

# Brevard Waterworks, Inc.

December 14, 2015

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FPSC - COMMISSION CLERK

COMMISSION  
CLERK

2015 DEC 21 AM 9:17

RECEIVED-FPSC

Office of Commission Clerk  
Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

**Re: Docket No. 140186-WU - Application of Brevard Waterworks, Inc. for Staff Assisted Rate Case in Brevard County – Response to Staff Inquiry**

Dear Commission Clerk,

Brevard Waterworks, Inc. (BWI) hereby submits its response to the PSC Staff inquiry of December 11, 2015.

- 1) Referring to paragraph VIII, under the subtitle Subsequent Actions Taken:
  - a) Please provide the plan that U.S. Water Services Corporation prepared for Brevard.
  - b) If not included in the plan, what would be the time frame for completing the project?
  - c) If not included in the plan, would the project be completed in phases?
  - d) If not included in the plan, explain what work would be completed in each phase. For example, the first phase would start on Kilbee Street replacing so many feet of four inch AC or Galvanized pipes.
  - e)

**Response:** See attached Bid Documents and Engineering Plans completed by U.S. Water Services Corporation for Brevard Waterworks, Inc.

Pursuant to the Instructions to Bidders Article 11 – Contract Times:

The “Commencement Date” shall be established in the Notice to Proceed to be issued by the U.S. Water Services. Contractor shall commence work within five (5) calendar days from the Commencement Date. The Work shall be substantially completed within 90 calendar days from the Commencement Date. The date of substantially completion of the Work is the date certified by the Design Professional when construction is sufficiently complete, in accordance with the Contract Documents, so Brevard Waterworks can occupy or utilize the Work for the use for which it is intended. The Work shall be fully completed and ready for final acceptance by U.S. Water Services within 120 calendar days from the Commencement Date.

Pursuant to the Bid Form Article 6 – Time of Completion:

Bidder agrees that the Work will be Substantially Complete within 120 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and will be completed and ready for final payment in accordance with paragraph 14.07.B of the

COM \_\_\_\_\_  
 AFD \_\_\_\_\_  
 APA \_\_\_\_\_  
 ECO Attachments \_\_\_\_\_  
 ENG \_\_\_\_\_  
 GCL \_\_\_\_\_  
 IDM \_\_\_\_\_  
 TEL \_\_\_\_\_  
 CLK \_\_\_\_\_

5320 Captains Court, New Port Richey, Florida 34652  
Mailing: C/O 4939 Cross Bayou Boulevard, New Port Richey, Florida 34652  
Tel: 727-848-8292

Brevard Waterworks, Inc.  
Staff Data Request Response  
December 14, 2015

General Conditions within 180 days after the date when the Contract Times commence to run, which days will be entered by Owner into the Agreement as the Contract Times.

- 2) Referring to paragraph X, under the subtitle Subsequent Actions Taken:  
a) Please provide a copy of the referenced bid.

**Response:** See Attached.

- 3) Referring to paragraph XI, under the subtitle Subsequent Actions Taken:  
a) Please explain in detail what is included in the additional engineering (\$34,746) and supervision (\$35,754) costs.  
b) Are any of the costs incurred to comply with the PAA Order (\$19,262) included in the Preliminary Cost Estimate (\$428,040) to replace the Oakwood distribution system? Please explain your answer.

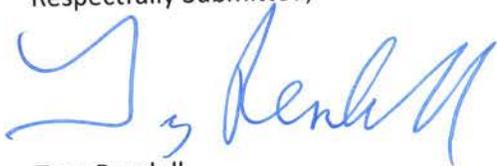
**Response:** (a) Please refer to Section 00700 – General Conditions of the Construction Contract attached. Specifically refer to Article Nos. **2, 3, 4, 6, 7, 9, 10, 12, 13, 14, 15.**

The additional engineering costs involve the overall project management, including inspection, certification, disbursements, etc. The supervision includes daily supervision and oversight of the on-site construction by U.S. Water Services employees to ensure the project meets the required specifications of the project. The supervision is a daily provision during the construction of the project, since the ultimate ownership will be by the owner, Brevard Waterworks, Inc.

(b) No, the costs requested of \$19,262 was not part of the engineering costs. This was for the preparation of the engineering plans (shop drawings), bid documents, advertising costs of the bid, travel costs to the customer meeting, noticing costs for the OPC notice of Customer Meetings, and travel costs to the PSC agenda. However, if the distribution project were to move forward, the engineering portion of this request or \$18,088 could be included as part of the overall cost of the project and capitalized upon completion. The remaining amounts relate to the cost of processing the SARC and complying with the PSC's order.

If you have any further questions, please do not hesitate to contact me at (727) 848-8192, ext. 245.

Respectfully Submitted,



Troy Rendell  
Manager of Regulated Utilities  
//for Brevard Waterworks, Inc.

OXFORD PIPELINE INC

**FAX**

To: *Hope*

From: *Craig*

Fax: *727-848-7701*

Pages:

Phone:

Date:

Re:

CC:

Urgent     For Review     Please Comment     Please Reply

FreeFaxCoverSheets.net

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

**BASE BID**

| Bid Item | Description with price written in words  | Quantity        | Unit Costs  | Total Amount (\$)     |
|----------|--|-----------------|---|-----------------------|
| 1        | Mobilization, demobilization, bonds and permits (not to exceed 5% of Bid Items)  | 1               | Lump Sum  | 5,000 <sup>00</sup>   |
| 2        | Furnish and install approximately 5,669 linear feet of 4" SDR17 PVC or SDR18 C900 PVC pipe with surface restoration. Method of construction is the contractor's option either by open cut or by directional drill.         | 5,669 LF        | 15 <sup>00</sup><br>\$/LF                         | 85,035 <sup>00</sup>  |
| 3        | Furnish and install approximately 9,293 linear feet of 3" SDR17 PVC pipe with surface restoration. Method of construction is the contractor's option either by open cut or by directional drill.                           | 9,292 LF        | 15 <sup>00</sup><br>\$/LF                         | 139,380 <sup>00</sup> |
| 4        | Furnish and install all necessary 4" DI valves according as depicted by the construction plans.  | 10 ea<br>Number | 650 <sup>00</sup><br>\$/Valve                     | 6500 <sup>00</sup>    |
| 5        | Furnish and install all necessary 3" DI valves according as depicted by the construction plans.  | 15 ea<br>Number | 600 <sup>00</sup><br>\$/Valve                     | 9000 <sup>00</sup>    |
| 6        | Furnish and install new single service 3/4" P.E. tubing connection including saddles, corp stops, and 3/4" PE tubing to the existing curb stops of the existing meters. Existing meter boxes with curb stops shall remain. | 11<br>Number    | 575 <sup>00</sup><br>\$/single service connection | 6325 <sup>00</sup>    |

