appendix A.

Refusal by the Contractor to place his signature on any required documents or certification statements will be considered as default of the Contract. The Contractor that performs any earth disturbing activities in the absence of any required signed documents or certifications statements may also be considered by the U.S. EPA to be in violation of the Clean Air Act.

The contractor shall furnish the Engineer the name and telephone number of the person who will be responsible for monitoring and maintaining the erosion control devices.

The Contractor shall be responsible for compliance with the approved Erosion Control Plan.

All cost for work, materials, obtaining permits, permit fees and incidental costs as specified above and required for project completion are to be included in the cost of this section unless otherwise specified.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

END OF SECTION

SECTION 300

PRIME AND TACK COAT FOR BASE AND SURFACE COURSE

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.03 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 300-9 – Basis of Payment - Delete the text of this article and insert the following:

No separate payment will be made for prime coat and tack coat materials but the cost of same, including furnishing, heating, hauling and applying (including sand or screening covering where required), shall be included for payment in the contract unit price either per ton or per square yard of base or asphalt pavement or in the unit price for pothole repair.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

END OF SECTION

SECTION 425

INLETS, MANHOLES AND JUNCTION BOXES

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.04 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 425-6.8 Adjusting Existing Structures – Replace the last sentence of the first paragraph as follows and delete the text of the entire second paragraph:

The materials and construction methods for this work shall conform to the requirements specified above and shall also meet the standards and requirements of the utility company that owns the structure that will be adjusted.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

END OF SECTION

Section 7

Appendix A

Project Geotechnical Report

DEP Form 62-621.300(4)(b)

TOWN OF CUTLER BAY

SECTION 8

ADDENDUM ACKNOWLEDGEMENT FORM

Addendum # Date Received

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

BIDDER: _____
(Company Name)

(Signature)

(Printed Name & Title)

END OF SECTION

TOWN OF CUTLER BAY

SECTION 9

ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA }
 } SS:
COUNTY OF MIAMI-DADE }

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the Town of Cutler Bay, its elected officials, and _____ or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Title: _____

Sworn and subscribed before this

_____ day of _____, 20__

Notary Public, State of Florida

(Printed Name)

My commission expires: _____

END OF SECTION

TOWN OF CUTLER BAY

SECTION 10

NON-COLLUSIVE AFFIDAVIT

State of _____ }
 } SS:
County of _____ }

_____ being first duly sworn, deposes and says that:

- a) He/she is the _____, (Owner, Partner, Officer, Representative or Agent) _____, the Bidder that has submitted the attached Proposal;
- b) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- c) Such Proposal is genuine and is not collusive or a sham Proposal;
- d) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices in the attached Proposal or of any other Bidder, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;

The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered
in the presence of:

Witness

Witness

By: _____

(Printed Name)

(Title)

TOWN OF CUTLER BAY

SECTION 11

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

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 the Town of Cutler Bay

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)9g), 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 the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States 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 or 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:
- a. A predecessor or successor of a person convicted of a public entity crime; or
 - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those 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 the management of an entity.
6. Based on information and belief, the statement that 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 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.

____ This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

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

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 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 HAT 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 of Entity Submitting Sworn Statement

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 notary public)

END OF SECTION

7. Miami-Dade County and Town of Cutler Bay Occupational License Number, if applicable, and expiration date.
8. How many years has your organization been in business?
9. What similar engagements is your company presently working on?
10. Have you ever failed to complete any work awarded to you? If so, where and why?
11. Give names, addresses and telephone numbers of three individuals, corporations, agencies, or institutions for which you have performed work:

11.1. _____
(name) (address) (phone #)

11.2. _____
(name) (address) (phone #)

11.3. _____
(name) (address) (phone #)

12. List the following information concerning all contracts in progress as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

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

(Continue list on insert sheet, if necessary.)

13. Has the Bidder or his or her representative inspected the proposed project and does the Bidder have a complete plan for its performance?
14. Will you subcontract any part of this work? If so, give details including a list of each subcontractor(s) that will perform work in excess of ten percent (10%) of the contract amount and the work that will be performed by each such subcontractor(s).

The foregoing list of subcontractor(s) may not be amended after award of the contract without the prior written approval of the Contract Administrator, whose approval shall not be unreasonably withheld.

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

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

17. What equipment will you rent for the proposed work?

18. State the name of your proposed project manager and give details of his or her qualifications and experience in managing similar work.

19. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)
 - 19.1 The correct name of the Bidder is:

 - 19.2. The business is a (Sole Proprietorship) (Partnership) (Corporation).

- 19.3. The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:

- 19.4. List all organizations which were predecessors to Bidder or in which the principals or officers of the Bidder were principals or officers.

- 19.5. List and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Bidder, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description the disposition of each such petition.

- 19.6. List and describe all successful Bid, Performance or Payment Bond claims made to your surety(ies) during the last five (5) years. The list and descriptions should include claims against the bond of the Bidder and its predecessor organization(s).

- 19.7. List all claims, arbitrations, administrative hearings and lawsuits brought by or against the Bidder or its predecessor organization(s) during the last five (5) years. The list shall include all case names; case, arbitration or hearing identification numbers; the name of the project over which the dispute arose; and a description of the subject matter of the dispute.

NAME

RELATIONSHIPS

Signature of entity submitting supplement form

STATE OF FLORIDA)
)SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this ____ day of _____, 2006.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

[THIS SPACE LEFT BLANK INTENTIONALLY]

and conditions, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding the amounts set forth in the first paragraph hereof.

The term "balance of the Contract price" as used in this Bond, shall mean the total amount payable by Obligee to Principal under the Agreement and amendments thereto, less the amount paid by Obligee to Principal and less amounts withheld by Obligee pursuant to its rights under the Contract.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the work to be performed thereunder and further agrees to all of the terms contained in the Agreement.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, successors, executors or administrators of the Obligee.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this ____ day of _____, 20__.

Witness: _____

Witness: _____

Principal

Surety

By: _____

By: _____

Name: _____
(Print)

Name: _____
(Print)

Title: _____

Title: _____

Address: _____

Address: _____

The name and address of the Resident Agent for service of process on Surety is:

Name: _____

Address: _____

Phone: _____

END OF SECTION

TOWN OF CUTLER BAY

SECTION 14
PAYMENT BOND

PROJECT TITLE: Saga Bay Drainage Basins 1.3 and 1.4 Paving and Drainage Improvements (the "Project")

CONTRACTOR:

AGREEMENT NO:

AGREEMENT DATED:

STATE OF § _____
 § _____
COUNTY OF § _____

BY THIS BOND (the "Bond"), We as _____, called CONTRACTOR, and _____, hereinafter called SURETY, are bound to TOWN OF CUTLER BAY, FLORIDA, a Florida municipal corporation, hereinafter called Town, in the amount of _____ Dollars for payment of which CONTRACTOR and SURETY bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by CONTRACTOR and Town, for the following:

Agreement Title:

Saga Bay Drainage Basins 1.3 and 1.4 Paving and Drainage Improvements (the "Project")

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

Promptly makes payments to all claimants as defined in Section 255.05(1), Florida Statutes, supplying CONTRACTOR with labor, material, or supplies, used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the Agreement;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract Documents and compliance or noncompliance with formalities, connected with the Agreement or with the changes, do not affect Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the Town.

Claimants must comply with notice requirements set forth in Section 255.05(2), Florida Statutes. No action shall be instituted against the CONTRACTOR or Surety under this bond after one (1) year from the performance of the labor or completion of the delivery of the materials or supplies.

IN WITNESS WHEREOF, this instrument is executed this the _____ day of _____, 20____.

WHEN THE PRINCIPAL IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(Witness) By: _____
(Individual Principal)

(Witness) Business Address _____

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:

Signed, sealed and delivered in the presence of:

(Witness) Business Name and Address

(Witness) By: _____
Signature of Individual

WHEN A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

(Witness) Name and Address of Partnership

(Witness) By: _____
(Partner)

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

(Corporate Seal) _____
(Corporate PRINCIPAL Name)

Business Address

Secretary

By: _____
President

ATTEST:

(Surety Seal)

(Corporate SURETY)

Business Address

(Secretary)

By: _____
(Surety)

Florida Resident Agent

ATTORNEY-IN-FACT

By: _____

Name _____
(Type)

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

NOTE 2: If both the Principal and Surety are Corporations, the respective Corporate Seals shall be affixed and attached

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

The Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other.

END OF SECTION

TOWN OF CUTLER BAY

SECTION 15

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Section 287.087, Florida Statutes, hereby certifies that _____ does:

(Name of Business)

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

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

Proposers Signature

Date

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



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 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 User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the 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. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

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*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR 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 Substantial Completion; and (ii) 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. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *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.

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

23. *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.

24. *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.

25. *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.

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

27. *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.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *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.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *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.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *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.

36. *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.

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. *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.

40. *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.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *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.

43. *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.

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

45. *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.

46. *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.

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

48. *Work*--The entire completed 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.

49. *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.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed 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 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 9.10 or any other provision of the Contract Documents.

B. Day

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

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or 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).

D. 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.

E. 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

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. 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. *CONTRACTOR's Review of Contract Documents:* 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; however, 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. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified

in the General Requirements), CONTRACTOR shall submit to ENGINEER for its 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 Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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.

C. *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.

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by 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.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten 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.B. CONTRACTOR shall have an additional ten 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 any specified Milestones and 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 Shop Drawing and Sample 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 called for by one is as binding as if called for 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, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees 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. 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 report it to ENGINEER in writing at once. 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; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy 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 in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) 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: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) 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 any of the Work under a direct or indirect contract with OWNER: (i) shall not 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 Consultant, including electronic media editions; and (ii) shall not 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. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL 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, 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, ENGINEER, or any of ENGINEER's Consultants 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 9.08 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 in respect of 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 within the time and 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, ENGINEER, and ENGINEER's Consultants 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, ENGINEER or any of ENGINEER's Consultants 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); 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, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other 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.E 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, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other 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.F 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 are not intended to 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 CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, 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 such 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 within 20 days thereafter substitute 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. 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: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) 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 so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, 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, and other 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 6.07, 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 thirty 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 (and 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, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other 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 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, 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, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, 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 or Written Amendment. 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, ENGINEER, ENGINEER's Consultants, 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, and other 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, and other 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, ENGINEER, ENGINEER's Consultants, 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, and other 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, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other 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 peril 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, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other 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 replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

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 2.05.C. 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, but 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. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto 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, lay out, and construct the Work 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, and CONTRACTOR will not permit overtime work or the performance of Work on 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 General Requirements, 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 warranties and guarantees specifically called for 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. 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 (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with

any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

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: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, 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 procedure 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 first 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 shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, 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 work on the Project) to adapt the design to the proposed substitute item and 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. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also 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, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and 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 procedure for review by ENGINEER will be similar to that provided in subparagraph 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 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 time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such 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 or Written Amendment signed. 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 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 shall it 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, ENGINEER, ENGINEER's Consultants, 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, and other 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. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants 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. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and 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 may 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, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants 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 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, Written Amendments, 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. 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 ENGINEER's Consultant, 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). 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 to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The 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.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample

submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, 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.

D. Submittal Procedures

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

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

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

d. CONTRACTOR 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 indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop

Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample 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 of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.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 approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. 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, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. 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.

B. 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 acceptance by OWNER or any failure to do so;

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

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

8. any correction of defective Work by OWNER.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other 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:

1. 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; and

2. is caused in whole or in part 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, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

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 Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them 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.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let 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 and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and 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. Unless otherwise provided in the Contract Documents, 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.

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 Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly 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 9.10, and 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 responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. 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 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. 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, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *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 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, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or 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.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

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

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

9.08 *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.

9.09 *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. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, 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. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *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 of 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 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement 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 Written Amendment, 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 (or Written Amendments) 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 and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter 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. Notice of the amount or extent of the Claim, dispute, or other matter 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, dispute, or other matter). 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).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH 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 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, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, 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, 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 Cash 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 as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allow-

ances 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.

B. 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. 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 9.08.

B. 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.

C. 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. if 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 or by a Written Amendment. 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 (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) 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 (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) 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.

12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to 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.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

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, ENGINEER's Consultants, 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.B; 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. If it is found that such 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. If, however, such 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 Milestones), 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. 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).

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 Laws or Regulations or 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: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) 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. If CONTRACTOR does not promptly comply with the terms of such 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, and 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.

B. 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 or by Written Amendment.

C. 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.

D. 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 and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In

connection with such corrective and 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 (or Milestones) 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 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 arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

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

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

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 9.08, 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: (i) 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 (ii) 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 to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or 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 referred to 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 Written Amendment or 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 must 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. Promptly thereafter, 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. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and 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. 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 responsibility.

ties 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.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by OWNER at OWNER's option of 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, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If 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. 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. 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.

2. No 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: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) 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. 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 will become due and, when due, 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 and recommendation of ENGINEER, and without terminating the Agreement, 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 writing which are 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 allowed 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 the surety, if any) seven days written notice, terminate

the services of CONTRACTOR, 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), 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 finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. 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.

C. 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.

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, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for 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. for 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. for 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. for 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, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or 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. 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. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

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 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 if 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, and 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 Agreement.

17.05 *Controlling Law*

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

TAB 4

RESOLUTION NO. 09-___

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING RESOLUTION 08-22 RELATING TO THE CREATION OF THE TOWN COMMUNICATIONS COMMITTEE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 28th, 2008, the Town of Cutler Bay (the “Town”) Town Council created the Communications Committee in order to assist the Town Council in implementing measures that may better inform the residents of the Town of items of public interest for the benefit of citizens; and

WHEREAS, since its creation, the Communications Committee has provided the Town Council with several recommendations for improving communication between the Town and its citizens; and

WHEREAS, the Town Council finds that the Communications Committee has fulfilled its purpose and that it is no longer necessary to have such a Town appointed Committee; and

WHEREAS, as such, the Town Council finds it necessary to repeal Resolution 08-22 creating the Communications Committee; and

WHEREAS, the Town Council finds that this Resolution is in the best interest of the health, safety and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Repeal of Resolution 08-22. The Town Council hereby repeals Resolution 08-22 relating to the Communications Committee.

Section 3. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved by:
Seconded by:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____

TAB 5



Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: February 18, 2009
Re: **ADOPTION OF PARKS MASTER PLAN**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE TOWN'S COMPREHENSIVE PARKS MASTER PLAN; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

At the February 20, 2008 Town Council meeting, Resolution No. 08-07 was adopted approving the execution of an agreement with Kimley-Horn and Associates to complete a comprehensive Parks Master Plan. The purpose of the Master Plan document is to provide guidance for the Town to follow in developing the Town's seven currently existing parks to their fullest potential, as well as for future park acquisition.

Kimley-Horn and Associates conducted a thorough review and analysis of the history of the Town and its parks; an assessment of the existing conditions and park inventory; constraints and opportunities associated with each of the parks; and conducted several public meetings to gather input from the Parks and Recreation Advisory Committee, Town residents and the Town Council. The result of the work of Kimley-Horn and Associates and all of the aforementioned groups is a comprehensive plan that addresses opportunities for improvements to each of the Town's currently owned parks, including cost estimates to complete the proposed improvements and potential funding sources for these improvements.

RECOMMENDATION

We recommend that the attached resolution be approved, adopting the Comprehensive Parks Master Plan document.

RESOLUTION NO. 09-_____

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING
THE TOWN'S COMPREHENSIVE PARKS MASTER PLAN;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, on February 20, 2008 the Town of Cutler Bay (the "Town") adopted Resolution No. 08-07 approving the execution of an agreement with Kimley-Horn and Associates to complete a comprehensive Parks Master Plan in accordance with the Town's 5-year Strategic Plan; and

WHEREAS, Kimley-Horn and Associates conducted four separate public meetings with the Parks and Recreation Advisory Committee, Town residents and the Town Council in order to solicit input regarding the wants and needs of the community concerning the Town's parks; and

WHEREAS, a draft version of the Master Plan was presented to the Town for review and additional input, resulting in the final Master Plan document attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Adoption. The Comprehensive Parks Master Plan document attached as Exhibit "A" is adopted as a guide in directing the future development of the Town's park system.

Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 6



Planning & Zoning Department

David G. Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David G. Hennis, AICP, Community Development Director

Date: February 9, 2009

Re: **2009 Planning and Zoning Fee Schedule**

This is a request to approve a 25 percent increase in the Town's planning and zoning fees, in accordance with the 25 percent increase approved by Miami-Dade County in October. At the time of incorporation the Town adopted the Planning and Zoning Fee Schedule used by Miami-Dade County. In an effort to retain consistency with the adopted county schedule, it is necessary to revise the town's planning and zoning fees in a likewise manner to address costs associated with such activities.

Attached to this cover is a chart summarizing the fee revisions and the revised fee schedule.

RECOMMENDATION

Approval of the resolution

RESOLUTION NO. 09-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE ADMINISTRATIVE ORDER “FEE SCHEDULE FOR THE PLANNING AND ZONING DIVISION” RELATING TO THE REVISION OF THE TOWN OF CUTLER BAY PLANNING AND ZONING DIVISION FEE SCHEDULE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 8, 2005, a Charter for the Town of Cutler Bay (the “Town”) was approved by the citizens of the Town, effective November 9, 2005; and

WHEREAS, when the Town incorporated, it adopted the Planning and Zoning Division Fee Schedule (the “Fee Schedule”) in use by Miami-Dade County at the time of incorporation, which was created under Miami-Dade County Administrative Order 4-111; and

WHEREAS, pursuant to Section 3.1 of the Town Charter of the Town of Cutler Bay and Section 2-104 of the Code of Ordinances of the Town of Cutler Bay, the Town may revise the Fee Schedule by administrative order subject to subsequent ratification by the Town Council; and

WHEREAS, the Town Council finds that it is necessary to revise the Fee Schedule in order to cover the costs associated with the Town Planning and Zoning Division and ensuring a fair and efficient planning and zoning process that protects the quality of life of the residents of, and visitors to, the Town; and

WHEREAS, the Town finds that this Resolution will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Administrative Order Approved.** The Administrative Order “Fee Schedule for Planning and Zoning Division” relating to the revision of the Town of Cutler Bay Planning and Zoning Division Fee Schedule attached as Exhibit “A” is hereby approved.

Section 3. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

Administrative Order
(Town Seal)

Administrative Order No.: 09-

Title: Fee Schedule for Planning and Zoning Division

Ordered: (Date)

AUTHORITY:

Section 3.1 of the Town Charter of the Town of Cutler Bay; Section 33-285 of the Code of Ordinances of the Town of Cutler Bay.

SUPERSEDES:

This Implementing Order supersedes Miami-Dade County Administrative Order 4-111 ordered November 30, 2004 and effective December 10, 2004, adopted by the Town of Cutler Bay upon incorporation.

POLICY:

A schedule of fees covering the cost of providing Planning and Zoning Division services shall be established and no application, permit, certificate or receipt shall be issued until the appropriate fee is paid. Additionally, no special study shall be prepared until a memorandum of agreement has been entered into or payment made.

PROCEDURE:

The Responsibility for this Administrative Order is assigned to the Community Development Director, Town of Cutler Bay Planning and Zoning Division, who shall be responsible for the collection of fees and the delivery of required services pursuant to Chapters 8 and 33 and Section 2-104 of the Code of the Town of Cutler Bay. Each two years or earlier, if need be, the Community Development Director shall review all fees in terms of their cost and recommend necessary changes to the County Manager.

SCOPE:

The fee schedule adopted by this Administrative Order has been presented and is considered a part hereof. In accordance with Section 2-3 of the Code of the Town of Cutler Bay, this official Fee Schedule is also filed with the Clerk of the Town of Cutler Bay. Fees which are charged by the Planning and Zoning Division shall be the same as those listed in the official Fee Schedule on file with the Clerk of the Town of Cutler Bay.

Steven J. Alexander
Town Manager



FEE

SCHEDULE

Effective
October 1, 2008

DEPARTMENT OF
*Planning &
Zoning*

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Department of Planning and Zoning Fee Schedule

The Department of Planning and Zoning shall charge and collect fees for planning and zoning services in accordance with the following schedule:

I. REQUESTS FOR WRITTEN ADVISORIES OF COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP) CONSISTENCY (OTHER THAN FOR DEVELOPMENT/SERVICES CONCURRENCY DETERMINATION)

For special written advisory letters/memoranda regarding the relationship of a particular parcel or the consistency of a proposed development action to the provisions of the Comprehensive Development Master Plan (CDMP) that are requested pursuant to Section 2-113 of the Code of Miami-Dade County and apart from regular development order approval processes, the requesting party shall pay the following charges:

A. INTERPRETATION/EXPLANATION OF CDMP PROVISIONS, INCLUDING ADOPTED LAND USE PLAN (LUP) MAP AND INTERPRETATION OF LUP MAP TEXT CONSISTENCY DETERMINATIONS RELATIVE TO A SPECIFIC LOCATION

MP01	Size of Parcel of Proposed Development (gross acres)	Fee
	Under 1.0 acre	114
	1.0 acres - 5.0 acres	228
	5.1 acres - 20.0 acres	342
	20.1 acres and over	570

Requests involving research of multiple parcels in a large-scale development shall be charged in accordance with item IV B, herein.

B. INTERPRETATION/EXPLANATION OF ADOPTED COMPONENTS GOALS, OBJECTIVES AND OTHER TEXT NOT RELATED TO A SPECIFIC LOCATION

MP02	Each issue/question not related to Level of Service (LOS) Standards	114
MP02A	Each issue/question related to LOS Standards	171

The Director of the Department of Planning and Zoning, or his or her designee, may condition such advisories on the information made available by the requesting party or defer to more complete development order review procedures. The conditional nature of all special advisories shall be addressed in the document.

II. APPLICATIONS TO AMEND THE CDMP

A. Land Use Element

1. LUP Map (except for Roadway and Transit changes which are covered in B), Agricultural Subarea 1 Map, Open Land Subareas Map, and Environmental Protection Subareas Map, which applications are requested for processing during regular semi-annual CDMP amendment cycles:

MP03	a) Regional Urban Center	109,440
MP03A	b) Metropolitan Urban Center	85,500
MP03B	c) Community Urban Center	54,720

Department of Planning and Zoning Fee Schedule

MP05 d) Other

Size of Area (gross acres) Subject to Application	Fee
Up to 5.0	11,400
5.1 - 10.0	21,660
10.1 - 20.0	42,750
20.1 - 40.0	64,410
40.1 - 80.0	85,500
80.1 - 160.0	102,600
160.1 - 320.0	119,700
320.1 - 480.0	136,800
480.1 - 640.0	153,900
640.1 - 800.0	171,000
800.1 - 960.0	188,100
960.1 - 1120.0	205,200
1120.1 - 1280.0	222,300
1280.1 and above	171/acre

MP05E e) The fee for any application requesting amendment to the LUP Map which includes a request to expand the Urban Development Boundary (UDB) or to redesignate to an urban land use outside the UDB shall be increased by 1) twenty-five (25%) percent of the amount indicated above in II.A.1.(d) for all applications up to eighty (80) acres in size, or 2) fifteen (15%) percent of the amount indicated above in II.A.1.(d) for applications larger than eighty (80) acres.

MP05F f) Application requesting amendment to the LUP Map to increase the currently planned residential density on land inside the UDB shall receive a reduction of the fee amount of 1) twenty-five (25%) percent of the amount indicated above in II.A.1.(d) for each application up to eighty (80) acres in size, or 2) fifteen (15%) percent of the amount indicated in II.A.1.(d) if the application area is larger than eighty (80) acres.

MP05G g) Applications requesting amendments to an Urban Expansion Area (UEA) boundary without amendment to the underlying future land use shall be charged 30 percent of the rate established in paragraph II.A.1.(d) above but not less than \$10,000.

MP06 h) Applications requesting amendment to the LUP Map for processing concurrently with an application to approve or amend a Development of Regional Impact (DRI) development order pursuant to Sec. 2-116.1(5)(a), Code of Miami-Dade County, Florida, shall be charged \$91,200 if 640 acres or smaller, or if a request for Urban Center; if 640.1 acres or larger, such applications shall be charged 65 percent of the fee amount for the applicable parcel size listed in foregoing paragraph 11.A.1.(a) through (g).

MP07 2. Revision of the LUP Map Text
Each issue-proposal (per paragraph) 17,100

MP08 3. Environmental/Historical or other Map
Each issue/item including associated text 17,100

MP09 4. Covenant revisions and other changes amending land uses relating to specific land parcels Two-thirds rate of II(A)(1)(d) above

B. Traffic Circulation Sub-Element

MP10 1. Planning Future Roadway Network Map
Per road lane-mile 17,100

MP11 2. Roadway Functional Classification Map
Per road-mile (existing or future) 17,100

MP12 3. Limited Access Facilities Map Per road-mile or interchange 17,100

MP12A 4. Other Map Per Mile 11,400

Department of Planning and Zoning Fee Schedule

		Fee
C. Mass Transit Sub-Element		
MP13	1. Future Mass Transit System Maps Per linear mile of service area, corridor, or alignment	17,100
MP14	2. Major Traffic Generators and Attractors Each major traffic generator	17,100
D. Port, Aviation, and Port of Miami Sub-Elements		
MP15	1. Major Aviation Facilities - Future Improvements Map Each facility	17,100
MP16	2. Aviation Facility Improvements Each improvement project line item	17,100
MP17	3. Port of Miami River - Future Land Use Map	(Same as LUP Map II.A.1)
MP17A	4. Port of Miami 5 year or 10 year Plan map	17,100
E. Capital Improvements Elements (CIE)		
MP18	1. Each proposed project line item	17,100
MP19	2. Urban Infill or Concurrency Exception Area Maps	51,300
F. All Elements (including A-E above)		
MP20	1. Each Level of Service (LOS) Standard or DRI Threshold (F.S.380) - addressing goal, objective, policy, or map	51,300
MP21	2. Each Non LOS Standard - addressing goal, objective or policy	17,100
MP22	3. Each monitoring measures item	10,260
MP23	4. Each other text change proposal item (up to 5 sentences)	17,100
MP24	5. Each other map change proposal or item	17,100
MP25	6. One or more non-LUP Map amendment proposals requested for processing concurrently with an application to approve or amend a DRI development order pursuant to Sec. 2-116.1(5)(a), Code of Miami-Dade County, Florida. This fee shall be charged only when a LUP Map amendment is not requested, and a fee is not charged, pursuant to par. II.A.1, above.	34,200

All above fees include any corresponding changes to other Plan Elements, or components thereof, required for internal consistency.

In the event that the applicant withdraws the application for amendment prior to the deadline established in Section 2-116.1(8), Code of Miami-Dade County, amendment fees paid shall be refunded.

In the event that the Board of County Commissioners fails to approve transmittal of a non-small scale amendment application to the State Land Planning Agency per Sec. 2.116.1(3)(g) of the Code of Miami-Dade County, or the applicant withdraws the application or any portion thereof after the full refund deadline referenced above, but prior to transmittal action by the Board of County Commissioners, 1) twenty-five (25%) percent of the department's CDMP amendment fees paid shall be refunded.

The applicant shall not be authorized, subsequent to the "transmittal" hearing held by the Board of County Commissioners, to receive any refund of application fees.

County proprietary departments shall pay required fees at the time of application except that (a) during a regular annual update to the CIE, a single fee of \$11,400 shall be charged to the department for one or more changes to a Schedule of Improvements table; (b) fees shall not be charged to such departments for a major Element update to implement an Evaluation and Appraisal Report (EAR); and (c) the fee for a major update or revision to a Plan Element required by a proprietary department at a time other than during an EAR-based CDMP amendment cycle shall be \$57,000 paid at the time of application filing, with any costs incurred by the Department of Planning and Zoning in excess of the initial filing fee to be paid by the applicable department.

Department of Planning and Zoning Fee Schedule

III. PREPARATION OF SPECIAL PROJECTS, STUDIES, REPORTS, OR PROVISION OF DATA

For special studies, reports or file research requested by non-Miami-Dade County entities that are not prepared as part of the regular work program of the Department of Planning and Zoning, the requesting entity shall pay the following charges:

A. Graphics Services

1. Actual salary costs of personnel involved in providing services in effect at time of activity, and
2. Graphics materials used at estimated cost (unless supplied by entity requesting services), and
3. Department overhead operating costs equal to .7 times personnel's salary costs identified in 1 above.

B. Non-Graphics Services

1. Actual salary of personnel providing services in effect at time of activity, and
2. Department personnel support and overhead operating costs equal to 1.0 times personnel's salary costs identified in IV.B.1. above.

The Director of the Department of Planning and Zoning, or his or her designee, is authorized to administer these professional services charges through letters of agreement with non-County entities requesting such services.

IV. CERTIFICATE OF USE (C.U.) AND TEMPORARY CERTIFICATE OF USE (T.C.U.)

The following original fees shall be paid for all uses. The indicated renewal fee applies to those uses which are required to be renewed annually by Code or by Resolution. All non-renewable uses are issued permanent use certificates which shall remain valid for an unlimited time, unless revoked for cause, or abandoned, provided there is no change of use, ownership, or name, or that there is no enlargement, alteration or addition in the use or structure. An "up front" processing fee equal to 50% of the total C.U. fee shall be assessed at the time of filing an application. The processing fee is non-refundable but shall be credited towards the final C.U. fee.

A. RESIDENTIAL		Fee	Renewal Fee
Apartments, hotels, motor hotels and all multiple family uses per building			
C003	4 - 50 units	82.65	
C021	51 - 100 units	98.33	
C022	101 - 200 units	112.58	
C023	201 or more units	128.25	
C004	Private school, charter schools, day nursery, Convalescent and nursing home, hospital, Assisted Congregate Living Facilities (Renewal Fee Code: R101, and R102)		
C040	(ACLF) and developmentally disabled home care (Renewal Fee Code: R104, and R111)		
C041		135.38	71.25
C042/ R124	Home Office	35.63	21.38
B. BUSINESS, WHOLESALE AND RETAIL			

Department of Planning and Zoning Fee Schedule

	Fee	Renewal Fee
C005 All uses, except the following:		
Per sq. ft. of business area	0.04	
Minimum	135.38	78.38
C006 Automobile, recreational vehicle, boat, truck, etc., rental or sales	135.38	
R1007 from open lot or combination open lot and building		
Per sq. ft. of business area	0.04	
Minimum	135.38	228.00
C026 Change of owner of restaurant liquor/beer/wine/ in conjunction		
R308 with restaurants, grocery stores, etc.	135.38	78.38
C007 C. INDUSTRIAL		
All uses, except the following:		
Per sq. ft. of business area	0.04	
Minimum	135.38	78.38
C008		
(Renewal Fee Code: R112, R118, R119, and R120)		
Automobile used parts yard, commercial incinerators, junkyards, slaughterhouses, bulk storage of petroleum products, trailer parks, tourist camps, utility plants of 30,000 sq. ft. or less		
Per sq. ft. of business area	0.03	
Minimum	628.43	228.00
C501		
(Renewal Fee Code: R501)		
Automobile used parts yard, commercial incinerators, junkyards, slaughterhouses, bulk storage of petroleum products, trailer parks, tourist camps, utility plants over 30,000 sq. ft.	897.75	332.16
D. UNUSUAL USES, SPECIAL PERMITS, BUSINESS AND INDUSTRIAL USE VARIANCES		
C009/ R122 All unusual uses, except the following:	314.93	239.40
A026/ R121 Churches	135.38	71.25
C010 Airports, racetracks, stadiums	628.43	228.00
(Renewal Fee Code: R106, and R116)		
C011 Cabaret, nightclub, liquor package store	416.10	377.63
(Renewal Fee Codes: R301 , R302 , and R304)		
C012 Rock quarries, lake excavation and/or filling thereof	494.48	239.40
Minimum	494.75	
C013 Circus or carnival (per week) and special events	263.63	263.63
C014 Open lot uses	188.10	149.63
(Renewal Fee Code: R113)		
C032 Lot clearing, sub-soil preparation	156.75	142.50
(Renewal Fee Code: R123)		
E. AGRICULTURAL		
C027 All uses, except as otherwise listed herein	188.10	178.13
(Renewal Fee Code: R105)		
F. TRAILER USE CERTIFICATES		
Covers administrative and initial field inspection cost for all types of construction site field offices. Fee also covers cost of site plan review.		
C015	256.50	256.50
(1) Mobile homes approved for temporary use during construction of a residence (Section 33-168, Code of Miami-Dade County)		

Department of Planning and Zoning Fee Schedule

	Fee	Renewal Fee
C016	524.40	498.75
C030 (2) Mobile homes or modular units approved for commercial purposes or development projects, including watchman's quarters and temporary sales offices		
C031 (3) Construction field offices	178.13	178.13
X010 (4) Cash escrow processing fee	142.50	
X011 (5) Mobile home tag deposit	35.63	
X029 (6) Cash escrow processing (balloons)	71.25	
X025 (7) Cash escrow (demo)	285.00	
G. MAXIMUM FEE		
C500 The maximum fee for a CU provided no violation exists at time of CU.	897.75	
H. CHANGE OF USE, BUSINESS OWNERSHIP OR NAME		
When there is a change of use, business ownership, or name, the fee shall be the original fee listed for the use proposed.		
I. REFUNDS		
No refunds shall be made of fees paid for use permits. In case of error, adjustments may be made by the Director of the Department of Planning and Zoning.		
J. OCCUPANCY WITHOUT CU		
(In violation)	225.15 plus a double CU fee	
A069 K. FAILURE TO RENEW CU(s) or Temporary Certificate of Use TCU(s) not renewed on or before the renewal or expiration date will be assessed a \$213.75 violation fee plus a double CU or TCU TCC fee.		
MP40		
L. TEMPORARY CU "UP FRONT" FEE		
C033 When the TCU application is received, the applicant shall pay an "up-front" processing fee equal to \$35.63. This processing fee is not refundable. This fee shall be deducted from the total cost of the TCU.		
M. CU AND TCU, INSPECTION FEE		
When an inspection is necessary prior to the issuance of a CU or, TCU, an inspection fee of \$84.44 shall be charged for each inspector who is required to make a field inspection. Temporary CUs will be charged at a fee equal to the final CU cost in addition to the inspection fee. This fee will be required regardless of the length of time the TCU is needed; up to ninety (90) days for CUs and up to sixty (60) days for TCUs.		
N. CU RE-INSPECTION FEE		
When extra inspection trips are necessary due to 1) wrong address being given on call for inspection, 2) required corrections not being made or completed at time specified or 3) failure to provide access to the property or use, a fee of \$84.44 for each inspector who must return shall be charged.		
		Renewal Fee
O. ALCOHOL FEES AND RENEWAL FEES		
R300 Bar/Lounge		78.38
Liquor Package Store, Cabaret nightclub, (Refer to C011)		377.63
R306 Restaurant with Liquor and/or Beer and Wine		78.38
R308 Other Alcoholic Beverage uses not listed		78.38
R303 Outdoor Patio		228.00
R305 Private Club: Liquor and/or Beer and Wine		228.00
R307 Restaurant and Lounge/Bar		156.75

Department of Planning and Zoning Fee Schedule

V. ZONING APPLICATION FEES:

All application fees shall be paid in total, at the time of filing of the application, and no total fee shall be credited or refunded except when adjustment is warranted or deemed necessary due to departmental error. A refund of fifty percent (50%) of an original application fee may be refunded upon the withdrawal of an application when the written request for withdrawal is received within 60 days of the date of application. In no event, however, shall an appellant of a Community Zoning Appeals Board decision be entitled to a refund of the appeal fee.

Z999 In addition to the zoning fees set forth below, the following items shall be assessed a fee of 0.71 cents per notice for each additional notice mailed beyond a 500' radius. These fees shall be assessed for every occasion on which notices are mailed.

A. PUBLIC HEARING, ADMINISTRATIVE MODIFICATIONS AND REFORMATION FEES

Z100 Except as otherwise provided in B. through F. below, for every application for a zoning change, or other zoning application, where a public hearing is required to be held
Z101 and for every application where notices and advertisement are required there shall be paid to the Department of Planning and Zoning for the processing of each and every application, a minimum fee of \$1,068.75 or \$2,137.50 if the application is the result of a violation. The exact amount of each and every public hearing application fee is established by the addition of the following fees:

		Fee
Z104	Zone Change to AU/GU/RU1/RU2/RUIZ/EU/RU-1M(a)/RU-1M(b)	1,425.00
Z114	Zone Change to RUTH/MULTI-FAM/PAD	2,137.50
		Fee
Z124	Zone Change to RU-5/RU-5A/OPD	2,850.00
Z134	Zone Change to BU	4,275.00
Z144	Zone Change to IU	3,562.50
Z115	Use Variance-AU/GU/RU-1/RU-2/RUIZ/EU	2,137.50
Z125	Use Variance-RUTH/MULTI-FAM/PAD	3,562.50
Z135	Use Variance-RU-5/RU5A-OPD	4,987.50
Z145	Use Variance-BU	4,987.50
Z155	Use Variance-IU	4,275.00
Z972	Non-Use Variance or Administrative Site Development Option (Residential)	712.50
Z973	Non-Use Variance or Administrative Site Development Option (Commercial, Industrial, Office)	1,425.00
Z974	Special Exception	2,850.00
Z975	Modify/Delete	1,425.00
Z976	Unusual Use	2,850.00
	(1) Residential:	
Z977	Site Plan Review	1,425.00

Department of Planning and Zoning Fee Schedule

Z978	Size of Property: \$712.50 per 10 acres or portion thereof	
Z979	Number of Units: \$356.25 per 15 units or portion thereof	
	(2) Commercial:	2,137.50
Z980	Site Plan Review	
Z981	Size of Property: \$855.00 per 10 acres or portion thereof	
Z982	Size of Building: \$285.00 per 5,000 sq. ft. or portion thereof	
B. NON-USE VARIANCE or ADMINISTRATIVE SITE DEVELOPMENT OPTION (ASDO) PUBLIC HEARINGS (RESIDENTIAL/ONE LOT)		
Z983 Z984	For every application for a non-use variance or ASDO for the new construction of, or addition to, a single family residence (one lot maximum) or duplex (one lot maximum), there shall be paid to the Department of Planning and Zoning a fee of \$1,567.50 (\$1,852.50 if the application is the result of a violation).	
C. UNUSUAL USE-MOBILE HOME AS A WATCHMAN'S QUARTERS		
Z102 Z103	For every application for an unusual use for a trailer as a watchman's quarters, there shall be paid to the Department of Planning and Zoning a fee of \$1,567.50 (\$1,852.50 if the application is the result of a violation).	
D. PUBLIC HEARINGS FOR PRIVATE SCHOOLS, HOUSES OF WORSHIP, ACLF, NURSING HOMES AND CONVALESCENT HOMES		
Z985 Z986	For every public hearing application for the above uses, there shall be paid to the Department of Planning and Zoning a fee of \$2,850.00 (\$3,562.50 if the application is a result of a violation).	
E. UNUSUAL USE-LAKE EXCAVATION		
Z987 Z988	For every application for an unusual use for a lake excavation, there shall be paid to the Department of Planning and Zoning a minimum of \$712.50 (\$1,047.38 if the application is the result of a violation). The exact amount of each and every lake excavation public hearing fee is established the addition of the following fees:	Fee
Z989	Site Plan Review	1,068.75
Z990	10 acres or portion thereof of water surface area	299.25
F. NON-USE VARIANCE-SIGNS		
Z997 Z998	For every application for a non-use variance for the installation of a sign(s), there shall be paid to the Department of Planning and Zoning a fee of \$2,137.50 (\$2,850.00 if the application is the result of a violation).	
G. REVISIONS TO PUBLIC HEARING PLANS		
Z116 Z117	Submittal of the first revised plan will be processed by the Department of Planning and Zoning at no additional cost to the applicant. Subsequent revisions will be processed at an additional charge of-\$855.00 (or \$1,140.00 if submitted 30 days or less prior to hearing) per revised plan and shall be paid in total at the time of submittal to the Department of Planning and Zoning.	
H. REVISIONS OF LEGAL DESCRIPTION		
	Rework of a legal description as a result of revisions, corrections, inconsistencies and/or missing items.	60.00
I. APPEALS OF COMMUNITY ZONING APPEALS BOARD DECISIONS		

Department of Planning and Zoning Fee Schedule

Z500 For every application for an appeal of a decision of the Community Zoning Appeals Board to the Board of County Commissioners, there shall be paid to the Department of Planning and Zoning for the processing of each and every application, a fee of \$1,068.75, to be paid at the time of application. Site plan modifications, where permitted, to appeal requests will be processed at an additional cost of \$855.00 (or \$1,140.00 if submitted 30 days or less prior to hearing) per revised plan.