00300-4

| Bid Item | Description with price written in words  | Quantity      | Unit Costs  | Total Amount (\$)    |
|----------|--|---------------|---|----------------------|
| 7        | Furnish and install new double service 1" P.E. tubing connection including saddles, corp stops, and 1" PE tubing to the existing curb stops of the existing meters. Existing meter boxes with curb stops shall remain. | 84.<br>Number | \$/double service connection<br>600 <sup>00</sup> | 50,400 <sup>00</sup> |
| 8        | Furnish and install new Blow Off Assembly with all necessary appurtenances and fittings according to the construction plans.   | 2.<br>Number  | \$/Blow Off Assembly<br>1500 <sup>00</sup>        | 3000 <sup>00</sup>   |
| 9        | Pressure testing, chlorination, clearance, and bacteriological sampling of new piping.   | 1             | Lump Sum  | 3900 <sup>00</sup>   |
| 10       | Abandonment of old existing pipes including capping and plugging of all pipes disconnected and taken out of service.   | 1             | Lump Sum  | 4000 <sup>00</sup>   |
| 11       | Clearing of utility easement allowance   | 1             | Lump Sum  | \$20,000.00          |
| 12       | Contingency  | 1             | Lump Sum  | \$25,000.00          |

|                            |  |  |  |                       |
|----------------------------|--|--|--|-----------------------|
| TOTAL Base Bid (Inclusive) |  |  |  | 354,510 <sup>00</sup> |
|----------------------------|--|--|--|-----------------------|

All specified cash allowances are included in the price(s) set forth above and have been computed in accordance with Paragraph 11.02 of the General Conditions.

It is understood that the foregoing quantities are approximate only and are solely for the purpose of facilitating the comparison of bids, and the compensation will be computed upon the basis of the actual quantities in the completed work, whether they be more or less than those shown.

ARTICLE 6 - TIME OF COMPLETION

6.01 Bidder agrees that the Work will be Substantially Complete within 120 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and will be completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions within 180 calendar days

00300-5

## LEGAL ADVERTISEMENT

### INVITATION TO BID

BREVARD WATERWORKS, INC.  
BREVARD COUNTY, FLORIDA

Date: 9/23/2015

### BID NO.706-19; BREVARD WATERWORKS WATER SYSTEM REPLACEMENT

Sealed proposals for 706-19/BREVARD WATERWORKS WATER SYSTEM REPLACEMENT addressed to Brevard Waterworks at 4939 Cross Bayou Blvd., New Port Richey, FL 34652 will be received until 3:00 p.m. EDT, on October 16, 2015, at which time all proposals will be publicly opened and read aloud. Any bids received after the time and date specified will not be accepted and shall be returned unopened to the Bidder.

A NON-MANDATORY pre-bid conference and shall be held at 9:00 A.M. Local Time, on the 6th day of October, 2015 in the offices of U.S. Water Services Corporation, 4939 Cross Bayou Blvd., New Port Richey, FL 34652 at which time all prospective Bidders may have questions answered regarding the Bidding Documents for this Project. Attendance at the pre-bid conference is encouraged but not mandatory.

Sealed envelopes containing bids shall be marked or endorsed "Proposal for Brevard Waterworks, Bid No. 706-19 and Bid Date 10/16/2015." No bid shall be considered unless it is made on the Bid Form which is included in the Bidding Documents. The Bid Form (Section 00300) shall be removed from the Bidding Documents prior to submittal.

One contract will be awarded for all work to be performed pursuant to this invitation to bid. Bidding Documents may be examined in the office of:

U.S. Water Services Corporation Office, 4939 Cross Bayou Blvd., New Port Richey, FL 34652, Telephone (727) 848-8292.

Prospective bidders may obtain the Bidding Documents free of charge, in PDF file format, from U.S. Water Services Corporation, by email request to [kkeegan@uswatercorp.net](mailto:kkeegan@uswatercorp.net). Bid documents will be made available by the close of business on Monday, September 25, 2015.

Each bid shall be accompanied by a certified or cashier's check or a Bid Bond in an amount not less than five percent (5%) of the total Bid to be retained as liquidated damages in the event the successful Bidder fails to execute the Agreement and file the required bonds and insurance within ten (10) calendar days after the receipt of the Notice of Award.

The successful Bidder shall be required to furnish the necessary Performance and Payment Bonds, as prescribed in the General Conditions of the Contract Documents. All

Bid Bonds, Performance and Payment Bonds, Insurance Contracts and Certificates of Insurance shall be either executed by or countersigned by a Florida licensed agent of the surety or insurance company doing business in the State of Florida. Further, the said surety or insurance company shall be duly licensed and qualified to do business in the State of Florida. Attorneys-in-fact that sign Bid Bonds or Performance and Payment Bonds must file with each bond a certified and effective dated copy of their Power of Attorney.

In order to perform public work, the successful Bidder shall, as applicable, hold or obtain such contractor's and business licenses, certifications and registrations as required by State statutes and local ordinances.

Before a contract will be awarded for the work contemplated herein, U.S. Water Services shall conduct such investigations as it deems necessary to determine the performance record and ability of the apparent low Bidder to perform the size and type of work specified in the Bidding Documents. Upon request, the Bidder shall submit such information as deemed necessary by the U.S. Water Services to evaluate the Bidder's qualifications.

The Successful Bidder shall be required to fully complete all Work to be performed pursuant to this invitation to bid within 180 calendar days from and after the Commencement Date specified in the Notice to Proceed.

U.S. Water Services reserves the right to reject all Bids or any Bid not conforming to the intent and purpose of the Bidding Documents, and to postpone the award of the contract for a period of time which, however, shall not extend beyond 120 days from the bid opening date.

Dated this 23th day of September, 2015.

U.S. Water Services Corporation  
New Port Richey, Florida

BY: Keith Keegan, P.E.  
Project Engineer

## SECTION 00100

### INSTRUCTIONS TO BIDDERS

#### TABLE OF ARTICLES

1. Defined Terms
2. Bids Received
3. Location and Description of Project
4. Copies of Bidding Documents
5. Qualifications of Bidders
6. Examination of Bidding Documents, Other Related Data and Site
7. Pre-Bid Conference
8. Site and Other Areas
9. Interpretations and Addenda
10. Bid Security
11. Contract Times
12. Liquidated and Special Damages
13. Substitute and "Or Equal" Items
14. Subcontractors, Suppliers and Others
15. Preparation of Bid
16. Basis of Bids; Comparison of Bids
17. Submittal of Bid
18. Modification or Withdrawal of Bid
19. Opening of Bids
20. Disqualification of Bidders
21. Bids to Remain Subject to Acceptance
22. Evaluation of Bids and Award of Contract
23. Contract Securities
24. Contractor's Insurance
25. Signing of Agreement
26. Notice to Proceed
27. Partnering
28. Sales and Use Taxes
29. Additional Requirements

#### ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

- A. Issuing Office: The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- B. The term "USW" used herein refers to U.S. Water Services Corporation or its duly authorized representative.
- C. the term "Bidder" used herein means one who submits a bid directly to the USW in response to this solicitation.
- D. The term "Successful Bidder" means the lowest qualified, responsible and responsive Bidder who is awarded the contract by the USW, on the basis of the USW's evaluation.
- E. The term "Bidding Documents" includes the Legal Advertisement, these Instructions to Bidders, the Bid Schedule and the Contract Documents as defined in the Agreement.
- F. The term "Work" includes all work required in connection with the Project specified in the Legal Advertisement for this solicitation as set forth in the Bidding Documents for this Project.
- G. The term "Agreement" used herein shall refer to the fully executed document between the Owner and Contractor, the form of which is included at Section 00500 of the Contract Documents.

#### ARTICLE 2 – BIDS RECEIVED

- 2.01 Refer to the Legal Advertisement for information on receipt of Bids.

#### ARTICLE 3 – LOCATION AND DESCRIPTION OF PROJECT

- 3.01 The project includes the complete replacement of the existing water system servicing the Oakwood Subdivision in Brevard County. The replacement water mains are to be installed within existing easements and right-of-way limits. The installation includes 187 service connections by installation of P.E. service tubing and fittings required for connection to the existing meter boxes. The contractor shall provide the necessary survey, utility locating, clearing of easements and restoration to provide a working water distribution system meeting all FDEP, AWWA, and local regulations. Refer to the coversheet of the plans for the location and detailed description of the Project.

#### ARTICLE 4 – COPIES OF BIDDING DOCUMENTS

- 4.01 Refer to the Legal Advertisement for information on location where Bidders may examine and obtain the Bidding Documents.
- 4.02 The Issuing Office is identified in the Legal Advertisement.
- 4.03 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

- 4.04 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not grant permission for any other use.

#### ARTICLE 5 – QUALIFICATIONS OF BIDDERS

- 5.01 Bidders shall be experienced in the kind of Work to be performed, shall have the necessary equipment therefor, and shall possess sufficient capital to properly execute the Work within the time allowed. Bids received from Bidders who have previously failed to complete work within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if Bidder cannot show that Bidder has the necessary ability, plant, and equipment to commence the Work at the time prescribed and thereafter to prosecute and complete the Work at the rate or within the times specified. A Bid may be rejected if Bidder is already obligated for the performance of other work which would delay the commencement, prosecution or completion of the Work.
- 5.02 To demonstrate qualifications to perform the Work, Bidder shall complete and submit with its Bid the Bidder Qualifications Statement which is bound in the Project Manual. Bidders may be asked to and shall furnish additional data to demonstrate Bidder's qualifications.
- 5.03 Bidders shall be qualified to do business in the state where the Project is located or covenant to obtain such qualification prior to signing the Agreement.

#### ARTICLE 6 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

- 6.01 Subsurface and Physical Conditions shall be determined by the contractor and their subcontractors. It is the contractor's responsibility to include all costs within the bid as necessary for; survey, soils investigations, utility locates, dewatering, clearing of easements, installation of water mains and services as well as site restoration.
- 6.02 Hazardous Environmental Condition
- Owner has no actual knowledge of a Hazardous Environmental Condition at the Site.
- 6.03 Provisions concerning responsibilities for the adequacy of data, furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unforeseen subsurface or physical conditions appear in Paragraphs 4.02, 4.03 and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract

Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in Paragraph 4.06 of the General Conditions.

- 6.05 On request, Owner's representative will conduct a Site visit during Owner's normal business hours.
- 6.06 It is the responsibility of Bidder, before submitting a Bid to:
- A. Examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents and Addenda (if any);
  - B. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
  - C. Become familiar with and satisfy Bidder as to the Laws and Regulations that may affect cost, progress and performance of the Work;
  - D. Consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in Bidding Documents with respect to the effect of such information, observation, and documents on
    - 1. The cost, progress and performance of the Work;
    - 2. The means, methods, techniques, sequences and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences and procedures of construction expressly required by the Bidding Documents; and
    - 3. Bidder's safety precautions and programs;
  - E. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for the performance of the Work at the price(s) bid and within the times required and in accordance with the other terms and conditions of the Bidding Documents;
  - F. Become aware of the general nature of work (if any) to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
  - G. Promptly give Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and

- H. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 6.07 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 6, that without exception the Bid is premised upon performing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, or procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing the Work.

#### ARTICLE 7 – PRE-BID CONFERENCE

- 7.01 A pre-Bid conference will be held at the U.S. Water Services Corporation, 4939 Cross Bayou Blvd., New Port Richey, FL 34652 at 9:00 A.M. local time on September 4, 2015. Representatives of the OWNER and ENGINEER will be present to discuss the Project. Bidders are strongly encouraged to attend and participate at the conference however, attendance at the pre-Bid conference is not mandatory. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions raised at the pre-Bid conference. Oral statements may not be relied upon and will not be binding or legally effective.

#### ARTICLE 8 – SITE AND OTHER AREAS

- 8.01 The Site is identified in the Bidding Documents.

#### ARTICLE 9 – INTERPRETATIONS AND ADDENDA

- 9.01 All questions about the meaning or intent of the Bidding Documents shall be submitted to the OWNER in writing. To receive consideration, questions must be received by the OWNER at least ten calendar days prior to the date for the opening of Bids. Interpretations or clarifications considered necessary by the OWNER or ENGINEER in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the OWNER as having received the Bidding Documents for receipt not later than five (5) days prior to the date for the opening of Bids. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 9.02 Addenda may also be issued to clarify, correct or change the Bidding Documents as deemed advisable by OWNER or ENGINEER. Such Addenda, if any, will be issued in the manner and within the time period stated in Paragraph 9.01 of these Instructions to Bidders.

## ARTICLE 10 – BID SECURITY

- 10.01 A Bid shall be accompanied by Bid security made payable to Owner in the amount of 5% of Bidder's maximum Bid price and in the form of a certified check, cashier's check, or a Bid Bond.
- 10.02 Bid bond shall be on a separate form included in the Bidding Documents. Bid bond shall be issued by a surety complying with the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.
- 10.03 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security, and complied with the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to sign and deliver the Contract Documents and furnish the required contract security within 10 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited to the Owner as liquidated damages for such failure.
- 10.04 The Bid security of any Bidder whom the OWNER believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the sixty-first day after the Bid opening whereupon the Bid security furnished by such Bidders will be returned. The Bid security of Bidders whom Owner believes do not have a reasonable chance of receiving an award will be returned within seven days of the Bid opening.