J. ENTRANCE FEATURE APPLICATION FEES

Z300 For every administrative application for an entrance feature, there shall be paid to the Department of Planning and Zoning, for the processing of each and every application, a fee of \$712.50
Z301 (\$1,425.00 if the application is the result of a violation). All such fees shall be paid, in total, at the time of the filing of the application, and no fee shall be credited or refunded. First plan revision will
Z303 be processed at no charge, subsequent revisions will be processed at \$312.50 each.

K. APPEALS OF ENTRANCE FEATURE DECISIONS

Z302 For every application for an appeal of an entrance feature decision by the Miami-Dade County Plat Committee to the Community Zoning Appeals Board by an aggrieved property owner in the area, there shall be paid to the Department of Planning and Zoning, for processing of each and every application, a fee of \$498.75, to be paid at the time of application. Pursuant to the provisions of Section 33-311(c)(2), an appeal by an aggrieved applicant shall be by the filing of a de novo application for public hearing before the Community Zoning Appeals Board, with the fee to be paid subject to the public hearing application fee provisions herein.

L. ADMINISTRATIVE ADJUSTMENT APPLICATION FEES

Any variance involving:

Z203	carport [max. 200 sq. ft.]	391.88
Z204	utility shed [max. 100 sq. ft.]	391.88
		Fee
Z205	fence/wall	391.88
Z208	storage of boat/RV	391.88
Z209	interior/exterior integration area	391.88
Z211	Setback adjustments for attached/detached structure(s):	748.13
Z217	Any administrative adjustment involving tennis court, swimming pool or other recreational use	926.25
Z219	Any adjustment for the construction of a new residence	1,204.13
Z220	Other adjustments such as, but not limited to, lot area, lot frontage, lot coverage, etc.	926.25
Z221	Only one fee shall be assessed; should an application involve two (2) or more adjustments of a different category, the greater shall apply. For any application where a notice of violation has been issued, an additional fee of \$285.00 shall be assessed.	

Z202 M. APPEALS OF ADMINISTRATIVE ADJUSTMENT DECISIONS

For every application for an appeal of an administrative adjustment decision of the Department of Planning and Zoning to the Community Zoning Appeals Board by any aggrieved property owner in the area, there shall be paid to the Department of Planning and Zoning, for the processing of each and every application, a fee of \$811.99, to be paid at the time of application. Pursuant to the provisions of Section 33-311(c)(2), an appeal by an aggrieved applicant shall be by the filing of a de novo application for public hearing before the Community Zoning Appeals Board, with the fee to be paid subject to the public hearing application fee provisions herein.

Department of Planning and Zoning Fee Schedule

Z600 N. APPEALS OF ADMINISTRATIVE DECISIONS OF DIRECTOR AND AMENDMENTS TO ZONING REGULATIONS

For every application, except for appeals of the issuance of a rockmining certificate of use pursuant to Article XI, Chapter 33, of the Miami-Dade County Code, for an appeal of the Department of Planning and Zoning Director's Administrative Decision relative to matters by any aggrieved property owner in the area concerned, or by any aggrieved applicant, or for any application for zoning hearing to the zoning regulations, there shall be paid to the Department of Planning and Zoning, for the processing of each and every application, a fee of \$1,068.75, to be paid at the time of application. For any appeal of a decision of the Director in connection with the issuance of a rockmining certificate of use pursuant to the Rockmining Overlay Zoning Area in Chapter 33, of the Code of Miami-Dade County (ROZA overaly), the fees associated with such appeal shall be waived.

Z991 O. APPEALS OF ADMINISTRATIVE DECISIONS OF THE EXECUTIVE COUNCIL

For every application for an appeal of the Miami-Dade County Executive Council's (Development Impact Fee Committee) Administrative Decision by any aggrieved property owner in the area concerned, or by any aggrieved applicant, the appellant shall pay to the Department of Planning and Zoning, for the processing of each and every application, a fee of \$498.75, to be paid at the time of application.

Z602 P. SEVERABLE USE RIGHTS

Application fee for use of severable use rights as provided by ordinance

(1) Basic application fee per bonus development "receiver" site

712.50

Z703 Q. ADMINISTRATIVE SITE PLAN REVIEW FEE (RESIDENTIAL)

For every application for an administrative review of site plans for residential use where such site plans do not require approval at a public hearing, there shall be paid to the Department of Planning and Zoning, for the processing of each and every application, a minimum fee of \$1,425.00.

Z704 The exact amount of each and every administrative site plan review fee is established by the addition of the following fees: \$712.50 per 10 acres or portion thereof, and \$356.25 per 15 units or
Z705 portion thereof

Z706 Submittal of the first revised plan will be assessed by the Department of Planning and Zoning at no additional cost to the applicant. Subsequent revisions will be processed at an additional charge of \$855.00 per revised plan and shall be paid in total at the time of submittal to the Department of Planning and Zoning.

Z707 R. ADMINISTRATIVE SITE PLAN REVIEW FEE (COMMERCIAL)

For every application for an administrative review of site plans for commercial use where such site plans do not require approval at a public hearing, there shall be paid to the Department of Planning and Zoning, for the processing of each and every application, a minimum of \$2,137.50.

Z708 The exact amount of each and every administrative site plan review fee is established by the addition of the following fees: \$855.00 per 10 acres or portion thereof, and \$285.00 per 5,000 sq. ft. or
Z709 portion thereof.

Z711 Submittal of the first revised plan will be processed by the Department of Planning and Zoning at no additional cost to the applicant. Subsequent revisions will be processed at an additional charge of \$855.00 per revised plan and shall be paid in total at the time of submittal to the Department of Planning and Zoning.

S. ADMINISTRATIVE LAKE PLAN REVIEW FEE

Z800 For every application for an administrative review of lake plans where such lake plans do not require approval at a public hearing, there shall be paid to the Department of Planning and Zoning, for
Z801 the processing of each and every application, a minimum of \$1,068.75. The exact amount of each and every administrative lake plan review fee is established by the addition of the following fee: \$299.25 per 10 acres or portion thereof of water surface area.

Z711 Submittal of the first revised plan will be assessed by the Department of Planning and Zoning at no additional cost to the applicant. Subsequent revisions will be processed at an additional charge of \$855.00 per revised plan and shall be paid in total at the time of submittal to the Department of Planning and Zoning.

Z947 T. CLASS I PERMITS

For every review of a Class I permit application, there shall be paid at time of application to the Department of Planning and Zoning, a fee of \$142.50.

Department of Planning and Zoning Fee Schedule

Z948 U. CLASS IV PERMITS

For every review of a Class IV permit application where a zoning hearing is not required, there shall be paid at the time of application to the Department of Planning and Zoning, a fee of \$142.50.

Z911 V. OTHER PROCESSING AND RESEARCH FEES

1) For each and every request for a Hearings Pre-Evaluation, there shall be paid to the Department of Planning and Zoning a fee of \$50.00

ZR53 2) In addition, the Department of Planning and Zoning may charge processing costs equal to actual staff time and related costs for matters which involve research, including review of legal agreements, distribution of zoning agenda listings to subscribing members of the public, letters reflecting preliminary assessment of a potential zoning related matter or matters involving platting inquiries, release of Unity of Title (U.T.) trending determinations, research of impact fees per folio number, etc. A minimum fee of \$106.88 shall be charged. All Plat applications will be charged a total of \$350.00 per application. Subsequent submittals will be processed at a fee of \$200.00.

3) For each and every Pre-Purchase Inspection Service Request, the Department of Planning and Zoning shall be paid a fee of \$300.00 for residential properties and \$350.00 for commercial properties.

Z992 W. GOVERNMENTAL FACILITIES

For each and every application for a public hearing for a governmental facility, there shall be paid to the Department of Planning and Zoning, for the processing of each and every application, a fee of \$1,781.25.

Z994 X. SHORELINE APPLICATIONS

For each and every application for Shoreline Review there shall be paid to the Department of Planning and Zoning, for costs associated with processing said application, a fee as follows: Fee

1. DETERMINATIONS (Developmental Impact Committee Executive Council)

MP61	a. NEED FOR COMPLIANCE		250.00
MP62	b. EXEMPTIONS		584.25
MP63	c. VESTED RIGHTS		584.25
MP30	2. APPLICATION FEE (BASIC) (Applies to all development actions requiring Committee review)	(Plat review subject to application fee only)	1,068.75

Fee

MP42 3. PLAN REVIEW (BASIC) (Site plan review) 1,425.00

4. MARINE CONSTRUCTION

MP65	Marinas - 50 Boat Slips & over =	712.50
MP66	All Other Construction =	228.00

Y. SUBSTANTIAL COMPLIANCE DETERMINATION

Z995 For each and every application for a substantial compliance determination, there shall be paid to the Department of Planning and Zoning for the review of every application, a fee of \$1,425.00 for residential and \$2,137.50 for commercial/industrial/office uses. First plan revision will be processed at no charge, subsequent plan revisions will be assessed a fee of \$855.00 each.
Z965
Z510

Z921 Z. ZONING KIT AND SUBSCRIPTIONS

For each and every subscription request for Zoning agendas, there shall be paid to the Department of Planning and Zoning, an annual subscription fee of \$213.75.

Z931 AA. ZONING LOGBOOK AND AGENDA SUBSCRIPTION

For each and every subscription request for copies of the zoning logbook and each agenda of monthly hearing files, there shall be paid to the Department of Planning and Zoning, an annual subscription fee of \$106.88.

Department of Planning and Zoning Fee Schedule

Z996 BB. HEARING TAPES

For the preparation of a copy of a hearing tape upon request, for each and every tape requested, there shall be paid to the Department of Planning and Zoning, a fee of \$35.63.

CC. RE-ADVERTISEMENT AND RE-NOTIFICATION FOR DEFERRED OR REMANDED HEARING APPLICATIONS

ZR67 For each and every zoning hearing application that is deferred or remanded to a date not yet advertised, there shall be paid to the Department of Planning and Zoning, a fee based on the actual cost of re-advertisement and re-notification, plus \$62.50 for applications involving Community Zoning Appeals Board. A \$312.50 fee shall be charged for Board of County Commissioners deferral, payable to the Board of County Commissioners.

VI. ZONING INSPECTION FEE

A. INSPECTION FEE

Z068 All inspections required as a result of a building permit will be assessed this fee. In addition, this zoning inspection fee will be tied to all completion holds. When extra inspection trips are necessary
ZR60 due to 1) wrong address being given on call for inspection, 2) required corrections not being made or completed at time specified, or 3) failure to provide access to the property use, a fee of \$84.44 for the inspector to return shall be charged.

B. INSPECTIONS REQUIRING OVERTIME

Z069 Charges for zoning inspections, which are requested in advance and which require that an employee work overtime, will be at a rate of \$93.75 per hour and in accordance with applicable employee
ZR62 contracted bargaining agreements.

VII. GENERAL INFORMATION

A. CONCURRENCY REVIEW

CN01 1. A fee of six (6%) percent (for concurrency review) of the total permit fee, CU or zoning application fee, will be added to original fees where a concurrency review was performed.
CN02

2. Concurrency Information Letters: Fees for Concurrency Information Letters shall be as follows to cover the cost of preparing informational letters.

MP27 Minor Letter: \$100.00
These require routine to moderate research and analysis, standard preparation and processing time.

MP57 Major Letter: \$200.00
These require extraordinary research and analysis, and/or special preparation and handling.

B. IMPACT FEES

Impact Fees are assessed on certain building permits, including re-application on expired permits (contact the Impact Fee Section for details on these fees).

C. PREPARATION OF CERTIFIED RECORDS FOR COURT APPEALS

For the purpose of court appeals, wherein the Director of the Department of Planning and Zoning is requested to make available the records upon which the decision of the Board of County Commissioners or Community Zoning Appeals Board or other administrative board is based, there shall be paid to the Department of Planning and Zoning, for the preparation of a certified copy of the records, a fee of \$391.88, to be paid at the time of request.

Department of Planning and Zoning Fee Schedule

D. COPIES OF DEPARTMENTAL RECORDS, VERIFICATION OF DOCUMENTS AND RESEARCH OF PLANS (EXPANDED)

Fee

ZR49	Plan reproduction from microfilm or document larger than 14 inches by 8 1/2 inches per sheet	7.13
X047	Reproduced records - per page (also refer to pg. 13, other Processing Fee)	0.19
X030	Double sided copy - per page	0.25
	Certified copies in addition to photocopy - per page	1.25
	Official copy of CU record	12.50
	Verification of legal description on documents prepared for recordation	12.50
RS23	Digital Maps, scanned images	35.63
	Special map requests	75.00
X006	Notary public service - per document	1.25
ZR52	Research and ordering plans	7.13

E. FEES BASED ON ESTIMATED COST - DOCUMENTATION REQUIREMENTS

The Department may require the permit applicant to submit appropriate documentation as proof of estimated cost of construction used to compute permit fees.

F. PUBLICATIONS

The Department gathers and analyzes data about land use and population patterns within Miami-Dade County. These publications are available as priced, plus postage and handling if mailed in the United States. The department also publishes other documents related to the maintenance and update of the CDMP, including the continuing amendment cycles, and other specialized reports and documents.

G. LATE PAYMENT CHARGES ON UNPAID AMOUNTS DUE TO THE DEPARTMENT OF PLANNING AND ZONING

Billings covered by contracts, agreements or other formal arrangements for services rendered by the department are due within 45 days from the date of the invoice. Full payment of the account balance must be received by the past due date set forth on the invoice. A monthly late payment charge will be assessed on any outstanding balance at the rate of 10% thereafter, until payment is received in full.

H. SURCHARGE

SUR 8 A zoning fee surcharge of eight percent was implemented for seven years beginning on October 1, 2003.
SUR 1

I. IMAGES – ON LINE

The department provides imaged records on line relating to land use files and are available using the established fees.

J. Conversion of Documents to Images (scanning) – Charge per Page

Fee

X060	i. Letter Size	0.25
X061	ii. Legal Size	0.29
X063	iii. E-Size	0.99

K. REFUNDS

A full refund less \$50.00 of the application/permit fee paid shall be granted to a customer who requests a refund provided:

- 1) that the refund amount is greater than \$50.00; and
- 2) that the department receives a written request from the customer prior to the application/permit expiration date; and
- 3) that the customer submits with such request the applicant's validated copy of such application/permit

Department of Planning and Zoning Fee Schedule

VIII. DEVELOPMENT IMPACT COMMITTEE LARGE SCALE APPLICATIONS

MP29 For each and every application for a Developmental Impact Committee Large Scale Application there shall be paid to the Department of Planning and Zoning, for costs associated with said application, a fee as follows:

A. BASIC FEE: \$8,122.50 Site Plan Review, District Boundary Change, DRI Development Order, or DRI Substantial Deviation Determination, Rapid Transit and Essentially built-out DRI.

MP292 \$12,397.50 Applications requesting two or more of the above

ZE001 B. SIZE OF APPLICATION: Applied to all Applications (total net acreage):

0-19.9 \$1,067.33	20-29.9 \$1,833.98	30-39.9 \$2,697.53	40-49.9 \$3,464.18
50-69.9 \$4,230.83	70-89.9 \$5,110.05	90-119.9 \$5,883.83	120-159.9 \$6,733.13
160-239.9 \$7,506.90	\$8,273.55	240-319.9 \$9,144.23	320-399.9 \$9,910.88
480-559.9 \$10,784.40	\$11,541.08	560-over	

ZE002 C. NUMBER OF UNITS: Applied to all Residential Site Plan Reviews (including mobile homes):

0-274 \$1,067.33	275-299 \$1,638.75	300-324 \$2,215.88	325-349 \$2,795.85
350-399 \$3,374.40	400-449 \$3,952.95	450-524 \$4,524.38	525-599 \$5,151.38
600-699 \$5,690.03	700-799 \$6,260.03	800-949 \$6,838.58	950-1099 \$7,425.68
1100-1399 \$7,995.68	1400-over \$8,567.10		

ZE003 D. FLOOR SPACE: Applied to Office, Business, Industrial, et al., Site Plan Reviews:

0-124,999 \$1,067.33	125,000-149,999 \$1,923.75	150,000-174,999 \$2,894.18
175,000-199,999 \$3,838.95	200,000-224,999 \$4,719.60	225,000-249,999 \$5,672.93

Department of Planning and Zoning Fee Schedule

250,000-274,999 \$6,553.58	275,000-299,999 \$7,506.90	300,000-349,999 \$8,468.78
350,000-399,999 \$9,340.88	400,000-449,999 \$10,311.30	450,000-499,999 \$11,174.85
500,000-599,999 \$12,129.60	600,000-over \$13,090.05	

- ZE010** E. ADDITIONAL SITE PLANS: \$2,307.08/each
- ZE020** F. ADDITIONAL DISTRICT BOUNDARY CHANGES: \$1,148.55/each

ZE030 G. SUPPLEMENTAL Development of Regional Impact Fee
\$11,541.08 - Development Order

H. CHARTER SCHOOLS

- Z727** Basic fee \$2,137.50
- Z728** Size of property (\$855.00 – per 10 acres or portion thereof)
- Z729** Size of buildings (\$285.00 per 5,000 sq. ft. or portion thereof)
- Z731** \$855.00 per revised plan submitted (first revision is processed at no charge)

I. NOTICES

Additional cost of mailing notices will be assessed on all Essential Built-Out DRI and Charter School applications.