## ARTICLE 11 – CONTRACT TIMES

- 11.01 Time is of the essence in the performance of the Work under this Agreement. The "Commencement Date" shall be established in the Notice to Proceed to be issued by the U.S. Water Services. Contractor shall commence the Work within five (5) calendar days from the Commencement Date. No Work shall be performed at the Project site prior to the Commencement Date. Any Work performed by Contractor prior to the Commencement Date shall be at the sole risk of Contractor. The Work shall be substantially completed within 90 calendar days from the Commencement Date. The date of substantial completion of the Work (or designated portions thereof) is the date certified by the Design Professional when construction is sufficiently complete, in accordance with the Contract Documents, so Brevard Waterworks can occupy or utilize the Work (or designated portions thereof) for the use for which it is intended. The Work shall be fully completed and ready for final acceptance by U.S. Water Services within 120 calendar days from the Commencement Date (herein "Contract Time").

## ARTICLE 12 – LIQUIDATED AND SPECIAL DAMAGES

12.01 Provisions for liquidated and special damages, if any, are set forth in the Agreement.

## ARTICLE 13 – SUBSTITUTE AND “OR EQUAL” ITEMS

13.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or “or-equal” items. Whenever it is specified or described in the Bidding Documents that a substitute or “or-equal” item of material or equipment may be furnished or used by the Contractor if accepted by the Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submittal of any such application by Contractor and consideration by Engineer is set forth in the General Conditions which may be supplemented in the Supplemental Conditions.

13.02 Refer to Section 6.05 of the General Conditions for the period of time after the Effective Date of the Agreement during which the Engineer will accept applications for substitute items of material or equipment.

## ARTICLE 14 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

14.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within seven days after Bid opening submit to Owner a list of all such Subcontractors, Suppliers, other individuals, and entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualifications for each such Subcontractor, Supplier, individual, and entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, the OWNER may, before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute without an increase in the Bid price.

14.02 If apparent Successful Bidder declines to make any such substitution, the OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other individuals or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which the OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

- 14.03 Where the Contract Price is on the basis of cost-plus, the apparent Successful Bidder, prior to the Notice of Award, shall identify in writing to OWNER those portions of the Work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the Work with the OWNER's written consent.
- 14.04 CONTRACTOR shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom CONTRACTOR has reasonable objection.

#### ARTICLE 15 – PREPARATION OF BID

- 15.01 A Bid shall be made on the Bid Form furnished in the Bidding Documents. The Bid Form shall not be altered in any way. Additional copies of the Bid Form may be obtained from the OWNER.
- 15.02 All blanks in the Bid Form shall be completed in ink or by typewriter and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated in both words and numerals for each bid item listed therein. In the case of optional alternatives the words "No Bid", "No Change", or "Not Applicable" may be entered. Ditto marks shall not be used.
- 15.03 A Bid shall be executed as stated below.
- A. A Bid by an individual shall indicate the Bidder's name and official address.
  - B. A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title shall appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be indicated.
  - C. A Bid by a joint venture shall be executed by each member of the joint venture in the manner indicated on the Bid Form. The official address of the joint venture shall be indicated.
  - D. A Bid by a corporation shall be executed in the corporate name by an officer of the corporation and shall be accompanied by a certified copy of a resolution of the board of directors authorizing the person signing the Bid to do so on behalf of the corporation. The corporate seal shall be affixed and attested by the secretary or an assistant secretary of the corporation. The state of incorporation and the official corporate address shall be indicated.
  - E. A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be indicated below the signature.
  - F. All names shall be typed or printed in ink below the signature.

- 16.03 For each allowance Bidder shall include, elsewhere in its Bid, all costs set forth in Paragraph 11.02.B of the General Conditions to complete the Work associated with the material, equipment or other designated items to be furnished under cash allowance(s).

#### ARTICLE 17 – SUBMITTAL OF BID

- 17.01 A Bid shall be received no later than the date and time prescribed and at the place indicated in the Advertisement for Bids.
- 17.02 Bid shall be enclosed in an opaque sealed envelope plainly marked on the outside with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) the name and address of the Bidder and its license or registration number, if applicable. Bid shall be accompanied by Bid security and other required documents.
- 17.03 An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

#### ARTICLE 18 – MODIFICATION OR WITHDRAWAL OF BID

- 18.01 Withdrawal Prior to Bid Opening: A Bid may be withdrawn by an appropriate document duly executed, in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time fixed for the opening of Bids. Upon receipt of such written notice, the unopened Bid will be returned to the Bidder.
- 18.02 Modification Prior to Bid Opening: If a Bidder wishes to modify its Bid, Bidder must withdraw its initial Bid in the manner specified in Paragraph 18.01 of these Instructions to Bidders and submit a new Bid.

#### ARTICLE 19 – OPENING OF BIDS

- 19.01 Bids will be opened at the time and place where Bids are to be submitted and, unless obviously non-responsive, read aloud publicly. A tabulation of the Bids will be made available to Bidders after the opening.
- 19.02 Bids received after the date and time specified for the receiving of Bids will not be accepted and will be returned to the Bidder unopened.

## ARTICLE 20 – DISQUALIFICATION OF BIDDERS

- 20.01 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

## ARTICLE 21 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 21.01 All Bids shall remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of that period.

## ARTICLE 22 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 22.01 Owner reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be not responsible. Owner also reserves the right to waive minor irregularities.
- 22.02 Owner reserves the right to reject any Bid not accompanied by specified documentation and Bid security.
- 22.03 Owner reserves the right to reject any Bid that, in its sole discretion, is considered to be unbalanced or unreasonable as to the amount bid for any lump sum or unit price item.
- 22.04 In evaluating Bidders, Owner will consider the qualifications of Bidders, whether or not their Bids comply with the prescribed requirements, the alternatives, if any, the lump sum and unit prices, and other data as may be requested in the Bid Form or prior to the Notice of Award.
- 22.05 Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 22.06 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of the Bidders to perform the Work in accordance with the Contract Documents. Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.

22.07 Owner reserves the right to accept any Bid deemed to be in its best interests.

#### ARTICLE 23 – CONTRACT SECURITIES

23.01 Performance and Payment Bonds shall be in the form provided in Sections 00610 and Section 00620 of the Contract Documents. The amounts of and other requirements for Performance and Payment Bonds are stated in Paragraph 5.01 of the General Conditions. The requirements for delivery of Bonds are stated in Paragraph 2.01 of the General Conditions. Additional requirements may be stated in the Supplementary Conditions.

23.02 Successful Bidder shall within 10 days from the date of the Notice of Award deliver to Owner, for Owner's review and approval, the Performance Bond and the Payment Bond.

#### ARTICLE 24 – CONTRACTOR'S INSURANCE

24.01 The requirements for Contractor's insurance are stated in Article 5 of the General Conditions and in the Supplementary Conditions. The requirements for delivery of certificates of insurance and other evidence of insurance are stated in Paragraph 2.01.B of the General Conditions.

24.02 Successful Bidder shall within 10 days from the date of the Notice of Award deliver to Owner, for review and approval, the required policies of insurance. Upon approval, the policies will be returned to the Bidder and Bidder shall submit certificates of insurance and other evidence of insurance to the Owner as stated in the General Conditions.

#### ARTICLE 25 – SIGNING OF AGREEMENT

25.01 When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement along with the other Contract Documents which are identified in the Agreement as attached thereto. Within 10 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within 21 days thereafter, Owner will deliver one fully signed counterpart to Successful Bidder with a complete set of the Contract Documents.

#### ARTICLE 26 – NOTICE TO PROCEED

26.01 Issuance of the Notice to Proceed shall be as stated in Article 2 of the General Conditions.

++ END OF SECTION ++

**SECTION 00300**  
**BID FORM**

Brevard Waterworks

(Oakwood) Water System Replacement  
Project No. 706-19

**TABLE OF ARTICLES**

1. Bid Recipient
2. Bidder's Acknowledgements
3. Bidder's Representations
4. Bidder's Certifications
5. Basis of Bid
6. Time of Completion
7. Attachments to this Bid
8. Defined Terms
9. Bid Submittal

**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to:

Brevard Waterworks, Inc.  
4939 Cross Bayou Blvd.  
New Port Richey, Florida 34652

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the price(s) and within the times indicated in this Bid and in accordance with the Bidding Documents.

**ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS**

2.01 Bidder accepts all of the terms and conditions of the Bid Solicitation and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 90 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner. Bidder will sign the Agreement and will furnish the required contract security, and other required documents within the time periods set forth in the Bidding Documents.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, if any, and the following Addenda, receipt of all of which is hereby acknowledged.

| <u>Addendum No.</u> | <u>Date Received</u> | <u>Addendum No.</u> | <u>Date Received</u> |
|---------------------|----------------------|---------------------|----------------------|
| _____               | _____                | _____               | _____                |
| _____               | _____                | _____               | _____                |
| _____               | _____                | _____               | _____                |

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities), if any, that have been identified in the Supplementary Conditions in SC-4.02 as containing reliable “technical data”.
- E. Bidder has considered the information known to Bidder, information commonly known to contractors doing business in the locality of the Site, information and observations obtained from visits to the Site, the Bidding Documents, and the Site-related reports and drawings identified in the Bidding Documents with respect to the effect of such information, observations, and documents on
  - 1. the cost, progress and performance of the Work
  - 2. the means, methods, techniques, sequences and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder; and
  - 3. Bidder’s safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data

are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required and in accordance with the other terms and conditions of the Bidding Documents.

- G. Bidder is aware of the general nature of work (if any) to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

#### ARTICLE 4 – BIDDER’S CERTIFICATIONS

4.01 Bidder certifies that:

- A. This Bid is genuine and is not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid
- C. Bidder; has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract. For the purposes of the Paragraph 4.01.D;
  - 1. “Corrupt practice” means the offering, giving, or soliciting of anything of value likely to influence the action of a public official in the bidding process
  - 2. ”Fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
  - 3. “Collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
  - 4. “Coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

| <b>Bid Item</b> | <b>Description with price written in words</b>   | <b>Quantity</b> | <b>Unit Costs</b>            | <b>Total Amount (\$)</b> |
|-----------------|--|-----------------|------------------------------|--------------------------|
| 7               | Furnish and install new double service 1" P.E. tubing connection including saddles, corp stops, and 1" PE tubing to the existing curb stops of the existing meters. Existing meter boxes with curb stops shall remain. | Number          | \$/double service connection |                          |
| 8               | Furnish and install new Blow Off Assembly with all necessary appurtenances and fittings according to the construction plans.   | Number          | \$/Blow Off Assembly         |                          |
| 9               | Pressure testing, chlorination, clearance, and bacteriological sampling of new piping.   | 1               | Lump Sum                     |                          |
| 10              | Abandonment of old existing pipes including capping and plugging of all pipes disconnected and taken out of service.   | 1               | Lump Sum                     |                          |
| 11              | Clearing of utility easement allowance   | 1               | Lump Sum                     | \$20,000.00              |
| 12              | Contingency  | 1               | Lump Sum                     | \$25,000.00              |

|  |                            |  |  |  |
|--|----------------------------|--|--|--|
|  | TOTAL Base Bid (Inclusive) |  |  |  |
|--|----------------------------|--|--|--|

All specified cash allowances are included in the price(s) set forth above and have been computed in accordance with Paragraph 11.02 of the General Conditions.

It is understood that the foregoing quantities are approximate only and are solely for the purpose of facilitating the comparison of bids, and the compensation will be computed upon the basis of the actual quantities in the completed work, whether they be more or less than those shown.

#### ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be Substantially Complete within 120 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and will be completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions within 180 calendar days

after the date when the Contract Times commence to run, which days will be entered by Owner into the Agreement as the Contract Times.

- 6.02 Bidder accepts the provisions of the Agreement as to liquidated and special damages in the event of failure to complete the Work within the Contract Times.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are attached to and made a condition of this Bid,:

- A. Required Bid security in a form acceptable to the Owner which may be a Certified Check, Cashier's Check made payable to Brevard Waterworks or Bid Bond (Section 00410).
- B. Required Bidder Qualifications Statement with supporting data.
- C. A tabulation of Subcontractors, Suppliers, and other individuals and entities required to be identified in this Bid.
- D. Public Entity Crimes Statement pursuant to § 287.133 (3) (a) Florida Statutes. (Section 00411)
- E. Affidavit for Trench and Safety Act (Section 00412)

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders and the General Conditions and Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

9.01 This Bid is submitted on \_\_\_\_\_, 20\_\_ by:

If Bidder is:

An Individual

Name (Typed or Printed): \_\_\_\_\_

By \_\_\_\_\_  
(Individual's Signature)

Doing business as \_\_\_\_\_

License or Registration Number: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

A Partnership

Partnership Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of General Partner - Attach evidence of authority to sign)

(Name (Typed or Printed): \_\_\_\_\_

License or Registration Number: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

A Corporation

Corporation Name: \_\_\_\_\_

\_\_\_\_\_

(State of Incorporation)

By \_\_\_\_\_  
(Signature - Attach evidence of authority to sign)

Name and Title (Typed or Printed): \_\_\_\_\_

(CORPORATE  
SEAL)

Attest: \_\_\_\_\_  
(Secretary)

License or Registration Number: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Limited Liability Company

By: \_\_\_\_\_

(Firm Name)

\_\_\_\_\_

(State of Formation)

By: \_\_\_\_\_

(Signature of Member/Authorized to Sign)

\_\_\_\_\_

(Printed or Typed Name and Title of Member Authorized to Sign)

(Attach evidence of authority to sign.)