IX. VESTED RIGHTS/TAKINGS FEE

For each and every application for a vested rights determination, there shall be paid to the Department of Planning and Zoning, for costs associated with the application, a fee as follows:

MP31 A. SECTION 2-114.1 - MIAMI-DADE COUNTY CODE - VESTED RIGHTS/TAKING-BASE FEE

\$1,809.75 (whichever is less)
\$1,809.75 (flat fee) for all other uses

SECTION 2-114.2, 2-114.3, or 2-114.4 - MIAMI-DADE COUNTY CODE - VESTED RIGHTS

\$477.38 Permit
\$1,081.58 Resolution - Board of County Commissioners' Action

B. VESTED RIGHTS/TAKINGS -- SIZE OF APPLICATION

MP75 SECTION 2-114.2 - MIAMI-DADE COUNTY CODE - SUPPLEMENTAL VESTED RIGHTS

0-10 ACRES \$1,457.78	10.1-50.0 ACRES \$2,351.25	50.1 ACRES – OVER \$3,173.48
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MP76 SECTION 2-114.3 - MIAMI-DADE COUNTY - REAFFIRMATION OF VESTED RIGHTS STATUS

0-10 ACRES \$931.95	10.1-50.0 ACRES \$1,762.73	50.1 ACRES-over \$2,640.53
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Department of Planning and Zoning Fee Schedule

MP77	SECTION 2-114.4 - MIAMI-DADE COUNTY CODE - MODIFICATION TO A PREVIOUSLY VESTED PLAN		
	0-10 ACRES \$931.95	10.1-50.0 ACRES \$1,762.73	50.1 ACRES – OVER \$2,640.53

X. EXTENSION OF CAPACITY RESERVATION

MP34 For each and every application for an extension of capacity reservation, there shall be paid to the Department of Planning and Zoning a fee as follows:

SECTION 33G-6 MIAMI-DADE COUNTY CODE
\$1,809.75

XI. APPEALS OF PLAT COMMITTEE DECISIONS

MP35 For each and every application for an appeal of a Plat Committee Decision [Section 28-7(F)], there shall be paid to the Department of Planning and Zoning a fee as follows:

\$884.93 flat fee

XII. APPEALS OF IMPACT FEES ASSESSMENTS: SECTION 33E-15 (ROAD); SECTION 33I-13 (POLICE); SECTION 33J-14 (FIRE); SECTION 33H-16 (PARK) AND SECTION 33K-14 (SCHOOL-MIAMI-DADE COUNTY CODE)

MP33 For each and every application for an appeal of the above listed impact fee assessments, there shall be paid to the Department of Planning and Zoning a fee as follows:

\$203.78 per single family residential unit up to four units

Over four units \$884.93 flat fee

\$884.93 flat fee all other applications

XIII. ADJUSTMENT OF LANDSCAPING REQUIREMENTS APPLICATION FEES

MP32 For every application for an adjustment of landscaping requirements, there shall be paid to the Department of Planning and Zoning, for the processing of each and every application, a fee as follows:

\$203.78 per single family residential unit up to four units

Over four units \$884.93 flat fee

\$884.93 flat fee all other applications

XIV. LAKES AND LANDFILLS

C012 Original permit (CU) fee for new Lakes and/or Landfills \$494.48

C029 Renewal of permits (CU) for Lakes and/or Landfills including Rockmining Uses located either outside or inside the boundaries of the Rockmining Overly Zoning Area (ROZA) \$250.80

CO42 Original permit (CU) fee for new Lakes and/or Landfills including Rockmining Uses located inside the boundaries of the Rockmining Overly Zoning Area (ROZA) \$1,562.50.

CO43 The exact amount of each and every administrative lake and landfill plan review fee inside the ROZA is established by the addition of a fee equivalent to the cost of each advertisement in both a newspaper of general circulation with over 100,000 subscribers and in an additional 5 newspapers, as required pursuant to the ROZA regulations within the Code of Miami Dade County.

Department of Planning and Zoning Fee Schedule

XV. ZONING PLANS PROCESSING FEE

A. INITIAL LANDSCAPE FEE

- A246** Residential (single and duplex) \$50.00
- A247** Commercial/Industrial and all multi-family residential and all others \$93.75

B. RE-WORK FEES

- A046** A fee of \$106.88 may be charged for failure to make required correction previously indicated.

C. REVISED LANDSCAPING PLANS FEE

- A067** Landscaping plan revision after permit is issued shall be subject to a fee of \$118.75.

XVI. ZONING REVIEW FEE ASSOCIATED WITH BUILDING PROCESS

A zoning review fee related to the permitting process such as the zoning plans processing review and the zoning inspection process is being split from the building fee, therefore creating a zoning review fee.

1. REVISED PLANS FEE

A. REVISED PLANS PROCESSING FEE

1. Major plan revision after permit is issued shall be subject to a fee of 50% of the original permit fee up to a maximum of \$1,425.00.

- ZR55** 2. Minor plan revisions shall be subject to a fee at the rate of \$1.43 per minute of time for each review that takes longer than 5 minutes.

B. "UP-FRONT" PROCESSING FEE

- ZR01** When the building permit application is received for the construction of a new Single Family Residence or Duplex, the applicant shall pay an "up-front" processing fee equal to \$0.04 for each square foot or fractional part thereof, or \$0.013 per dollar in estimated value or fractional part when square footage does not apply. When a building permit application is received for a commercial project, the applicant shall pay an "up-front" processing fee equal to \$1.43 per 100 square foot or fractional part or \$0.23 for each \$114.00 of estimated value or fractional part thereof. This processing fee is not refundable, but shall be credited toward the final building permit fee.

C. MINIMUM FEE FOR BUILDING PERMIT

The minimum fee for all building permits is applicable to all items in this section except as otherwise specified.

Fee

50.00

(With the exception of fees associated with windows, trusses, doors, skylights and all required shop drawings, which are already included in the basic building permit fee, this minimum fee does not apply to add-on building permit fees issued as supplementary to current outstanding permits for the same job.)

D. NEW BUILDING OR ADDITIONS

- | | | |
|-------------|--|-------|
| ZR05 | New construction Single Family and Duplex above 1000 sq. ft. - Group I per sq. ft. | 0.085 |
| ZR06 | Prefabricated utility shed with slab (max 100 sq. ft. of floor area). | 11.40 |
| | Single Family and Duplex (Group I) - Attached Structures | |
| ZR07 | 0 to 100 sq. ft. in floor area. | 15.68 |
| ZR08 | 101 to 300 sq. ft. in floor area. | 25.65 |
| ZR09 | 301 to 500 sq. ft. in floor area. | 37.05 |

Department of Planning and Zoning Fee Schedule

	Fee
ZR10 501 to 1000 sq. ft. in floor area.	66.98
ZR11 Above 1000 sq. ft. per sq. ft. Single Family and Duplex (Group I) Detached Structures	0.85
ZR07 0 to 100 sq. ft. in floor area.	15.68
ZR08 101 to 300 sq. ft. in floor area.	25.65
ZR09 301 to 500 sq. ft. in floor area.	37.05
ZR10 501 to 1000 sq. ft. in floor area.	66.98
ZR11 Above 1000 sq. ft. per sq. ft.	0.085
ZR17 Alterations or repairs to Single Family Residence or Duplex (Group I) per \$1.00 of estimated cost or fractional part	0.014
Minimum Fee	50.00
Maximum Fee	179.55
ZR18 Repairs due to fire damage per \$1.00 of estimated cost or fractional part (copy of construction contract required)	0.014
Minimum Fee	66.98
Maximum Fee	179.55
ZR19 Storage & Industrial Use of Group E & F occupancies 100 sq. ft. or fractional part of floor area.	2.78
ZR20 Shade Houses per 100 sq. ft. or fractional of floor area.	0.10
ZR63 Agricultural buildings where site is 5 acres or more	68.75
ZR64 Agricultural buildings where site is less than 5 acres	81.25
ZR22 Mobile Homes additions - each 100 sq. ft. or fractional part of floor area.	2.08
Minimum Fee	50.00
ZR12 Tents	50.00
0 - 5000 sq. ft.	
ZR13 over 5000 sq. ft.	50.00
ZR23 All others, including temporary building for construction, per 100 sq. ft. or fractional part of floor area.	3.14
Minimum	66.98
ZR24 FOR STRUCTURES OF UNUSUAL SIZE OR NATURE AS ARENAS, STADIUMS AND WATER AND SEWER PLANTS THE FEE SHALL BE BASED ON ½ OF 1% OF THE ESTIMATED CONSTRUCTION COST	0.006
5. NEW CONSTRUCTION OTHER THAN AS SPECIFIED HEREIN: (WATER TOWERS, PYLONS, BULK STORAGE-TANK FOUNDATIONS, UNUSUAL LIMITED-USE BUILDINGS, MARQUEES, AND SIMILAR CONSTRUCTION)	
ZR68 For each \$1,000 of estimated cost or fractional part	2.56
Minimum Fee	50.00
6. ALTERATIONS AND REPAIRS TO BUILDING, PAVING/RESTRIPING/RESURFACING/SEAL COATING, AND OTHER STRUCTURES (EXCEPT GROUP I)	

Department of Planning and Zoning Fee Schedule

	Fee
ZR26 For each \$100 of estimated cost or fractional part Minimum Fee	0.38 59.85
ZR27 7. MOVING BUILDINGS FOR OTHER STRUCTURES For each 100 sq. ft. or fractional part thereof (does not include cost of new foundation or repairs to buildings or structure)	2.85
ZR28 8. SLABS 9. FENCES AND/OR WALLS Chainlink	50.00
ZR29 0 - 500 linear ft.	50.00
ZR30 501 - 1000 linear ft. each additional linear ft. over 1000 Minimum Fee	50.00 0.14 50.00
ZR31 Wood each linear ft. Minimum Fee	0.20 50.00
ZR32 Concrete each linear ft. 10. SWIMMING POOLS, SPAS, AND HOT TUBS	0.34
ZR33 Installation of Swimming Pool/Spa	50.00
ZR34 Repair of Swimming Pool/Spa	50.00
ZR35 11. TEMPORARY PLATFORMS AND TEMPORARY BLEACHERS TO BE USED FOR PUBLIC ASSEMBLY For each 100 sq. ft. or fractional part of platform area Minimum Fee	1.56 50.00
ZR36 For each 100 linear feet or fractional part of seats 12. SCREEN ENCLOSURES, CANOPIES & AWNINGS	1.29
ZR37 (a) Screen enclosures Each 100 sq. ft. or fraction thereof	2.64
ZR38 (b) Free standing canopies For each \$1,000 of estimated cost or fractional part Minimum Fee	2.43 50.00
ZR39 (c) Awnings and Canopies Horizontal projection per sq. ft. area covered Minimum Fee	0.03 50.00
ZR40 13. SIGN PERMIT FEES (a) Minimum sign fee	50.00
ZR41 b) Signs-non-illuminated painted wall signs and balloons (per sq. ft.) - illuminated signs under electrical permits	0.38
c) Mural Signs - original mural sign permit application Subsequent plan revisions	350.00 175.00
ZR42 Annual Renewal of Class C signs on or before October 1st of each year (per sign)	50.00

Department of Planning and Zoning Fee Schedule

	Fee
ZR14 Quarterly Renewal of Class A sign (temporary)	106.25
ZR15 Annual Renewal of Class C signs (billboards)	50.00
ZR43 14. TIE DOWN Tie Down Inspection Fee: (This does not include installation of meter mounts and service equipment. Separate mechanical, plumbing and related electrical permits are required)	50.00
ZR44 15. SATELLITE DISH All trades each	50.00
16. ORNAMENTAL IRON	
ZR45 Per sq. ft. coverage Minimum Fee	0.014 50.00
17. SIGNS & ARCHITECTURAL FEATURES (INDOOR NEONS)	
ZR46 Per sq. ft. of sign Minimum fee	0.38 50.00
ZR47 Repairs and re-connection each	50.00
ZR48 Neon strips each 5 ft. or fractional part Minimum fee	0.71 50.00

18. All permits for renewals shall be assessed a fee of 50% of the original permit fee (except where the minimum permit fee was assessed) if permit is renewed within 6 months or less. If permit is renewed after 6 months, then 100% of the original fee shall be assessed. In no event shall the fee be less than the minimum fee listed for that permit.

XVII. CHAPTER 163 DEVELOPMENT AGREEMENTS

MP78 A one time fee of \$1,250 shall be paid to the Department of Planning and Zoning for the initial review of a Chapter 163 Development Agreement.

XVIII. FEE FOR MONITORING DEVELOPMENT OF REGIONAL IMPACT AND OTHER MAJOR PROJECTS

- ZE060** A. \$250 for every status report submittal
ZE065 B. A \$150 additional fee shall be paid to the Department for all late submittals of status reports.

XIX. HISTORIC PRESERVATION FEES

	Fee
A . Certificate of Appropriateness (COA) Administrative	No Charge
HP10 Demolition COA	500.00
HP15 New Construction	500.00
HP20 Relocation	100.00
HP25 All other HP Board COA's	150.00
HP30 After the Fact Administrative	50.00
HP35 After the Fact HPB Review	300.00
HP40 B. Certificate to Dig (CTD) Approval Letter	250.00
HP50 C. Ad-valorem Tax Abatement Application	250.00
D. Cultural Resource Assessment (CRA)	

Department of Planning and Zoning Fee Schedule

HP60	Initial Review	No Charge
HP65	Site Visit Required (CRA requests from the Office of Community and Economic Development are exempt from this fee)	100.00
E. Designation Requests		
HP70	Individual Sites	100.00
HP75	Districts (per platted lot) or \$600, whichever is less	10.00 per lot (or up to 600.00)
F. Deferment or Continuance of Hearing		
HP80	After the Legal Ad has been placed	150.00

Fee Schedule Comparison Chart

Planning and Zoning Services	Previous Fee	New Fee
Unusual Uses, special permits, business, & industrail use variances		
-All uses except the following:	\$251.94	\$314.93
Church	\$108.30	\$135.38
Airports, racetracks, stadiums	502.74	628.43
Cabaret, nightclub, liquor package store	\$332.88	\$416.10
Rock quarries,lake excavation and/or thereof	\$395.58	\$494.48
Circus or carnival (per week) and special events	\$210.90	\$263.63
Open lot uses	\$150.48	\$188.10
Temporary CU "Upfront" Fee	\$28.50	\$35.63
CU Re-Inspection Fee	\$67.55	\$84.44
Alcohol Fees and Renewal Fees:		
Bar/Lounge	\$62.70	\$78.38
Restaurant with liquor and/or beer and wine	\$62.70	\$78.38
Outdoor patio	\$182.40	\$228.00
Public Hearing, Administrative Modifircations and Reformation Fees:		
Zone change to AU/GU/RU1/RU2/RU1Z/EU/RU-1M(a)/RU-1M(b)	\$1,140.00	\$1,425.00
Use Variance - AU/GU/RU-1/RU-2/EU	\$1,710.00	\$2,137.50
Non-Use Variance or Administrative Site Developmental Option (Residential)	\$570.00	\$712.50
Non-Use Variance or Administrative Site Developmental Option (Commercial)	\$1,140.00	\$1,425.00
Special Exception	\$2,280.00	\$2,850.00
Unusual use	\$2,280.00	\$2,850.00
Site Plan Review Residential:	\$1,140.00	\$1,425.00
Size of Property	\$570.00 per 10 acres	\$712.50 per 10 acres
Number of units	\$285.00 per 15 units	\$356.25 per 15 units
Site Plan Review Commerical:	\$1,710.00	\$2,137.50
Size of Property	\$684.00 per 10 acres	\$855.00 per 10 acres
Number of buildings	\$228.00 per 5,000 sq.ft	\$285.00 per 5,000 sq. ft
Non-Use Variance Signs	\$1,710.00	\$2,137.50
Administrative Adjustment Application Fees, any variance involving:		
carport [max 200 s.q. ft]	\$313.50	\$391.88
utility shed [max 100 s.q. ft]	\$313.50	\$391.88
fence/wall	\$313.50	\$391.88
storage of boat/RV	\$313.50	\$391.88
setback adjustments for attached/deattached structure(s)	\$598.50	\$748.13
Any administrative adjustment involving swimming pool, tennis court	\$741.00	\$926.25

Any administrative adjustment for the construction of a new residence	\$963.30	\$1,204.13
Other Processing, research, ALF verification, special event permit fee.	\$85.00	\$106.88
Zoning Inspection Fee	\$67.55	\$84.44
Inspections requiring overtime	\$75.00	\$93.75
Zoning fee surcharge of 8 percent beginning on October 1, 2003 implemented for	five years	seven years
Zoning Plans Processing Fee - Initial Landscape Fee		
Residential (single & duplex)	\$35.00	\$50.00
Commercial/Industrial & all multi-family residential and all others	\$75.00	\$93.75
Re-work Fees	\$85.50	\$106.88
Revised Landscaping Plans Fee	\$95.00	\$118.75
Zoning Review Fee Associated with Building Process:		
New Construction single-family & duplex above 1,000 sq. ft	0.068	0.085
Prefabricated utility shed with slab [max 100 sq. ft. of floor area]	\$9.12	\$11.40
Alterations or repairs to Single Family or duplex per \$1.00 of estimated cost	Min. 29.64- Max 143.64	Min. 50.00 - Max 179.55
Tents [0-5,000 sq. ft]	\$12.64	\$50.00
Tents [0-5,000 sq. ft]	\$50.00	\$50.00
Wood [each linear ft]	\$0.16	\$0.20
Chainlink fence 0-500 linear ft	\$14.82	\$50.00
Chainlink fence 501 - 1000 linear ft	\$19.38	\$50.00
Each additional linear ft. over 1000	\$0.011	\$0.14
Concrete each linear ft.	\$0.27	\$0.34
Swimming pool, spas, and hot tubs	\$28.50	\$50.00
Sign Permit [Minimum fee]	\$20.52	\$50.00
Sign - Indoor neon [per sq. ft. of sign	\$0.30	\$0.38
Awning & Canopies [Minimum fee]	\$12.54	\$50.00
Awning [horizontal projection per sq. ft area covered]	0.023	0.03
Free standing Canopies [Minimum fee]	\$14.82	\$50.00
Free standing Canopies [for each \$1,000 of estimated cost or fractional cost	\$1.94	\$2.43
Ornamental Iron [minimum fee]	\$12.54	\$50.00
Ornamental Iron [per sq. ft coverage]	\$0.011	\$0.014

TAB 7



Planning & Zoning Department

David G. Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David G. Hennis, AICP, Community Development Director

Date: February 9, 2009

Re: **Certificate of Re-Occupancy Program**

This is a program to require a certificate of re-occupancy for any existing residential dwelling within the town, prior to conveyance or transfer of title. The program does not apply to dwellings that have never been occupied. The certificate of re-occupancy shall provide that the town has inspected the dwelling and such dwelling complies with the residential occupancy regulations of the zoning code. The program will also determine if the dwelling requires correction of violations that immediately threaten the life or safety of the residents. In all single-family zoning districts, a certificate of re-occupancy shall not be issued for more than one dwelling or residence; in two-family districts, a certificate shall not be issued for three or more dwellings or residences.

As written, the program prohibits utilizing the inspection to cite the owner for violations outside those relevant to the issuance of the certificate. The certificate does not constitute any representation as to the condition of the dwelling or other structures on the premises for which it is issued. The program was developed following parameters used by the county and other municipalities in the area and includes an inspection fee ranging from \$50 up to \$200, should the applicant need the certificate and inspection within 3 days of a complete request.

Other communities in the area that are conducting similar programs are Biscayne Park, Hialeah, Panama City, El Portal, North Miami, Virginia Gardens, Miami Shores, and Miami-Dade County.

RECOMMENDATION

Approval of the ordinance

ORDINANCE NO. 09-__

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATING TO CERTIFICATES OF RE-OCCUPANCY FOR THE SALE OF HOMES THAT HAVE ALREADY BEEN OCCUPIED; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) wishes to ensure that existing homes being sold in the Town comply with the occupancy requirements of the Town Code of Ordinances (the “Town Code”); and

WHEREAS, the Town also wishes to ensure that homes that are being re-sold in the Town comply with the most basic safety requirements of the Town Code; and

WHEREAS, the Town Council desires to require that a certificate of re-occupancy be obtained for homes that are being re-sold within the Town in order to certify compliance with the Town’s occupancy requirements and basic safety requirements; and

WHEREAS, the Town finds that this Ordinance will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Findings. The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Amendment to the Town Code. The Town Council of the Town of Cutler Bay hereby amends the Town Code of Ordinances as follows¹:

(1) Title. This section shall be known as the “Town of Cutler Bay Certificate of Re-occupancy Ordinance.”

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

(2) It shall be unlawful for any person or corporation to buy, sell, convey or otherwise transfer title to any residential dwelling without first obtaining a re-occupancy certificate issued by the Town Planning and Zoning Director or designee. The certificate of re-occupancy, if issued, shall state that the Town has inspected the dwelling and determined that the dwelling complies with the residential occupancy regulations of the zoning district on the property wherein the dwelling unit is located. In all one-family dwelling residences zoning districts, a certificate of re-occupancy shall not be issued for the presence or existence of more than one (1) dwelling or residence. In all two-family dwelling residences zoning districts, a certificate of re-occupancy will not be issued for the presence or existence of three (3) or more dwellings or residences. The Town shall also determine if the dwelling requires the correction of violations that immediately threaten the life or safety of the residents. The provisions of this section shall not apply to the sale, conveyance or transfer of title of a new dwelling or residence that has never been occupied and that represents the first transaction since the issuance of the original certificate of occupancy.

(3) It shall be unlawful for any person to sell, convey or transfer title to any residential dwelling unit owned by such person without first disclosing by written notice to the buyer, grantee or transferee the fact that a certificate of re-occupancy is required by this section. It is required that a seller, grantor or transferor deliver to the buyer, grantee or transferee a properly signed and approved Town certificate of re-occupancy prior to the sale, conveyance or transfer of title.

(4) A seller, property owner or designated agent shall request a certificate of re-occupancy by submitting a completed application together with payment of an inspection fee.

(a) Upon payment of a fifty dollar (\$50.00) inspection fee, a Town inspector shall inspect the dwelling within thirty (30) days and, if such dwelling is found to be in compliance with the residential occupancy regulations of the applicable zoning district and does not require the correction of violations that immediately threaten the life or safety of the residents, the Town will issue a certificate of re-occupancy.

(b) Upon payment of a one hundred dollar (\$100.00) inspection fee, a Town inspector shall inspect the dwelling within ten (10) days and, if such dwelling is found to be in compliance with the residential occupancy regulations of the applicable zoning district and does not require the correction of violations that immediately threaten the life or safety of the residents, the Town will issue a certificate of re-occupancy.

(c) Upon payment of a two hundred dollar (\$200.00) inspection fee, a Town inspector shall inspect the dwelling within three (3) days and, if such dwelling is found to be in compliance with the residential occupancy regulations of the applicable zoning district and does not require the correction of violations that

immediately threaten the life or safety of the residents, the Town will issue a certificate of re-occupancy.

A twenty-five dollars (\$25.00) fee shall be paid for each re-inspection performed by the Town. The re-occupancy certificate shall be effective for six (6) months and may be extended only one (1) time for additional six (6) months upon payment of a ten dollar (\$10.00) fee. Upon a real estate closing or title transfer the certificate of re-occupancy shall be recorded in the Miami-Dade County public records with the deed or other conveyance of title.

(5) If a dwelling violates the residential occupancy regulations of the applicable zoning district or the dwelling contains violations that immediately threaten the life or safety of the residents, the Town shall identify those issues. Until there is compliance or correction of the violation of the residential occupancy regulations and violations that immediately threaten the life or safety of the residents, confirmed upon re-inspection, the certificate of re-occupancy will be withheld.

(6) Under circumstances where remedial action may reasonably extend beyond the date of the sale, conveyance or transfer to complete, the Town shall issue conditional certificates of re-occupancy with a compliance date set forth in the certificate. If the proposed remedial action includes correction of violations that immediately threaten the life or safety of the residents as listed in the certificate, the Town shall identify such violations on the conditional certificate or occupancy. Upon compliance, the Town shall issue a re-occupancy certificate.

(7) Information gained or conditions observed in the course of any inspection conducted pursuant to the authority of this section, shall not be utilized by the code inspectors as the basis for issuing new citations or notices of violation other than violations of the residential occupancy regulations permitted by the applicable zoning district or violations that immediately threaten the life or safety of the residents. This shall not preclude other enforcement actions brought upon the basis of information gained or violations observed by other lawful means.

(8) The certificate of re-occupancy does not constitute any representation or warranty as to the condition or any aspect of such condition of the dwelling or other structures on the premises for which the certificate is issued. The inspection made in connection with a certificate of re-occupancy is neither a structural, electrical, plumbing nor mechanical inspection and does not represent that the premises conform to the provision of the code, including the building and technical codes adopted by the Town. Interested persons are advised and encouraged to obtain an inspection of the premises in order to determine the condition thereof.

(9) Payment of liens. No re-occupancy certificate shall be issued for any property until the owner of the property shall satisfy any and all Town liens against the property.

(10) A certificate of re-occupancy shall be required in connection with all applicable real estate closings and other applicable transactions that occur on or after June 1, 2009.

Section 3. Schedule of violations and civil penalties amended. That the Town Code of the Town of Cutler Bay is hereby amended by amending Ordinance 07-09, Section 10 "Schedule of civil penalties", to read as follows:

Sec. 10. Schedule of civil penalties.

TABLE INSET:

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
***	***	***
<u>Ordinance</u>	<u>Violation of Certificate of Re-occupancy Ordinance</u>	<u>First violation \$250; Second Violation \$500; Third or subsequent violation \$500.</u>
***	****	***

Section 4. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Inclusion in the Code. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____ day of _____, 2009.

PASSED and ADOPTED on second reading this ____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 8



MEMORANDUM

To: Honorable Mayor and Councilmembers

From: Steven J. Alexander, Town Manager

Date: January 12, 2009

Re: **An Ordinance amending the fee schedule for solid waste franchise fees and providing for a dumpster registration fee and providing for an exemption for non-profit organizations.**

REQUEST

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REVISING FEES FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION FRANCHISEES; PROVIDING FOR A DUMPSTER REGISTRATION FEE PAID BY THE FRANCHISEE FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION ACTIVITIES; PROVIDING FOR A DEFINITION OF, AND AN EXEMPTION FOR, NON-PROFIT ORGANIZATIONS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

In January 2008, the Town Council enacted ordinance 08-01, providing for registration with the Town by private haulers of solid waste doing business within the Town, as defined. Ordinance 08-01 contains no provision to exempt any organization from the requirements of the solid waste franchise fee. Consequently, those non-profit organizations within the Town are being charged the solid waste franchise fee by the franchisees, which are permitted to recoup the fee they are charged by the Town from their customers.

Staff believes that it was not the intent of the original ordinance to subject such non-profit organizations to this fee. Furthermore, it is in the best interest of the Town to clarify the ordinance to prohibit franchisees from recouping the cost of this fee from non-profit customers, while at the same time excusing the franchisees from paying a franchise fee to the Town for servicing those organizations.

The original ordinance charged a fee per vehicle servicing dumpsters within the Town, with the exception of temporary construction dumpsters. An additional purpose of this amendment is to clarify ordinance 08-01 to provide for the collection of a fee per dumpster or large container, as well as provide a definition of such type of container.



Office of the Town Manager

RECOMMENDATION

Staff recommends adopting this ordinance amendment to provide for excusing the payment by the franchisees of franchise fees to the Town for certain non-profit organizations, as defined, while also clarifying the intent of a per dumpster/large container fee and to prohibit franchisees from recouping the collection of franchise fees from non-profit organizations.

ORDINANCE NO. 09-__

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TOWN'S SOLID WASTE FRANCHISE ORDINANCE (ORDINANCE 08-01); REVISING FEES FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION FRANCHISEES; PROVIDING FOR AN EXEMPTION FOR TAX-EXEMPT ORGANIZATIONS FROM PAYING A FEE TO FRANCHISEES THAT ALLOWS THE FRANCHISEE TO RECOUP THE COST OF THE FRANCHISE FEE PAYABLE TO THE TOWN; REVISING FEES FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION FRANCHISEES; PROVIDING FOR A DUMPSTER REGISTRATION FEE PAID BY THE FRANCHISEE FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION ACTIVITIES; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") has the authority to require that persons and entities engaging in the business of solid waste collection in the Town obtain a franchise from the Town and pay solid waste collection franchise fees imposed by the Town; and

WHEREAS, the Town Council wishes to impose an annual fee upon solid waste companies that are awarded a franchise to work with the Town ("Franchisees") to cover the administrative costs associated with dumpsters within the Town; and

WHEREAS, the Town Council wishes to exempt non-profit organizations within the Town from certain franchise fees which solid waste franchisees typically recoup from their clients; and

WHEREAS, the Town Council finds that exempting non-profit organizations from being charged by franchisees to recoup the cost of the franchise fee, and imposing a fee to cover the costs of dumpster registration, will promote the health, safety and welfare of the Town and it is in the Town's best interest to amend the solid waste franchise ordinance in order to do so.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS¹:

Section 1. Findings. The foregoing “Whereas” clauses are true and correct and are hereby incorporated as the legislative intent of this Ordinance.

Section 2. Amendment to Ordinance 08-01² of the Town Code. The Town Council of the Town of Cutler Bay hereby amends Section 2 and Section 8 of Ordinance 08-01 of the Town Code of Ordinances as follows:

Section 2. Definitions. The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them:

(a) *Biohazardous waste:* Any solid or liquid waste which may present a threat of infections to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste which contains human-disease causing agents; used disposable sharp medical equipment; human blood, blood products and body fluids; and other materials which in the opinion of the Department of Health and Rehabilitative Services represent a significant risk of infection to persons outside the generating facility.

(b) *Biological waste:* Any solid or liquid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biohazard wastes, diseased or dead animals, and other waste capable of transmitting pathogens to humans or animals.

(c) *Commercial establishment:* Any structure used or constructed for use as a business which is not also a residential unit. For purposes of this Ordinance, hotels and motels are commercial establishments.

(d) *Customer:* A person who uses the solid waste or recycling services of a private hauler.

(e) *Dumpster or large solid waste container:* a refuse container of one cubic yard or larger.

~~(e)~~(f) *Franchise:* The named person who obtains a franchise from the Town of Cutler Bay pursuant to this Ordinance to provide private hauling services.

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

² Pursuant to the Town charter, the Town code consists of the applicable provisions of the Miami Dade County code as they existed on the date of the Town’s incorporation and as amended from time to time by the Town Council.

~~(f)~~(g) *Garbage*: Every refuse accumulation of animal, fruit, vegetable, or organic matter that attends the preparation, use, cooking, and detailing in, or storage of, meat, fish, fowl, fruit, flowers, plants, or vegetables, and decay, putrefaction and the generation of noxious or offensive gases or odors, or, which, during or after decay, may serve as breeding or feeding material for flies or other germ carrying insects.

~~(g)~~(h) *Garbage can or container*: Any container made of galvanized metal, durable plastic or other suitable material of a capacity not less than ten gallons and not to exceed thirty gallons approved for use by the Town Manager or his designee. The container shall have two handles upon its sides, or a bail by which dirt may be lifted, and shall have a tight fitting solid top.

~~(h)~~(i) *Gross receipts*: Gross receipts shall mean the entire amount of fees collected by a franchisee, exclusive of state sales taxes provided by law from any person within the Town for garbage, hazardous, industrial, biomedical, biological, or solid waste; construction and demolition, debris, trash, litter refuse, and/or rubbish collection, removal and disposal. The invoices resulting from the collection of solid waste from multi-family residential, commercial and residential construction customers within the Town, provided however that gross receipts shall not include fees collected by a franchisee from an entity that is exempt from taxation under §501 of the Internal Revenue Code due to its status as a nonprofit corporation or other private foundation, or from an entity that has been granted a tax exemption as a nonprofit corporation by the State of Florida Department of Revenue, so long as the Franchisee does not charge such entity any amount to recoup franchise fees. The Franchisee must also provide evidence of the entity's tax exempt status to the Town Clerk, including all supporting documents filed with the State of Florida or the Internal Revenue Service of the United States to obtain such tax exempt status, in order to qualify for the exclusion from the calculation of gross receipts.

~~(i)~~(j) *Hazardous waste*: Any solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infections characteristics, may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitation reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.

~~(j)~~(k) *Industrial waste*: Any and all debris and waste products generated by manufacturing, food processing (except restaurant), land clearing, any commercial shrubbery or tree cutting, building construction or alteration (except do-it-yourself home projects) and public works type construction projects whether performed by a government unit or by contract.

~~(k)~~(l) *Infectious waste*: Those wastes which may cause disease or may reasonably be suspected or harboring pathogenic organisms. Included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to diseased human and animal parts,

contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

~~(l)~~(m) *Multi-family residential establishment:* Any structure other than a residential unit which is used, or constructed for use, as a multiple dwelling facility. Multi-family residential establishments shall include, without limitations, rooming houses, tourist courts, trailer parks, apartment buildings with rental or cooperative apartments, or multiple story condominiums with common means of ingress or egress.

~~(m)~~(n) *Performance or Payment bond:* The form of security approved by the Town and furnished by the franchisee as required as a guarantee that the franchisee will execute the work in accordance the work in accordance with the terms of this chapter and will pay all franchise fee payments due to the Town.

~~(n)~~(o) *Person:* Any natural person, individual, public or private corporation, firm, partnership, association, joint venture, municipality, or any combination of such, jointly or severally.

~~(o)~~(p) *Private hauler:* Any person, entity, corporation or partnership for hire that removes, collects and transports for disposal any solid waste over the streets or public rights-of-way within the Town. The qualified and approved private hauler must have the following: a minimum two years of incorporation; operation facility in Miami-Dade County; proven experience servicing a municipal and governmental contract in Miami-Dade County; possess a Miami-Dade County Waste Haulers Permit, Miami-Dade County Occupational License.

~~(p)~~(q) *Recyclable materials:* Those materials which are capable of being recycled and which would otherwise be processed or disposed of as a solid waste.

~~(q)~~(r) *Residential construction:* Any construction or renovation requiring a permit from the Town.

~~(r)~~(s) *Residential construction site:* A location where residential construction is taking place.

~~(s)~~(t) *Residential unit:* Any structure which is used, or constructed for use, as a single-family dwelling, duplex, cluster house or townhouse, and which is located on a single lot, parcel or tract of land. For the purposes of this Ordinance, any condominium structure composed of privately-owned, single family housing units with separate means of ingress or egress and containing no more than two stories shall be considered a residential unit. The term “residential unit” shall not include any multi-family residential establishment, as identified at subsection (e), above.

~~(t)~~(u) *Solid waste:* Garbage, trash, litter, yard trash, hazardous waste, construction and demolition debris, industrial waste, or other disregard materials, including solid or contained gaseous materials resulting from domestic, industrial,

commercial, mining, agricultural or governmental operations. Solid waste includes, but is not limited to: biohazardous waste, biological waste, garbage, hazardous waste, industrial waste, infectious waste, and recyclable materials.

~~(#)~~(v) *Solid waste disposal*: Disposition of solid waste by means of combustion, land filling or other final method of discard.

Section 8. Franchise Fee and Permit Fees.

(a) All private haulers operation in the Town shall pay the following franchise fees to the Town for the privilege of collection, removing or disposing of solid waste from commercial or multi-family residential establishments over the streets or public rights-of-way located within the Town:

- (1) The franchisee shall pay a franchisee fee to the Town equal to 17% percent of its monthly total gross receipts for all of its accounts which are located in the Town.
- (2) The franchise fee shall be in addition to any occupational license taxes levied by the Town upon the franchisee's business activities.
- (3) The franchise fee shall be paid to the Town by the private hauler on a monthly basis. The franchise fee is due on the 15th day of the month succeeding the month for which the franchise fee is being paid.
- (4) The franchise fee shall be accompanied by a report to the Town manager designation the names and addresses of each account of the private hauler located in the Town that was provided solid waste collection and disposal service for the preceding month. The report shall include the monthly total gross receipts of all such accounts. The report shall be in a format approved by the Town manager.

(b) If the franchise fee is not paid by the 15th of the month by the private hauler, an additional monthly surcharge, equal to 17% of monthly total gross receipts for the preceding month, shall be payable to the Town for each month the payment franchise fee is delinquent. Additionally, the franchisee shall pay all the Town's collection expenses, including court costs and reasonable attorney's fees.

(c) If any audit or examination discloses an underpayment to the Town greater than 17% of the required payment, in addition to payment of the underpayment, the franchisee shall pay for the expenses of the audit and a penalty equal to three times the underpayment.

(d) Each and every franchisee shall pay a permit per account fee annually of \$100.00 for each account with whom they contract for the provision of commercial solid waste services. The Town shall provide one color-coded sticker for each dumpster in each account to identify the dumpster. Franchise shall inform the Town as to the number of dumpsters associated with each account and shall ensure that a sticker is attached to each dumpster. The franchisee may only pass on an amount not to exceed \$48.00 of said permit per account fee to each contracted customers. Said permit per account fee shall not be transferable. The annual period will begin October 1st and end September 30th. Permit per account applications submitted before the 15th of the month will be charged the full amount for the applicable month; those submitted after the 15th will be invoiced in the next month.

(e) Each franchisee utilizing large containers and/or roll-offs shall pay a temporary roll-off/container permit fee, per account, for each container/roll-off utilized to provide solid waste services requiring such containers. The \$50.00 fee shall be for a 90 day period and will be assessed each 90 days the container remains on site.

(f) Each franchisee shall pay, in addition to the other fees imposed by this Ordinance, an annual dumpster registration fee which shall be in the amount of \$25.00 for each dumpster or large container being serviced within the Town by the Franchisee. This shall not include those temporary roll-off/containers already assessed a per container fee as described in Section 9(e) of this Ordinance.

(g) Each franchisee shall be prohibited from collecting any amount to recoup the cost of franchise fees from any entity that is exempt from taxation under § 501 of the Internal Revenue Code due to its status as a nonprofit corporation or other private foundation, or from an entity that has been granted a tax exemption as a nonprofit corporation by the State of Florida Department of Revenue, it being the intent of this Ordinance that such not for profit entities shall be exempt from paying any franchise fee under this Ordinance, and franchisees shall not be required to pay such amounts to the Town.

Section 3. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. Inclusion in the Code. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be re-

numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 21st day of January, 2009.

PASSED and ADOPTED on second reading this ____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____
Vice Mayor Edward P. MacDougall _____
Councilmember Peggy R. Bell _____
Councilmember Timothy J. Meerbott _____
Councilmember Ernest N. Sochin _____

TAB 9



MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: January 21, 2009

Re: **ORDINANCE ADOPTING REVISIONS TO THE TOWN'S FLOODPLAIN
MANAGEMENT REGULATION**

REQUEST

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-10 ENTITLED, "FLOODPLAIN MANAGEMENT REGULATIONS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

In order for the Town residents to be eligible for participation in the National Flood Insurance Program (NFIP), the Town adopted a Floodplain Management Ordinance (# 06-10) on May 25, 2006. Town staff and Consulting Engineers have met with the Federal Emergency Management Agency (FEMA) to determine how to improve the Town's initial rating under the NFIP's Community Rating System (CRS) program. A higher rating with the CRS will provide additional savings to Town residents, who currently pay for flood insurance.