License or Registration Number: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

A Joint Venture

Name of Joint Venture: \_\_\_\_\_

First Joint Venturer Name: \_\_\_\_\_

By: \_\_\_\_\_

(Signature of First Joint Venturer - Attach evidence of authority to sign)

Name (Typed or Printed): \_\_\_\_\_

(Title)

Title: \_\_\_\_\_

Second Joint Venturer Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Second Joint Venturer - Attach evidence of authority to sign)

Name (Typed or Printed): \_\_\_\_\_  
(Title)

(Each joint venturer must sign. The manner of signing for each individual, partnership, corporation or limited liability company that is a party to the joint venture shall be in the manner indicated above).

Business Address: \_\_\_\_\_

Phone and fax numbers and address for receipt of communications to joint venture:

Joint Venture Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

++ END OF BID FORM ++

SECTION 00410  
BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
\_\_\_\_\_,  
(herein after called the Principal) and \_\_\_\_\_  
\_\_\_\_\_,  
(herein called the Surety), a corporation chartered and existing under the laws of the state of \_\_\_\_\_ with its principal offices in the city of \_\_\_\_\_ and authorized to do business in the State of Florida are held and firmly bound unto the Brevard Waterworks, Inc. (hereinafter called Brevard Waterworks, in the full and just sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) good and lawful money of the United States of America, to be paid upon demand of the Brevard Waterworks, to which payment well and truly to be made, the Principal and the Surety bind themselves, their heirs, and executors, administrators, and assigns, jointly and severally and firmly by these presents.

Whereas, the Principal is about to submit, or has submitted to the Brevard Waterworks, Inc., a proposal for furnishing all labor, materials, equipment and incidentals necessary to furnish and install:

706-19; Water System Replacement  
\_\_\_\_\_  
(Project Number and Description)

NOW, THEREFORE: The conditions of this obligation are such that if the Proposal be accepted, the Principal shall, within fifteen days after the date of a written Notice of Award, execute a Contract in accordance with the Proposal and upon the terms, conditions and price(s) set forth therein, of the form and manner required by the Brevard Waterworks, and execute a sufficient and satisfactory Contract Performance Bond and Payment Bond payable to the Brevard Waterworks, in an amount of 100 Percent of the total Contract price each in a form and with security satisfactory to the said Brevard Waterworks, then this obligation to be void; otherwise to be and remain in full force and virtue in the law; and the Surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to the aforesaid Brevard Waterworks, upon demand, the amount hereof in good and lawful money of the United States of America, not as a penalty but as liquidated damages.

IN TESTIMONY Thereof, the Principal and Surety have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Principal

By \_\_\_\_\_  
(Seal)

\_\_\_\_\_  
Surety

\_\_\_\_\_  
(Seal)

Countersigned \_\_\_\_\_

Local Resident Producing Agent for \_\_\_\_\_

\_\_\_\_\_

SECTION 00411  
PUBLIC ENTITY CRIME STATEMENT

THIS FORM IS TO BE COMPLETED AND RETURNED WITH THE PROPOSAL

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

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Florida Governmental Utility Authority

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 Para. 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Para. 287.133(1)(b), Florida Statutes means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to

charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate: as defined in Para. 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 Para. 287.133(1)(e), Florida Statutes means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. Please 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 management of the entity, nor any affiliate of the entity have 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 the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in 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 the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in 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 ONE ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM

REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
(Signature)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by \_\_\_\_\_ who is \_\_\_\_\_ personally known  
OR \_\_\_\_\_ produced identification \_\_\_\_\_ (Type of  
Identification)

Notary Public - State of Florida

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

(SEAL)

\_\_\_\_\_  
Printed, typed or stamped Commissioned name of Notary Public

SECTION 00412

TRENCH SAFETY ACT

Bidder acknowledges that included in the various items of the proposal and in the Total Bid Price are costs for complying with the Florida Trench Safety Act, Chapter 553, Part VI, Florida Statutes. The Bidder further identifies the cost to be summarized below:

| Trench Safety Measure (Description) | Units of Measure (LF,SY) | Unit Quantity | Unit Cost | Extended Cost |
|-------------------------------------|--------------------------|---------------|-----------|---------------|
| 1. _____                            | _____                    | _____         | _____     | _____         |
| 2. _____                            | _____                    | _____         | _____     | _____         |
| 3. _____                            | _____                    | _____         | _____     | _____         |
| 4. _____                            | _____                    | _____         | _____     | _____         |
| 5. _____                            | _____                    | _____         | _____     | _____         |

Total \$ \_\_\_\_\_

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

Dated \_\_\_\_\_ Bidder \_\_\_\_\_

By \_\_\_\_\_

SECTION 00450

BIDDER QUALIFICATION STATEMENT

SUBMITTED TO:

Brevard Waterworks, Inc.  
4939 Cross Bayou Blvd.  
New Port Richey, FL 34652

SUBMITTED FOR:

Brevard Waterworks (Oakwood) water system replacement.  
Brevard County, Florida  
Project No. 706-19

SUBMITTED BY:

Name of Organization: \_\_\_\_\_  
(Print or Type Name of Bidder)

Name of Individual: \_\_\_\_\_

Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Bidder's Website: \_\_\_\_\_

If address and phone number given above is for a branch office, provide address and phone number of principal home office:

Principal Home Office Address:

---

---

Principal Home Office Telephone No.:

---

Gentlemen:

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter.

(Note: Attach additional sheets as required.)