One of the activities the Town can undertake to improve its CRS rating is to amend the existing Floodplain Management regulations to include more stringent standards.

The "revised" proposed ordinance includes: updated definitions, new section for critical facilities, procedures for calculating substantial improvements & damages, and more stringent provisions for buildings built on permanent fill. These recommended changes are underlined, in the attached "revised" Floodplain Management Ordinance.

RECOMMENDATION

It is recommended that the Town Council adopt the proposed ordinance revising Town Ordinance number 06-10.

ORDINANCE NO. 09 - ____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-10 ENTITLED, “FLOODPLAIN MANAGEMENT REGULATIONS”; UPDATING DEFINITIONS; REVISING TOWN STANDARDS TO CONFORM TO FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) GUIDELINES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in order to obtain coverage under the National Flood Insurance Program (“NFIP”) the Town must adopt Floodplain Management Regulations; and

WHEREAS, the Federal Emergency Management Agency (“FEMA”), the Federal Agency which administers the NFIP, has reviewed the Town’s regulations with Town staff and agreed on the following technical changes to Ordinance 06-10, which governs Floodplain Management; and

WHEREAS, the Town Council finds that this Ordinance is in the best interest of the health, safety and welfare of the residents of the Town.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. Amendment to Ordinance 06-10 of the Town Code. The Town Council of the Town of Cutler Bay hereby amends Ordinance 06-10 of the Town Code of Ordinances as follows:

ARTICLE 2. DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

Accessory structure (Appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood"). Base flood is the term used throughout this ordinance.

Base Flood Elevation means the water-surface elevation associated with the base flood.

Basement means that portion of a building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Building – see **Structure**.

Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1 – V30, VE, or V.

Critical facility means a facility for which the impact of even a slight chance of flooding might be too great, including, but not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.

Datum A reference surface used to ensure that all elevation records are properly related. Many communities have their own datum that was developed before there was a national standard. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.

Development means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, ~~permanent~~ structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing Construction means, for the purposes of floodplain management, structures for which “the start of construction” commenced before the ~~date~~ date of the initial Flood Insurance Rate Map (FIRM). Existing construction, means for the purposes of determining rates structures for which the “start of construction” commenced before ~~the effective date of the first FIRM or before January 1, 1975, for FIRMs effective before that date.~~ **May 25, 2006**. This term may also be referred to as “existing structures”.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before **the effective date of the floodplain management regulations adopted by a community May 25, 2006**.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters.
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
 - (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on

the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

- (b) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

Flood Boundary and Floodway Map (FBFM) means the official map of the community on which the Federal Emergency Management Agency (FEMA) has delineated the areas of special flood hazard and regulatory floodways.

Flood Hazard Boundary Map (FHBM) means an official map of the community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as only Approximate Zone A.

Flood Insurance Rate Map (FIRM) means an official map of the community, issued by FEMA, which delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official hydraulic & hydrologic report provided by FEMA. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study may also contain flood profiles, as well as the FIRM, FHBM (where applicable), and other related data and information.

Floodplain means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Administrator is the individual appointed to administer and enforce the floodplain management regulations of the community.

Floodplain management regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes Federal, State of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Floodway fringe means that area of the floodplain on either side of the regulatory floodway ~~where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.~~

Freeboard means the additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, blockage of bridge or culvert openings and hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected frequency flood and floodway conditions.

Functionally dependent use means a use that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hardship as related to variances from this ordinance means the exceptional hardship associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic Structure means any structure that is:

- a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:
- b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district:

- c) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or
- d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By the approved Florida program as determined by the Secretary of the Interior, or
 - 2. Directly by the Secretary of the Interior.

Lowest adjacent grade means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the nonelevation design standards of this ordinance.

Mangrove Stand means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above ground and which contain one or more of the following species: Black mangrove (*Avicennia Nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Languncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

Manufactured home means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

Mean Sea Level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North American Vertical Datum (NAVD) of 1988.

National Geodetic Vertical Datum (NGVD) of 1929 means a vertical control used as a reference for establishing varying elevations within the floodplain.

New Construction means, for floodplain management purposes, any structure for which the “start of construction” commenced on or after the effective date of the initial floodplain management code, ordinance, or standard based upon specific technical base flood elevation data that establishes the area of special flood hazard – include only one date. The term also includes any subsequent improvements to such structures. For flood insurance rates, structures for which the start of construction commenced on or after ~~the effective date of the date of an initial FIRM or after December 31, 1974, whichever is later~~ include only one date, **May 25, 2006**, and includes any subsequent improvements to such structures, are considered new construction.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first floodplain management code, ordinance or standard.

North American Vertical Datum (NAVD) of 1988 means a vertical control used as a reference for establishing varying elevations within the floodplain.

Free of Obstruction means any type of lower area enclosure or other construction element that will obstruct the flow of velocity water and wave action beneath the lowest horizontal structural member of the lowest floor of an elevated building during a base flood event is not allowed. This requirement applies to the structures in velocity zones (V-Zones).

Program deficiency means a defect in the community’s floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the standards required by the National Flood Insurance Program.

Public safety and nuisance means anything which is injurious to safety or health of the entire community or a neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle means a vehicle that is:

- a) Built on a single chassis;
- b) 400 square feet or less when measured at the largest horizontal projection;
- c) Designed to be self-propelled or permanently towable by a light duty truck; and
- d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Remedy a deficiency or violation means to bring the regulation, procedure, structure or other development into compliance with State of Florida, Federal or local floodplain management regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Repetitive Loss means flood related damage sustained on a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Sand dune means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Shallow flooding means the same as area of shallow flooding.

Special flood hazard area means the same as area of special flood hazard.

Start of construction For other than new construction or substantial improvements under the Coastal Barrier Resources Act P. L. 97-348, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Storm cellar means a place below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornadoes or similar windstorm activity.

Structure means for floodplain management purposes a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure during a five-year period whereby the cumulative cost of restoring the structure to its before damaged condition would equal or exceed ~~50~~ 44 percent of the market value of the structure before the damage occurred. This term also includes repetitive loss structures. See definition of substantial improvement for an explanation of the procedure to be utilized for the purpose of calculating substantial damage.

Substantial improvement means any combination of reconstruction, rehabilitation, addition, or other improvement of a structure taking place during a five-year period, the cumulative cost of which equals or exceeds ~~50~~ 44 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “repetitive loss” or “substantial damage” regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct existing violations of State of Florida or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions. For the purposes of calculating substantial improvements and/or substantial damage, the following procedure shall be utilized:

- a) The costs of the improvements or repairs for a project shall be obtained from one of the following sources:
 1. Detailed cost estimate of the improvements or repairs from the licensed general contractor of record.
 2. A cost estimate prepared using professional construction estimation software, such as R.S. Means or the Federal Emergency Management Agency’s substantial damage estimation program, as prepared by a licensed architect or engineer.

- b) Any one of the following sources will be considered acceptable estimates of market value:
 1. An independent appraisal by a professional appraiser licensed by the State of Florida. The appraisal must exclude the value of the land and not use the “income capitalization approach” which bases value on the use of the property, not the structure.
 2. Detailed estimates of the structure’s actual cash value, which shall equal the replacement cost of the building, minus depreciation percentage based on age and condition.
 3. Property appraisals used for tax assessment purposes with an adjustment recommended by the Miami-Dade County Property Appraiser to reflect market conditions (adjusted assessed value).

- c) For structures in which the substantial improvement or substantial damage percentage is greater than or equal to 30 percent, a more precise market value estimate may be required.

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 ~~44~~ percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance is a grant of relief from the requirements of this ordinance.

Violation means the failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

ARTICLE 4. ADMINISTRATION

SECTION A. PERMIT PROCEDURES

Application for a Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) Application Stage:
 - a) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings;
 - b) Elevation in relation to mean sea level to which any non-residential building will be flood-proofed;
 - c) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in Article 4, Section A (2) and Article 5, Section B (2);

- d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
- (e) Elevation in relation to mean sea level of the bottom of the lowest horizontal structural member of the lowest floor and provide a certification from a registered engineer or architect indicating that they have developed and or reviewed the structural designs, specifications and plans of the construction and certified that are in accordance with accepted standards of practice in Coastal High Hazard Areas.

(2) Construction Stage:

Upon placement of the lowest floor, or flood-proofing by whatever construction means, or bottom of the lowest horizontal structural member it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NGVD or NAVD elevation of the lowest floor or flood-proofed elevation, or bottom of the lowest horizontal structural member as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the lowest floor and flood-proofing elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct violations detected by such review. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

SECTION B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties of the Administrator shall include, but are not be limited to:

- (1) Review permits to assure sites are reasonably safe from flooding;
- (2) Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
- (3) Advise permittee that additional Federal, State of Florida, or local permits may be required, and if such additional permits are necessary, especially as it relates to Chapters 161.053; 320.8249; 320.8359; 373.036; 380.05; 381.0065, and 553, Part IV, Florida Statutes, require that copies of such permits be provided and maintained on file with the development permit;
- (4) Notify adjacent communities, the Department of Community Affairs, Division of Emergency Management, the South Florida Water Management District, the Federal

Emergency Management Agency and other Federal and/or State of Florida agencies with statutory or regulatory authority prior to any alteration or relocation of a watercourse;

- (5) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;
- (6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (A-Zones) or bottom of the lowest horizontal structural member of the lowest floor (V-Zones) of all new or substantially improved buildings, in accordance with Article 5, Section B (1) and (2) and Section E (2), respectively;
- (7) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved buildings have been flood-proofed, in accordance with Article 5, Section B (2);
- (8) Review certified plans and specifications for compliance. When flood-proofing is utilized for a particular building, certification shall be obtained from a registered engineer or architect certifying that all areas of the building below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy in compliance with Article 5, Section B (2) of this ordinance. In Coastal High Hazard Areas, certification shall be obtained from a registered professional engineer or architect that the building is designed and securely anchored to pilings or columns in order to withstand velocity waters and hurricane wave wash. Additionally in Coastal High Hazard Areas, if the area below the lowest horizontal structural member of the lowest floor is enclosed, it may be done so with open wood lattice and insect screening or with non-supporting breakaway walls that meet the standards of Article 5, Section E (6) of this ordinance;
- (9) Interpret the exact location of boundaries of the areas of special flood hazard. When there appears to be a conflict between a mapped boundary and actual field conditions, the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article;
- (10) When base flood elevation data or floodway data have not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of Article 5;
- (11) Coordinate all change requests to the FIS, FIRM and FBFM with the requester, State of Florida, and FEMA, and
- (12) Where Base Flood Elevation is utilized, obtain and maintain records of lowest floor and floodproofing elevations for new construction and substantial improvements in accordance with Article 5, Sections B (1) and (2), respectively.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all areas of special flood hazard, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

- (1) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, ~~or~~ and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, ~~or~~ and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State of Florida requirements for resisting wind forces;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage. ~~See the applicable Technical Bulletin or Bulletins for guidance;~~
- (4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage. ~~See the applicable Technical Bulletin or Bulletins for guidance;~~
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (6) Adequate drainage shall be provided to reduce exposure to flood hazards;
- ~~(6)~~(7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- ~~(7)~~(8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- ~~(8)~~(9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- ~~(9)~~(10) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance;

~~(10)~~(11) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced;

~~(11)~~(12) All applicable additional Federal, State of Florida, and local permits shall be obtained and submitted to the Floodplain Administrator. Copies of such permits shall be maintained on file with the development permit. State of Florida permits may include, but not be limited to the following:

- (a) South Florida Water Management District(s): in accordance with Chapter 373.036 Florida Statutes, Section (2)(a) – Flood Protection and Floodplain Management.
- (b) Department of Community Affairs: in accordance with Chapter 380.05 F.S. Areas of Critical State Concern, and Chapter 553, Part IV F.S., Florida Building Code.
- (c) Department of Health: in accordance with Chapter 381.0065 F.S. Onsite Sewage Treatment and Disposal Systems.
- (d) Department of Environmental Protection, Coastal Construction Control Line: in accordance with Chapter 161.053 F.S. Coastal Construction and Excavation.

~~(12)~~(13) Standards for Subdivision Proposals and other Proposed Development (including manufactured homes):

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (d) When a structure is partially located in a special flood hazard area, the entire structure shall meet the provisions for new construction and substantial improvements.
- (e) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation.

SECTION B. SPECIFIC STANDARDS.

In all A-Zones where base flood elevation data have been provided (Zones AE, A1-30, and AH), as set forth in Article 3, Section B, the following provisions, in addition to those set forth in Article 5, Section A, shall apply:

- (1) *Residential Construction.* All new construction or substantial improvement of any residential building (including manufactured home) shall have the lowest floor, including basement, mechanical and utility equipment and ductwork, elevated to no lower than one foot above the base flood elevation, beginning March 1, 2009. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate automatic equalization of flood hydrostatic forces on both sides of the exterior walls shall be provided in accordance with standards of Article 5, Section B (3).
- (2) *Non-Residential Construction.* All new construction or substantial improvement of any commercial, industrial, or non-residential building (including manufactured home) shall have the lowest floor, including basement, mechanical and electrical equipment and ductwork, elevated to no lower than one foot above the base flood elevation, beginning March 1, 2009. All buildings located in A-Zones may be flood-proofed, in lieu of being elevated, provided that all areas of the building components (including mechanical and electrical equipment and ductwork) below the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied using the FEMA Floodproofing Certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the Floodplain Administrator.
- (3) *Elevated Buildings.* New construction or substantial improvements of elevated buildings that include ~~fully~~-enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. (Note changes to this section should provide for 300 CRS points, but could impact remodeling of buildings with garages below the BFE i.e. Cutler Cay)
 - (a) Designs for complying with this requirement must ~~either~~ be certified by a professional engineer or architect and~~or~~ meet or exceed the following ~~minimum~~ criteria:
 - (i) Provide openings in each wall having a total net area of not less than 50% of the total wall area subject to flooding. ~~a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;~~

- (ii) ~~At least one opening per wall~~ ~~The bottom of all openings shall be no higher than one foot above foundation adjacent interior grade (which must be equal to or higher in elevation than the adjacent exterior grade); and~~
 - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.
- (b) ~~Fully e~~Enclosed areas below the lowest floor shall solely be used for parking of vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and
- (c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.
- (4) *Standards for Manufactured Homes and Recreational Vehicles*
- (a) All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites (i) outside of an existing manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood, the lowest floor be elevated on a permanent foundation to no lower than one foot above the base flood elevation, beginning March 1, 2009, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
 - (b) All manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision within Zones A-1, AH, and AE, that are not subject to the provisions of paragraph 4 (a) of this Section, must be elevated so that either:
 - (i) The lowest floor of the manufactured home is elevated to no lower than one foot above the base flood elevation, or
 - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength that are no less than 48 inches in height above the grade and securely anchored to an adequate foundation system to resist flotation, collapse, and lateral movement.
 - (c) Placement of manufactured homes is prohibited within the regulatory floodway, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home

park or subdivision provided the anchoring standards of Article 5, Section A(2), the elevation standards of Article 5, Section B (1) and (2), and the encroachment standard of Article 5, Section B (7) (a), are met.

~~(e)~~(d) All recreational vehicles placed on sites within Zones A1-30, AH, and AE must either:

- (i) Be on the site for fewer than 180 consecutive days,
- (ii) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions), or
- (iii) Meet all the requirements for new construction, including anchoring and elevation requirements in accordance with Section B, provisions (4) (a) and (b) of this Article.

(5) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.

(6) Standards for ~~streams~~ waterways with established Base Flood Elevations, without Regulatory Floodways

Located within the areas of special flood hazard established in Article 3, Section B, where streams exist for which base flood elevation data has been provided by the Federal Emergency Management Agency without the delineation of the regulatory floodway (Zones AE and A1-30), the following additional provisions, in addition to those set forth in Article 5, Section A, shall also apply.

- (a) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development including fill shall be permitted within the areas of special flood hazard, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- (b) Development activities which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of the Federal Emergency Management Agency.

(7) Standards for waterways with established Base Flood Elevations and Floodways. Located within areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the

velocity of flood waters which carry debris, potential projectiles and have significant erosion potential, the following additional provisions shall also apply:

- (a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments within the regulatory floodway unless certification (with supporting technical data) by a registered professional engineer is provided through hydraulic and hydrologic analyses performed in accordance with standard engineering practice demonstrating that encroachments would not result in any increase in flood levels during occurrence of the base flood discharge.
 - (b) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Article 5, Section A (2), and the elevation standards of Article 5, Section B ~~(4) (A) and (B)(1) and (2)~~, and the encroachment standards of Article 5, Section B (7) (a), are met.
 - (c) Development activities including new construction and substantial improvements that increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of FEMA.
 - (d) When fill is proposed, in accordance with the permit issued by the **Florida Department of Health**, South Florida Water Management District and/or Miami-Dade County Department of Environmental Resource Management, within the regulatory floodway, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood in accordance with Article 5, Section (7) (a).
- (8) For all structures located seaward of the Coastal Construction Control Line (CCCL), the lowest floor of all new construction and substantial improvements shall be elevated to the regulatory flood elevation established by the Florida Department of Environmental Protection or **the base flood elevation established** by FEMA **plus one foot** in accordance with Article 3, Section B, whichever is higher. All non-elevation design requirements of Article 5, Section E shall apply.
- (9) Buildings on Fill. New and substantially improved buildings may be constructed on permanent fill in accordance with the following:
- (a) The lowest floor, including basement, mechanical and utility equipment and ductwork, shall be a minimum of one-foot above the base flood elevation.

- (b) The fill shall be placed in layers no greater than one foot deep before compacting and shall extend at least ten (10) feet beyond the foundation of the building before sloping below the base flood elevation; and
 - (c) The top of the fill shall be above the base flood elevation. However, the ten foot minimum required in Article 5, Section B(9)(b) may be waived if a structural engineer certifies an alternative method to protect the building from damage due to erosion, scour, and other hydrodynamic forces; and
 - (d) The fill shall not adversely affect the flow or surface drainage from or onto neighboring properties.
- (10) Critical Facilities. New and substantially improved critical facilities shall be constructed on properly compacted fill and have the lowest floor (including basement) elevated to at least one (1) foot above the elevation of the 0.2% annual chance (500-year) flood.

SECTION C. SPECIFIC STANDARDS FOR A-ZONES WITHOUT BASE FLOOD ELEVATIONS AND REGULATORY FLOODWAYS.

Located within the areas of special flood hazard established in Article 3, Section B, where there exist A Zones for which no base flood elevation data and regulatory floodway have been provided or designated by the Federal Emergency Management Agency, the following provisions shall apply:

- (1) Require standards of Article 5, Section A.
- ~~(7)~~(2) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data.
- ~~(2)~~(3) The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of this ordinance. When such data is utilized, provisions of Article 5, Section B shall apply. The Floodplain Administrator shall:
 - a) Obtain the elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures,
 - b) Obtain, if the structure has been floodproofed in accordance with the requirements of Section B (2) of Article 5, the elevation in relation to the mean sea level to which the structure has been floodproofed, and
 - c) Maintain a record of all such information.

- (3)(4) Notify, in riverine situations, adjacent communities, the State of Florida, Department of Community Affairs, NFIP Coordinating Office, **and the applicable South Florida Water Management District, and the Miami-Dade County Department of Environmental Resource Management** prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (4)(5) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (5)(6) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Florida and local anchoring requirements for resisting wind forces.
- (6)(7) When the data is not available from any source as in paragraph (23) of this Section, the lowest floor of the structure shall be elevated to no lower than three feet above the highest adjacent grade.
- ~~(7) — Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data.~~

SECTION D. STANDARDS FOR AO-ZONES

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist and the path of flooding is unpredictable and indeterminate; therefore, the following provisions, in addition to those set forth in Article 5, Section A, apply:

- (1) All new construction and substantial improvements of residential structures in all AO Zones shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map **plus one foot**. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to no less than ~~two~~ **three** feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of non-residential structures shall:
- (a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map **plus one foot**. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to at least two feet above the highest adjacent grade, or

- (b) Together with attendant utility and sanitary facilities be completely floodproofed to **no less than one foot above** that level to meet the floodproofing standard specified in Article 5, Section B (2)(a).
- (3) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.
- (4) **All elevated buildings shall meet the non-elevation design requirements of Article 5, Section B.**

SECTION E. COASTAL HIGH HAZARD AREAS (V-ZONES)

Located within areas of special flood hazard established in Article 3, Section B are Coastal High Hazard Areas, designated as Zones V1–30, VE, or V (with BFE). The following provisions shall apply for all development activities:

- (1) Meet the requirements of Article 4, Section A, and Article 5, Sections A, B (except B (7)), C, and D.
- (2) All new construction and substantial improvements in Zones V1–V30, VE, and V (with BFE) shall be elevated on pilings or columns so that:
 - a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to no lower than one foot above the base flood elevation whether or not the structure contains a basement; and
 - b) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading will be those values associated with the base flood. Wind loading values will be those required by applicable State of Florida or local, if more stringent than those of the State of Florida, building standards.
 - c) **For all structures located seaward of the Coastal Construction Control Line (CCCL), the bottom of the lowest horizontal structural member of the lowest floor of all new construction and substantial improvements shall be elevated to the 100-year flood elevation established by the Florida Department of Environmental Protection or the base flood elevation plus one foot, whichever is higher.**
- (3) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Section.

- (4) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures. The Floodplain Administrator shall maintain a record of all such information.
- (5) All new construction and substantial improvements shall be located landward of the reach of mean high tide.
- (6) Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
 - a) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and
 - b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). The water loading shall be those values associated with the base flood. The wind loading values shall be those required by applicable Florida or local, if more stringent than those of the State of Florida, building standards.
 - c) Such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be finished, partitioned into multiple rooms, or temperature-controlled.
- (7) Prohibit the use of fill for structural support. No development permit shall be issued for development involving fill in coastal high hazard areas unless it has been demonstrated through appropriate engineering analyses that the subject fill does not cause any adverse impacts to the structure on site or adjacent structures. ~~Placement of fill that would result in an increase in the base flood elevation or cause adverse impacts by wave ramping and deflection may be permitted, provided that the permit applicant first applies for and receives a conditional FIRM revision, fulfilling the requirements for such revisions as established by FEMA.~~
- (8) Prohibit man-made alteration of sand dunes and mangrove stands that would increase potential flood damage.

- (9) Standards for Manufactured Homes
- (a) All manufactured homes to be placed or substantially improved on sites: (i) Outside a manufactured home park or subdivision, (ii) In a new manufactured home park or subdivision, (iii) In an expansion to an existing manufactured home park or subdivision, or, (iv) In an existing manufactured home park or subdivision in which a manufactured home has incurred “substantial damage” as the result of a flood, must meet the standards of Article 5, Section E (2) through (8),
 - (b) All manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision shall meet the requirements of Article 5, Section B (4) (a) and (b).
- (10) Recreational vehicles placed on sites within Zones VE, V1–V30, V (with base flood elevation) on the FIRM either
- (a) Be on the site for fewer than 180 consecutive days,
 - (b) Be fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
 - (c) Meet the requirements of Article 5, Section E (2) through (8).
 - (d) Prohibit the placement of recreational vehicles, except in an existing recreational vehicle park. They must be on site for fewer than 180 consecutive days, fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site by quick disconnect type utilities and security devices, and has no permanently attached additions). They shall also have a plan for removal in case of a threat.
- (11) For all structures located seaward of the Coastal Construction Control Line (CCCL), the bottom of the lowest horizontal structural member of the lowest floor of all new construction and substantial improvements shall be elevated to the flood elevation established by the Florida Department of Environmental Protection or the base flood elevation **plus one foot**, whichever is the higher. All non-elevation design requirements Article 5, Section E (2) through (~~104~~) shall apply.
- (12) When fill is proposed, in accordance with the permit issued by the Florida Department of Health, in coastal high hazard area, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood nor cause any adverse impacts to adjacent properties by wave ramping and deflection.

ARTICLE 6. VARIANCE PROCEDURES.

SECTION A. DESIGNATION OF VARIANCE AND APPEALS BOARD.

The Town Council of the Town of Cutler Bay shall hear and decide appeals and requests for variances from the requirements of this ordinance.

SECTION B. DUTIES OF VARIANCE AND APPEALS BOARD.

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Management Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Circuit Court.

SECTION C. VARIANCE PROCEDURES.

In acting upon such applications, the Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

SECTION D. CONDITIONS FOR VARIANCES.

- (1) Variances shall only be issued when there is:
 - a) A showing of good and sufficient cause;
 - b) A determination that failure to grant the variance would result in exceptional hardship; and
 - c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (2) Variances shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this ordinance.
- (3) Variances shall not be granted after-the-fact.
- (5) The Floodplain Administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP Biennial Report or upon request to FEMA and the State of Florida, Department of Community Affairs, NFIP Coordinating Office.

SECTION E. VARIANCE NOTIFICATION.

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
- (2) Such construction below the base flood level increases risks to life and property.

A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Clerk of Court and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

SECTION F. HISTORIC STRUCTURES.

Variances may be issued for the repair or rehabilitation of "historic" structures – meeting the definition in this ordinance – upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic" structure.

SECTION G. STRUCTURES IN REGULATORY FLOODWAY.

Variations shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result.

Section 3. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2009.

PASSED AND ADOPTED on second reading this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 10



Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: January 21, 2009
Re: **ORDINANCE CREATING REGULATIONS RELATING TO THE PROTECTION OF TREES WITHIN THE TOWN**

REQUEST

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATING TO THE PROTECTION OF TREES WITHIN THE TOWN; PROVIDING FOR THE REGULATION OF THE SAFEGUARDING, MAINTENANCE, AND REMOVAL OF TREES WITHIN THE RIGHT-OF-WAY OF THE TOWN OF CUTLER BAY; SETTING FORTH TOWN RIGHTS AND RESPONSIBILITIES; DESCRIBING PRIVATE LANDOWNER RIGHTS AND RESPONSIBILITIES; CREATING A PUBLIC EDUCATION PROGRAM; SETTING UP A SYSTEM FOR PERMITTING AND BOND REQUIREMENTS; PROVIDING FOR PENALTIES AND NOTIFICATION; SETTING FORTH TOWN INDEMNIFICATION GUIDELINES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

One of the identified “goals” of the Town’s Street Tree Master Plan and the “Green Plan” is to become a Tree City USA. In order for the Town to qualify for Tree City USA, the town must meet four standards established by The Arbor Day Foundation and the National Association of State Foresters. The standards were established to ensure that every qualifying community would have a viable tree management plan and program. It is important to note that they were also designed so that no community would be excluded because of size.

1. A Tree Board or Department
2. A Tree Care Ordinance
3. A Community Forestry Program With an Annual Budget of at Least \$2 Per Capita
4. An Arbor Day Observance and Proclamation

The “proposed” tree Ordinance provides an opportunity to set good policy and meet one of the goals set in the Town’s adopted Strategic Plan - (5. Community Identity, Unity and Pride) – emphasizes the development and implementation of a Town Beautification Program. Ideally, it will provide clear guidance for planting, maintaining and removing trees from streets, parks and other

public places. These types of standards have been recognized by various organizations, including the Florida Green Building Coalition as being critical to producing a more sustainable community.

Becoming a Tree City USA, helps present the kind of image that most citizens want to have for the place they live or conduct business. The Tree City USA signs at community entrances tell both residents & visitors that the Town cares about its environment. It is also an indication to prospective businesses that the Town Council has a high priority for the quality of life within the Town. Additionally, preference is sometimes given to Tree City USA communities over other communities when allocations of grant money are made for trees or forestry programs. The reason is that there are invariably more requests than available funds when grants are available through State or Federal agencies. If requests are equally worthy, some officials tend to have more confidence in communities that have demonstrated the foresight of becoming a Tree City USA.

RECOMMENDATION

It is recommended that the Town Council approve the attached Ordinance, for first reading.

ORDINANCE NO. 09- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATING TO THE PROTECTION OF TREES WITHIN THE TOWN; PROVIDING FOR THE REGULATION OF THE SAFEGUARDING, MAINTENANCE, AND REMOVAL OF TREES WITHIN THE RIGHT-OF-WAY OF THE TOWN OF CUTLER BAY; SETTING FORTH TOWN RIGHTS AND RESPONSIBILITIES; SETTING FORTH THE DUTIES OF THE TOWN; DESCRIBING PRIVATE LANDOWNER RIGHTS AND RESPONSIBILITIES; CREATING A PUBLIC EDUCATION PROGRAM; SETTING UP A SYSTEM FOR PERMITTING AND BOND REQUIREMENTS; PROVIDING FOR PENALTIES AND NOTIFICATION; SETTING FORTH TOWN INDEMNIFICATION GUIDELINES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) recognizes the necessity of the conservation and preservation of the natural resources of the Town; and

WHEREAS, the protection of trees within the Town is a critical component to those conservation goals, and doing so provides benefits to all the citizens of the Town with respect to air quality, water quality, stormwater management, Town aesthetics and general quality of life; and

WHEREAS, this Ordinance is one facet of an integrated planning process that addresses the suitability of land use, the impacts of impervious surfaces, urban hydrology and water quality; and

WHEREAS, these types of standards have been recognized by various organizations, including the Florida Green Building Coalition, as being critical to producing a more sustainable community; and

WHEREAS, the Town Council finds that it is in the best interest of the public to provide standards and requirements for the protection of trees on public property within the Town for the purpose of making the Town a more attractive and healthier living environment; and

WHEREAS, the Town finds that this Ordinance will promote the health, safety and welfare of the Town.

NOW, THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals Adopted. That the recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Public Tree Protection. The Town of Cutler Bay hereby creates the Public Tree Protection program, as follows:

(1) **Intent** This Ordinance is intended to supplement, not replace, the existing Town ordinance on Tree Preservation and Protection under Section 24 of the Town Code of Ordinances, and the ordinance granting the Town authority over the public right-of-way under Section 2-103.16 of the Town Code of Ordinances. This Ordinance does not apply to those species of trees covered by Sec. 24-49(4)(f) of the Town Code of Ordinances, unless the tree is a part of a natural forest community as defined by Section 24 of the Town Code of Ordinances.

(2) **Public Tree Protection Regulations**

- (a) No person except a public utility shall cut, prune, injure or remove any living tree on or in a public highway, right-of-way, neutral ground, public park, public place, sidewalk, or other public property; or cut or disturb or interfere in any way with the roots of any tree on public property; or spray with any chemical insecticide or herbicide or other oils or whitewash any tree on public property; or place any wire, rope, sign, poster, barricade, or other fixture on a tree or tree guard on public property; or injure, misuse or remove any device placed to protect any such tree. Owners of property may lightly trim those trees in the swale area which abuts their properties and may remove of dead or hanging branches from the trees in accordance with Section 19-13 of the Town Code and in a manner which is not harmful to the health of the trees.
- (b) No person shall pile building material or other material, about any tree, plant a shrub in a street in any manner that will in any way injure such tree, plant or shrub.
- (c) Commencing on March 1, 2009, no person shall pave or place gravel, soil or other such material within twelve (12) ft of any tree on public property, unless approved by Town Manager or designee. Property owners may utilize topsoil and other such materials which promote and does not inhibit the health of the swale area which abuts their properties in accordance with Section 19-13 of the Town Code. However, property owners may not alter the existing elevation of the swale area as part of the application of top soil or other such materials.

¹ Coding: underlined words are additions to existing text, ~~struck-through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

- (d) No person shall dump, pour or spill any oil, herbicide, insecticide or other deleterious matter upon any tree or tree space in any street or within the critical root zone of any tree, or keep or maintain upon any street, any receptacle from which oil or herbicide, pesticide or other deleterious matter leaks or drips onto any parking or concrete gutter so as to injure any tree on any public property.
- (e) No person shall use the rights-of-way, parks, sidewalks, or public places to dump grass clippings, tree trimmings, rocks or refuse of any nature. Persons that properly request a bulk waste pick-up from Miami-Dade County prior to placing their bulk waste on the right-of-way shall not be deemed to have violated this subsection.

(2)(3) Town of Cutler Bay Rights and Responsibilities

- (a) The Town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the rights-of-way of all streets, parks, squares, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.
- (b) It shall be unlawful as a normal practice for any person, firm, or government entity/department to top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this provision of this Ordinance by receipt of written notification from staff for each instance allowing such actions.
- (c) It shall be unlawful for any entity, utility, citizen, tree care company or government entity/department to trench, cut, grade, clear, or fill within the critical root zone of any public tree without the expressed written consent of the Town Manager or designee.

(4) Duties of Town

- (a) It shall be the expressed duty of the Town of Cutler Bay staff, when necessary, to issue permits, inspect tree work, require certain tree work to be performed, and enforce provisions of this ordinance.
- (b) The Town Department of Public Works shall serve as the primary department for the purpose of administering this tree ordinance and any other regulations that pertain to trees within the Town.

- (5) **Private Landowner Rights and Responsibilities** Every property owner of any tree overhanging any street or right of way within the Town shall prune the branches so that such branches shall not substantially obstruct the view of any street intersection and so that there shall be a clear space of thirteen (13) ft. above street surface or eight (8) ft. above the sidewalk surface. Said property owners shall also be responsible for the maintenance of the trees in the swale areas abutting their properties in accordance with Section 19-13 of the Town Code so that such branches shall not substantially obstruct the view of any street intersection and so that there shall be a clear space of thirteen (13) ft. above street surface or eight (8) ft. above the sidewalk surface. Said

owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs that constitute a menace to the safety of the public. The Town shall have the right to prune any tree or shrub on private property when it interferes with visibility of any traffic control device or sign or line of sight if the private landowner has not done so within 10 days of receiving notice to do so by the Town.

- (6) **Public Education** It shall be the responsibility of Town Staff to undertake a public Arbor Day planting activity and develop and/or secure and distribute tree care and tree benefit information as part of a town wide educational program.

(7) **Permit and Bond**

(a) It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees or tree within a public right-of-way within the Town without first applying for and procuring a permit. The fees shall be established by a separate resolution subject to approval by the Town Council. No permit shall be required for electric utilities and their agents and contractors or Town employee doing such work in the pursuit of their public service endeavors.

(b) Before any permit shall be issued for any tree work on public property, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$100,000 for bodily injury and \$200,000 for property damage to protect the town and any third person injured as a result of such endeavors.

(8) **Notification and Penalties**

(a) Any person who shall injure, damage or destroy any public tree situated upon the public right-of-way of any street, alley, sidewalk, park or other public property within the Town of Cutler Bay shall promptly notify the Town Manager or designee of any such fact and shall, within such reasonable time as specified by the Town of Cutler Bay, repair or replace the same to the satisfaction of the Town Manager or designee.

(b) Should the person fail or refuse to repair or replace the damaged or destroyed trees or plants within such reasonable time, the Town Manager or designee shall do or cause to be done the necessary repairing or replacement, and the costs of this work shall be recovered from the person responsible for the damage or destruction by, a proper action of law which the Town is entitled.

~~(c) Any person violating any provision of this ordinance shall be, upon conviction or a plea of guilty, subject to a fine not to exceed \$250 for each violation plus restitution for damages to public trees and property.~~

- (9) **Indemnification** Nothing contained in this ordinance shall be deemed to impose any liability upon the Town, its officers or employees, nor to relieve the owner of any

private property from the duty to keep any tree, shrub or plant upon any street tree area on his property or under his/her control in such condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any public property or right of way or public place within the Town.

Section 3. Schedule of violations and civil penalties amended. That the Town Code of the Town of Cutler Bay is hereby amended by amending Ordinance 07-09, Section 10 “Schedule of civil penalties”, to read as follows: ²

Sec. 10. Schedule of civil penalties.

TABLE INSET:

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
***	***	***
<u>Ordinance</u>	<u>Violation of Tree Ordinance</u>	<u>First violation \$250; Second Violation \$250500; Third or subsequent violation \$250500.</u>
***	****	***

Section 4. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Inclusion in the Code. It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

² Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

PASSED on first reading this 21st day of January, 2009.

PASSED and ADOPTED on second reading this ____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 11



Planning & Zoning Department

David G. Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David G. Hennis, AICP, Community Development Director

Date: November 6, 2008

Re: **Proposed Amendments to the Sign Code**

The Mayor and Town Council have expressed its desire to improve the signage permitted within the Town; such sign regulations include flag displays. Councilman Meerbott requested staff prepare a specific proposal to amend the height limit for flag poles in residential zoning districts.

The proposed ordinance, has been prepared by Town planning staff with the advice of the Town attorneys to amend the provisions of Sec. 33-96.5. Flag display standards, to permit a maximum height of 35 feet for Flagpoles in residential zoning districts. The proposed amendments are summarized as follows:

Sec. 33-96.5. Flag display standards.

(a) Maximum height. Except as otherwise provided herein, flags shall be displayed on flag poles. Such poles in nonresidential zoning districts shall not exceed the allowed structure height of the zoning district or 60 feet, whichever is less. Flagpoles may not be placed on top of buildings or light poles. Flagpoles in residential zoning districts shall not exceed ~~20~~ 35 feet. Flag poles shall be constructed in accordance with the construction and permitting requirements of Section 33-60 of the Miami-Dade County Code of Ordinances, as applicable.

RECOMMENDATION

Approval of the ordinance amending the sign

ORDINANCE NO. 09-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 “ZONING” ARTICLE VI “SIGNS” SECTION 33-96.5 RELATING TO THE MAXIMUM HEIGHT FOR FLAG POLES IN RESIDENTIAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 20, 2008, the Town Council adopted Ordinance 08-19 providing for certain regulations of signs within the Town; and

WHEREAS, such sign regulations include flag displays as well as a maximum height requirement for flag poles in residential zoning districts; and

WHEREAS, it is the desire of the Town Council to amend the height limit for flag poles in residential zoning districts, to allow for a maximum flag pole height of **35** **25** feet within the Town’s residential zoning districts; and

WHEREAS, the Town Council recognizes that Section 33-60 of the Miami-Dade County Code of Ordinances, which applies within the incorporated and unincorporated areas of the county, provides that flag poles exceeding 20 feet in height shall comply with construction and building permit requirements; and

WHEREAS, the Town Council finds and determines that this Ordinance is consistent with all applicable policies of the Miami-Dade County Comprehensive Plan; and

WHEREAS, the Town Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed meeting on November 19, 2008, and recommended its adoption; and

WHEREAS, the Town Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals Adopted. That the recitals set forth above are true and correct and incorporated herein by this reference.

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

Section 2. Amendment to Chapter 33 of the Town Code. The Town Council hereby amends Chapter 33 “Zoning,” Article VI “Signs” as follows:

* * *

Sec. 33-96.5. Flag display standards.