1.0 Bidder's General Business Information

1.1 Check if:

- Corporation       Partnership       Joint Venture       Other  
 Limited Liability Company       Sole Proprietorship

If Corporation:

A. Date and State of Incorporation:

---

---

B. List of Executive Officers:

| Name  | Title | Address |
|-------|-------|---------|
| _____ | _____ | _____   |
| _____ | _____ | _____   |
| _____ | _____ | _____   |

If Partnership:

A. Date and State of Organization:

---

---

B. Current General Partners (name and address for each):

---

---

C. Type of Partnership

General     Publicly Traded     Limited

Limited Liability     Other (describe): \_\_\_\_\_

If Joint Venture:

A. Date and State of Organization:

---

---

B. Name, Address, Form of Organization, and State of Organization of Each Joint Venture Partner: (Indicate with an asterisk (\*) the managing or controlling Joint Venturer if applicable):

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If Limited Liability Company:

A. Date and State of Organization:

---

---

B. Members:

Name

Address

---

---

---

---

If Sole Proprietorship:

A. Date and State of Organization:

---

---

B. Name and Address of Owner or Owners:

---

---

---

---

If Other Type of Organization:

A. Type of Organization:

---

B. Date and State of Organization:

---

---

C. Name and Address of Each Owner or Principal:

---

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1.2 Certifications: In addition to the above categories of business entities, indicate whether Bidder's organization is a:

- Disadvantaged Business Enterprise, certified by \_\_\_\_\_
- Minority Business Enterprise, certified by \_\_\_\_\_
- Women's Business Enterprise, certified by \_\_\_\_\_
- Historically Underutilized Business Zone Small Business Concern, certified by \_\_\_\_\_

2.0 How many years has your organization been in business as a general contractor?

\_\_\_\_\_

3.0 If your organizational structure has changed within the past five years, provide data as listed above in Item 1.0 for your previous organization.

4.0 Do you plan to subcontract any part of this project? \_\_\_\_\_ If so, give details.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.0 Has any construction contract to which you have been a party been terminated by the owner; have you ever terminated work on a project prior to its completion for any reason; has any surety which issued a performance bond on your behalf ever completed the work in its own name or financed such completion on your behalf; has any surety expended any monies in connection with a contract for which they furnished a bond on your behalf? If the answer to any portion of this question is "yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.0 Has any officer or partner of your organization ever been an officer or partner of another organization that had any construction contract terminated by the owner; terminated work on a project prior to its completion for any reason; had any surety which issued a performance bond complete the work in its own name or financed such completion; or had any surety expend any monies in connection with a contract for which they furnished a bond? If the answer to any portion of this question is "yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7.0 In the last five years, has your organization, or any predecessor organization, failed to substantially complete a project in a timely manner? If the answer to this question is "yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.

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8.0 On Schedule A, attached, list name, location and description of project, owner, architect or engineer, contract price, percent complete and scheduled completion of the major construction projects your organization has in progress on this date. Provide name, address and telephone number of a reference for each project listed.

9.0 On Schedule B, attached, list name, location and description of project, owner, architect or engineer, contract price, date of completion and percent of work with your own forces of major projects of the same general nature as this project which your organization has completed in the past five years. Provide name, address and telephone number of a reference for each project listed.

10.0 On Schedule C, attached, list name and construction experience of the principal individuals of your organization directly involved in construction operations.

11.0 Licenses and Registrations:

11.1 Indicate the jurisdictions in which your firm is legally qualified to practice. Indicate license or registration number for each jurisdiction, if applicable, and type of license or registration. Attach separate sheet as required.

| Jurisdiction | License/Registration No. | Type  |
|--------------|--------------------------|-------|
| <hr/>        | <hr/>                    | <hr/> |
| <hr/>        | <hr/>                    | <hr/> |
| <hr/>        | <hr/>                    | <hr/> |

11.2 In the past five years, has Bidder had any business or professional license suspended or revoked?

No       Yes

If yes, describe on a separate attachment the circumstances, including the jurisdiction and bases for suspension or revocation.

12.0 Provide the following information for your surety:

12.1 Surety Company: \_\_\_\_\_

12.2 Agent: \_\_\_\_\_

A. Address: \_\_\_\_\_

B. Telephone No.: \_\_\_\_\_

13.0 Provide the following with respect to an accredited banking institution familiar with your organization.

13.1 Name of Bank: \_\_\_\_\_

13.2 Address: \_\_\_\_\_

13.3 Account Manager: \_\_\_\_\_

13.4 Telephone No.: \_\_\_\_\_

14.0 Provide the name, address and telephone number of an individual who represents a major equipment/material supplier whom the Owner may contact for a financial reference:

15.0 Attach a financial statement, prepared on an accrual basis, in a form which clearly indicates Bidder's assets, liabilities and net worth.

15.1 Date of financial statement: \_\_\_\_\_

15.2 Name of firm preparing statement: \_\_\_\_\_

16.0 Industry Affiliations, Memberships, Awards, and Honors

16.1 List below the industry organizations with which your organization is affiliated or which your organization is a member:

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16.2 List below the industry awards or honors received by your organization and the date for each. Attach supporting documentation as necessary.

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17.0 Statement of Potential Conflicts of Interest: List below business associations, financial interests, or other circumstances that may create a conflict of interest with the Owner or other entity involved in the Project. Attach additional documentation as required.

18.0 Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Bidder: \_\_\_\_\_  
(Print or Type Name of Bidder)

By: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_

Attachments A, B and C

(Seal, if corporation)

------(Affidavit for Individual)-----

\_\_\_\_\_ being duly sworn, deposes and says that:  
a) the financial statement, taken from his/her books, is a true and accurate statement of his/her financial condition as of the date thereof; and b) all of the foregoing qualification information is true, complete, and accurate.

------(Affidavit for Partnership)-----

\_\_\_\_\_ being duly sworn, deposes and says that:  
a) he/she is a member of the partnership of \_\_\_\_\_;  
b) he/she is familiar with the books of said partnership showing its financial condition;  
c) the financial statement, taken from the books of said partnership, is a true and accurate statement of the financial condition of the partnership as of the date thereof; and d) all of the foregoing qualification information is true, complete, and accurate.

------(Affidavit for Corporation)-----

\_\_\_\_\_ being duly sworn, deposes and says that: a) he/she is  
\_\_\_\_\_ of \_\_\_\_\_;  
(Full name of Corporation)  
b) he/she is familiar with the books of said corporation showing its financial condition;  
c) the financial statement, taken from the books of said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof; and d) that all of the foregoing qualification information is true, complete, and accurate.

------(Affidavit for Limited Liability Company (LLC))-----

\_\_\_\_\_ being duly sworn, deposes and says that: a) he/she is  
\_\_\_\_\_ of \_\_\_\_\_;  
(Full name of LLC)  
b) he/she is familiar with the books of said company showing its financial condition;  
c) the financial statement, taken from the books of said company, is a true and accurate statement of the financial condition of said company as of the date thereof; and d) that all of the foregoing qualification information is true, complete, and accurate.

------(Affidavit for Joint Venture)-----

Each joint venturer shall complete the affidavit appropriate for the joint venturer's type of organization and attach said affidavit to the Bidder Qualifications Statement. Submit separate acknowledgement for each joint venturer's affidavit.