(a) *Maximum height.* Except as otherwise provided herein, flags shall be displayed on flag poles. Such poles in nonresidential zoning districts shall not exceed the allowed structure height of the zoning district or 60 feet, whichever is less. Flagpoles may not be placed on top of buildings or light poles. Flagpoles in residential zoning districts shall not exceed ~~20~~ ~~35~~ **25** feet. Flag poles shall be constructed in accordance with the construction and permitting requirements of Section 33-60 of the Miami-Dade County Code of Ordinances, as applicable.

(b) *Maximum number and size.*

(1) The maximum dimensions of any flag shall be proportional to the flag pole height. The hoist side of the flag shall not exceed 20% of the vertical height of the pole. In addition, flags are subject to the following dimensional limitations:

Pole Height	Maximum Flag Size
Up to 25 feet	24 total square feet
25 to 39 feet	40 total square feet
40 to 49 feet	60 total square feet
50 to 60 feet	150 total square feet

(2) Each property that is equal to or less than a lot area of 7,500 square feet shall be allowed a maximum of ~~three (3)~~ **one (1)** flag poles. For all other properties more than the total lot area of 7,500 square feet shall be allowed a maximum of two (2) flag poles. A maximum of two flags shall be allowed per flag pole. References to flagpole height in this division refer to vertical flagpoles. References to the number of flags and flag poles and flag dimensions refer to both vertical flagpoles and mast-arm flagpoles (for example, staffs extending at an angle from a building). On United States and Florida holidays, there shall be no maximum flag size or number or other limitations on manner of display.

(c) *Flags on permanent fixtures other than poles.* Flags that are attached to the side of a structure without a pole shall not, individually or cumulatively, cover more than the greater of 24 square feet or 10% of the facade of the structure on which the flag is mounted. One flag is permitted on up to two building facades.

(d) *Setback.* A vertical flag pole must be set back at least 5 feet from all property boundaries.

(e) *Condition of flag and pole or other permanent mounting.* The flag and flag pole or other permanent mounting shall be maintained in good repair. Flag poles with broken halyards shall not be used, and torn or frayed flags shall not be displayed.

(f) *Administrative Approval.* An applicant requesting to amend the requirements of this ordinance shall place a request in writing to the Planning and Zoning Department for approval of the request.

~~(f)~~(g) *Use of flags as attention-attractors prohibited.* The placement of flags upon merchandise or structures to draw the public's attention to such items shall be considered to render such flags prohibited "attention attractors" pursuant to Section 33-95(f) of the Code.

* * *

Section 3. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 19th day of November, 2008.

PASSED and ADOPTED on second reading this _____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 12



Planning & Zoning Department

David G. Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David G. Hennis, AICP, Community Development Director

Date: January 8, 2009

Re: **Extension of Moratorium to allow for finalization of Green Building Standards**

Staff requests a 6-month extension in the ordinances enacted in May and June of last year which established a development moratorium on the issuance of site plan approvals for buildings in order to afford the staff and consultants the opportunity to prepare the necessary "green" Land Development Regulations. These moratoriums are scheduled to expire in February and March of this year. The extension is requisite to complete and finalize documents regarding community efforts towards green development regulations and initiatives.

A copy of draft Green Development Standards has been prepared and is attached which requires public review and comment prior to adoption and implementation. A draft Sustainability Plan has also been prepared by *Spillis Candela* to assist the Town in becoming certified as a Green Local Government. Along with these initiatives the Town continues to work with *Zyscovich Architects* in the preparation of codes and development requirements for the future build out of the Urban Center area surrounding Southland Mall.

RECOMMENDATION

Approval of a 6-month extension in the moratoriums

ORDINANCE NO. 09-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCES 08-11 AND 08-12 TO PROVIDE FOR AN EXTENSION TO THE MORATORIUMS ON DEVELOPMENT WITHIN THE TOWN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) recently adopted its first Comprehensive Plan, which provides the blueprint for long term growth within the Town; and

WHEREAS, the Town has hired highly qualified planning consultants to draft the necessary Land Development Regulations to implement the Comprehensive Plan in order to provide for efficient and well conceived growth; and

WHEREAS, the Town recognizes the importance of becoming a sustainable community as well as environmental stewardship in a variety of media, which include, but are not limited to, water, energy, air, and waste; and

WHEREAS, the Town Council adopted Ordinance 08-11 on May 21, 2008 as well as Ordinance 08-12 on June 18, 2008 creating building moratoriums on certain developments within the Town; and

WHEREAS, these moratoriums were adopted in order to afford the Town staff and the consultants the opportunity to prepare and adopt a Green Plan, which would implement the Comprehensive Plan by creating Land Development Regulations to further guide land use and development, so that development within the Town will further the Town’s goal of creating a sustainable community; and

WHEREAS, since the adoption of these moratoriums, Town staff and consultants have been working on such proposed Land Development Regulations and have held workshops to solicit input from the public; and

WHEREAS, although a substantial amount of work has been done, the proposed Land Development Regulations are not yet finalized; and

WHEREAS, as such, the Town Council finds it is necessary and reasonable to extend the moratoriums to a date certain of August 20, 2009 in order to afford the Town staff and consultants the opportunity to complete and adopt the Green Plan and related Land Development Regulations; and

WHEREAS, the Town Council, in its capacity as the Local Planning Agency, has reviewed this Ordinance and has recommended approval; and

WHEREAS, after due notice and hearing, the Town Council finds that this Ordinance is consistent with the Town's Comprehensive Plan and Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Findings. The foregoing "Whereas" clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Amendment to Ordinance 08-11. Section 8 of Ordinance 08-11 shall be amended to read as follows:

Section 8. Term. The moratorium imposed by this Ordinance is temporary and shall be effective until August 20, 2009 ~~for a period of nine (9) months from the effective date of this Ordinance~~, unless dissolved earlier by the Town Council. Further, the moratorium shall automatically dissolve upon the adoption of the Green Plan and implementing land development regulations. The moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Section 3. Amendment to Ordinance 08-12. Section 8 of Ordinance 08-12 shall be amended to read as follows:

Section 8. Term. The moratorium imposed by this Ordinance is temporary and shall be effective until August 20, 2009 ~~for a period of nine (9) months from the effective date of this Ordinance~~, unless dissolved earlier by the Town Council. Further, the moratorium shall automatically dissolve upon the adoption of the Green Plan and implementing land development regulations. The moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Section 4. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 5. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 21st day of January, 2009.

PASSED AND ADOPTED on second reading this ___ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____

ARTICLE __
GREEN DEVELOPMENT

DRAFT
DRAFT

To establish goals, programs and procedures which reduce the use of natural resources, create a healthier and more sustainable living environment; minimizes the negative environmental impacts of development; promotes economic and environmental health through sustainable and environmental friendly design parameters; and provides leadership to both the private and public sectors in the area of green building practices to minimize the negative environmental impacts of development on the town.

Section 1 **Program Applicability**

The article shall apply to non-residential projects greater than 10,000 SF and multifamily projects greater than 5,000 SF. Public projects shall comply regardless of size, unless the town council determines that the cost [e.g., time, function, or funding] associated with the program significantly outweighs the benefits of program participation.

Section 2 **Certification.**

Projects require certification by an accredited professional authorized by the Florida Green Building Coalition, US Green Building Council and/or National Home Builders Association to verify that a project has satisfied the applicable program requirements necessary for certification.

Section 3 **Standards.**

Standards associated with Green Development certification are those developed by the Florida Green Building Coalition and the U.S. Green Building Council. Projects shall be bound by these standards, unless the applicant requests to be certified under an alternate standard and the request is approved by the Town Manager or designee. Standards shall apply to each sub-program as follows:

1. *FGBC.* Residential and non-residential projects seeking green development certification shall apply the requirements associated with FGBC including the Green Home Designation Standard for residential projects
2. *LEED 2.0.* Non-residential projects seeking green development certification under LEED 2.0 may be eligible for additional incentives.

Section 4 **Development Incentives.**

Incentives may be granted upon request of the applicant for projects addressing Section 3 requirements and at the discretion of the Town Council. Incentives may include the following:

1. Expedited site plan review.
2. Administrative site plan review.
3. Expedited building permit review.
4. Reduced cost recovery fee, which may equal up to 50 percent.
5. Reduced impact fees.
6. Marketing of green buildings on site construction signs, Town website, use of program logo on advertisements and brochures.
7. Green Building Award by the Town at an annual ceremony.
8. To allow orientation of the building to take full benefit of available natural resources, administrative modification(s) as authorized for yard setbacks, fencing, drainage, easements,

- docks, curbing, signage, landscaping, lighting, parking, driveways and/or architectural design standards needed to support the proposed design in the opinion of the Department Director.
9. Public funding support for the project.
 10. Rebate from water, sewer, drainage and/or electric utilities.
 11. Increased density and/or intensity for those projects attaining a minimum LEED gold certification or equivalent certification from other certifying agencies;
 12. Increased height for those projects attaining a minimum LEED gold certification or equivalent certification from other certifying agencies.
 13. Assistance in obtaining available grants.

Prior to award of an incentive/s, the participant shall meet with the Town to confirm that program certifications, policies, and credits are incorporated in an acceptable manner and in perpetuity. The details shall be confirmed through a development or other agreement. The participant shall provide a performance bond in an amount to be determined by the Town Manger, which bond will be forfeited to the Town in the event the building does not meet the requirements of certification.

Section 5 Florida Friendly Landscape Standards.

All projects shall follow strategies to establish Florida Friendly landscape and yards. Development shall also include standards within projects to address creation of a walkable community. Projects will encompass the following minimum standards

1. Water efficiency. Choose drought tolerant plants. Group plants according to similar water needs. Use low volume irrigation where applicable.
2. Fertilize appropriately. Choose fertilizers that contain 30 percent or more slow release nitrogen; and not exceeding 1 pound of nitrogen per 1,000 SF.
3. Mulch. Maintain 2 to 3 inches of mulch over all roots and within plant beds. Use recycled mulch or melaleuca, pine needles, or bark. Unsustainable cypress mulch is not permitted
4. Attract Wildlife. Plant native vines, shrubs, and trees following the landscaping code.
5. Reduce storm water runoff. Create swales or a rain garden to collect and filter rainwater. Direct downspouts and gutters to drain into lawns, beds, or rain barrels. Use gravel, pavers, crushed shell or mulch for walkways, patios, and driveways to absorb water and prevent runoff.
6. Protect waterways. Maintain a pesticide free along water edges of at least 10 feet. Remove evasive exotics plants for the water. Plant native vegetation according the landscape code.
7. Walkable Community. Follow the 12 Steps for a Walkable Community as listed in the Florida Department of Transportation Pedestrian and Bicycle Program parameters.

Section 7 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

1. FGBC means the Florida Green Building Coalition.
2. GHDS means the Green Home Designation Standard of the Florida Green Building Coalition.
3. Green building means generally the resource efficient design, construction, and operation of buildings by employing environmentally sensible construction practices, systems, and materials.
4. L.E.E.D. 2.0 means the Leadership in Energy and Environmental Design Rating System, Version 2.0, of the U.S. Green Building Council.
5. Certification means the final designation awarded to a program participant for satisfying all requirements associated with the program for a particular project.
6. USGBC means the U.S. Green Building Council.

TAB 13



Planning & Zoning Department

David G. Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven Alexander, Town Manager

From: David Hennis, Community Development Director

Date: December 16, 2008

Re: **Amendments to the Temporary Storage Units Ordinance**

The Mayor and Town Council have expressed its desire to improve the regulations related to Temporary Storage Units permitted within the Town. The proposed ordinance, amending Ordinance 06-23 "Temporary Storage Units" of the Code of Ordinances, has been prepared by Town planning staff with the advice of the Town attorneys in order to amend the Town's regulations.

The proposed amendments are summarized as follows:

1. The usage and nature of these storage units and their oversight requires a permit be issued, and a system of permitting be implemented.
2. The town also wishes to clarify that the users of these units must pay a fee.
3. The Town desires that any portable storage company doing business in the Town obtain an annual permit.
4. The Town will also add regulations related to freight containers, clarifying that they too are to be permitted, that their users shall pay a fee, and that companies providing freight containers within the Town shall have to obtain an annual permit.

RECOMMENDATION

Approval of the ordinance amending Ordinance 06-23

ORDINANCE NO. 09-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, UPDATING REGULATIONS RELATED TO TEMPORARY STORAGE UNITS AND FREIGHT CARGO CONTAINERS; CREATING PERMIT REQUIREMENTS; CREATING ANNUAL REGISTRATION FEE; CLARIFYING FEE REQUIREMENT RETROACTIVE TO PASSAGE OF INITIAL ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") finds and determines that regulations are necessary in relation to temporary on-site storage units (the "Storage Units") and freight cargo containers (the "Freight Containers"); and

WHEREAS, the usage and nature of these Storage Units and Freight Containers and their oversight requires that a permit be issued, and a system of permitting be implemented, in order to ensure that they are being utilized in compliance with the Town Code of Ordinances (the "Town Code"); and

WHEREAS, the Town also wishes to clarify that the users of these Storage Units and Freight Containers must pay a fee for the usage of the units as already stipulated by the Planning and Zoning Fee Schedule of the Town and Town Ordinance 06-23 in order to help defray the administrative costs relating to the oversight of these units; and

WHEREAS, the Town desires that any portable storage company providing Storage Units, as well as any company that provides Freight Containers, doing business in the Town obtain an annual permit, outlining the obligations and requirements for conducting business in the Town, in order to ensure that the company will comply with those obligations and requirements, and in order to allow the Town to monitor that compliance; and

WHEREAS, the Town finds that this ordinance will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

Section 2. Amendment to Ordinance 06-23 of the Town Code. The Town Council of the Town of Cutler Bay hereby amends Ordinance 06-23 of the Town Code of Ordinances as follows:

(1) **Recitals.**

The above Recitals are true and correct and are incorporated herein by this reference.

(2) **Purpose and Intent.**

This Ordinance regulates the placement of Temporary Storage Units and Freight Cargo Containers in order to promote the health, safety, and welfare of the residents of the Town and to preserve the aesthetic value of its neighborhoods.

(3) **Definitions.**

The following definitions shall apply under this Ordinance:

A. User shall mean the person that owns, rents, occupies, or controls the property.

B. Supplier shall mean the company or vendor which supplies the Temporary Storage Unit to the property.

C. Temporary Storage Unit shall mean a transportable unit designed and used primarily for temporary storage of building materials (before they are utilized for building purposes), household goods, and other such materials for use on a limited basis on a property. Such unit shall not be considered an accessory structure as provided in the Code of the Town of Cutler Bay.

D. Freight Cargo Container shall mean a reusable enclosed or semi-enclosed vessel, cargo container or truck trailer:

(i) Originally, specifically or formerly designed or used for the packing, shipping, movement or transportation of freight, articles, goods, belongings or commodities; or

(ii) Designed for or capable of being mounted or moved on a rail car, truck or vessel; or

(iii) Designed for or capable of being mounted on a chassis or bogie for movement by truck tractor or other similar device.

Such cargo container shall not be considered an accessory structure as provided in the Town Code. The Freight Cargo Container may be similar or identical to a Temporary Storage Unit in its appearance and/or function, the principal difference being its use for transient purposes rather than stationary storage.

(4) **Requirements for Placement of Temporary Storage Units and Freight Cargo Containers.**

The following requirements shall apply to the placement of Temporary Storage Units and Freight Cargo Containers in the residential zones:

A. It shall be unlawful for any person or entity to place or permit the placement of Temporary Storage Units and Freight Cargo Containers on property located within a Residential Zoning District unless the placement complies with this section of the Town Code.

B. Temporary Storage Units and Freight Cargo Containers shall only be placed on the User's driveway or a parking area or, if access exists at the side or rear of the site, the side or rear yard. The required parking space(s) shall at all times be maintained if temporary storage units are placed in parking areas. No more than one storage unit may be placed on a property at any time.

C. The Temporary Storage Unit or Freight Cargo Container shall be located at such property for a maximum of fourteen (14) consecutive days, including the days of delivery and removal. An extension may be granted to the User by the Town Manager, or designee, subject to conditions, for a reasonable additional time period in an amount not to exceed twenty eight (28) days.

D. A Temporary Storage Unit or Freight Cargo Container may not be located at a residential property for more than four months of any calendar year.

E. The User, as well as the Supplier, shall each be independently responsible for ensuring that the Temporary Storage Unit or Freight Cargo Container is maintained in good condition, free from evidence of deterioration, weathering, discoloration, graffiti, rust, ripping, tearing or other holes or breaks, at all times.

F. No Temporary Storage Unit or Freight Cargo Container shall be used to store solid waste, construction debris, demolition debris or any illegal or hazardous material. Upon reasonable notice to the User, the Town of Cutler Bay may inspect the contents of any Temporary Storage Unit or Freight Cargo Container at any reasonable time to ensure that it is not being used to store said materials.

G. No ~~storage unit~~ Temporary Storage Unit or Freight Cargo Container may be used to house humans or animals of any kind.

H. The date that the ~~container~~ Temporary Storage Unit or Freight Cargo Container was dropped off must be clearly posted, in a weather resistant manner, on the ~~container~~ Temporary Storage Unit or Freight Cargo Container.

(5) **Permits Required.**

A. Prior to commencing business in the Town the portable storage company must obtain an annual permit for providing Temporary Storage Units outlining the obligations and requirements for conducting business in the Town. The fee for such permit shall be

\$250.00. The annual permit fee for portable storage companies is payable on or before January 1 of each year, commencing January 1, 2009.

B. Prior to commencing business in the Town the company providing freight containers must obtain an annual permit for providing Freight Cargo Containers, outlining the obligations and requirements for conducting business in the Town. The fee for such permit shall be \$500.00. The annual permit fee for companies providing freight cargo containers is payable on or before January 1 of each year, commencing January 1, 2009.

C. Prior to placing a Temporary Storage Unit or Freight Cargo Container on site, the user or the supplier of the Temporary Storage Unit or Freight Cargo Container must apply for a site permit. Application for the site permit shall be made to the Town on a form provided by the Town. The application shall include the signature of the site property owner in order to ensure that the site owner has full knowledge of, and consents to the placement of the portable storage unit on site and the provisions of this section.

D. Pursuant to Town Ordinance 06-23 and Section U of the Town Planning and Zoning Fee Schedule, a fee shall accompany the completed application for a Temporary Storage Unit or Freight Cargo Container, in the sum of \$85.00, payable by the user. The effective date of this fee is September 19, 2006.

E. Portable storage unit permits will not be granted to any portable storage unit company, or customer of any portable storage unit company, which is found to be in violation of the regulations of this section, until such violation is brought into compliance.

(5)(6) Placement of Temporary Storage Units in other Zoning Districts.

A storage unit Temporary Storage Unit or Freight Cargo Container placed in a zoning district other than residential shall comply with the subsections (4)C, (4)D, (4)E, (4)F, (4)G and (4)H above of this Ordinance.

(7) Waiver of Duration Requirements

The Town Planning and Zoning Director may waive those ordinance guidelines that pertain to the duration that a Temporary Storage Unit or Cargo Freight Container may be kept on a property if the Town Planning and Zoning Director determines that the entity seeking the waiver by necessity needs an extension due to an acute, non self-imposed hardship.

Section 3. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences,

clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading, and shall be applied retroactively to the extent indicated in paragraph (5) (B) above.

PASSED on first reading this 19th day of November, 2008.

PASSED and ADOPTED on second reading this ____ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____