----- (Acknowledgment) -----

\_\_\_\_\_ being duly sworn, deposes and says  
that he/she is \_\_\_\_\_ of \_\_\_\_\_;  
(Name of Bidder)

that he/she is duly authorized to make the foregoing affidavit and that he/she makes it on  
behalf of

( ) himself/herself; ( ) said partnership; ( ) said corporation;  
( ) said joint venture; ( ) said limited liability company

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, in the County  
of \_\_\_\_\_, State of \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

My commission expires \_\_\_\_\_

(Seal)

++ END OF BIDDER QUALIFICATIONS STATEMENT ++

ATTACHMENT A

**SCHEDULE A  
PROJECTS IN PROGRESS**

| <u>Name, Location and<br/>Description of Project</u> | <u>Owner</u> | <u>Architect or<br/>Engineer</u> | <u>Contract Price</u> | <u>Percent<br/>Complete</u> | <u>Scheduled<br/>Completion</u> | <u>Reference/Contract<br/>Include Address and Phone</u> |
|--|--------------|----------------------------------|-----------------------|-----------------------------|---------------------------------|---|
|--|--------------|----------------------------------|-----------------------|-----------------------------|---------------------------------|---|

ATTACHMENT B

SCHEDULE B  
PROJECTS COMPLETED

| <u>Name, Location and<br/>Description of Project</u> | <u>Owner</u> | <u>Architect or<br/>Engineer</u> | <u>Date<br/>Completed</u> | <u>Contract Price</u> | <u>Percent with<br/>Own Forces</u> | <u>Reference/Contract<br/>Include Address and</u> |
|--|--------------|----------------------------------|---------------------------|-----------------------|------------------------------------|---|
|--|--------------|----------------------------------|---------------------------|-----------------------|------------------------------------|---|

**SCHEDULE C  
PERSONNEL**

| <u>Name</u> | <u>Position</u> | <u>Date Started With<br/>This Organization</u> | <u>Date Started In<br/>Construction</u> | <u>Prior Positions and<br/>Experience In Construction</u> |
|-------------|-----------------|--|---|---|
|-------------|-----------------|--|---|---|

## SECTION 00500

### AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Brevard Waterworks, Inc. (hereinafter referred to as "OWNER") and \_\_\_\_\_ **d/b/a** \_\_\_\_\_ (hereinafter referred to as "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:

Pursuant to the attached plans and specifications, the contractor at it's own cost furnish all labor, services, tools, materials, equipment, and incidentals necessary to complete all Work as specified or indicated in the Contract Documents to install 5,669 linear feet of 4" SDR17 certa-lok C900 PVC, and 9,293 linear feet of 3" SDR 17 certa-lok PVC by horizontal directional drill method. The water system installation also includes the installation of 187 service connections utilizing ¾" P.E. tubing. All proposed water mains shall be pressure and bacteriologically tested prior to connection to the existing water meters. The second part of the work includes clearing of the existing five foot utility easements on each side of the property lines along the alignment. The third part of the work includes restoring the site to equal or better conditions. The construction work shall be performed in accordance with the Contract Drawings and Technical Specifications attached. All water mains shall be install within the utility easements or the right-of-way. All survey costs associated with the delineation of right-of-way or easements shall be the responsibility of the Contractor.

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

Brevard Waterworks (Oakwood) Water System Replacement.

#### ARTICLE 2. ENGINEER

The Project has been designed by U.S. Water Services Corporation who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

#### ARTICLE 3. CONTRACT TIME

- 3.1 The Work will be substantially completed within 90 calendar days from the date of Notice to Proceed as provided in the General Conditions, and completed and ready for final payment in accordance with paragraph the General Conditions within 120 calendar days from the date of Notice to Proceed.
- 3.2 LIQUIDATED DAMAGES. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER five hundred and 00/100 dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion, plus any monies paid by

the OWNER to the ENGINEER for additional engineering and inspection services until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER five hundred and 00/100 dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for completion of Work and readiness for final payment, plus any monies paid by the OWNER to the ENGINEER for additional engineering and inspection services.

#### **ARTICLE 4. CONTRACT PRICE**

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, subject to adjustment as provided therein, the amount of \$ \_\_\_\_\_ Dollars which is based on the Price Schedule attached to the Bid Form.

#### **ARTICLE 5. PAYMENT PROCEDURES**

- 5.1 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.
- 5.2 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 about the 30<sup>TH</sup> day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values established in paragraph 2.07.A of the General Conditions and, in the case of unit price work, payments will be based on the number of units completed or, in the event there is not Schedule of Values, as provided in the General Requirements. A progress payment will not be made whenever the value of the Work completed since the last previous progress payment is less than \$1,000 (Florida Prompt payment Act §255.08 Florida Statutes)
  - 5.2.1 Prior to Substantial Completion, progress payments will be made in an amount of 90 percent of the Work completed, (with the balance being retainage), less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with Paragraph 14.02 of the General Conditions until 50 percent of the Work is completed, progress payments will be made in the amount of 95 percent of the Work completed (with the balance being retainage); and 90 percent of the cost of materials and equipment not incorporated in the Work but suitably stored (with the balance being retainage) until 50 percent of the Work is completed. After 50 percent of the Work is completed, progress payments will be made in the amount of 95 percent of the Work completed (with the balance being retainage).
  - 5.2.2 Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02B.5 of the General Conditions.
- 5.3 FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, and settlement of all claims, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER in accordance with said paragraph 14.13.
- 5.4 INTEREST. All moneys not paid when due hereunder shall bear interest at the rate provided in §255.073(4) Florida Statutes.

#### **ARTICLE 6. CONTRACTOR'S REPRESENTATIONS**

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

- 6.1 CONTRACTOR has examined the Contract Documents, the site and locality where the Work is to be performed, the legal requirements (Federal, State and Local Laws, ordinances, rules and regulations) and the conditions affecting the costs, progress or performance of the Work and has made such independent investigations as CONTRACTOR deems necessary.
- 6.2 CONTRACTOR understands all such examinations, investigations, explorations, tests and studies which pertain to the subsurface or physical conditions at the site or otherwise, and which may affect the cost, progress, performance or furnishing of the Work shall be acquired by the CONTRACTOR as necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions.
- 6.3 Contractor has considered the information known to Contractor, information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the drawings identified in the Contract documents, with respect to the effect of such information, observations, and documents on;
- 6.3.1 The cost, progress, and performance of the Work;
- 6.3.2 The means, methods, techniques, sequences and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents, and;
- 6.3.3 Based on the information and observations referred to in Paragraph 6.3 above, Contractor does not consider that further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 6.4 Contractor is aware of the general nature of work to be performed by Owner and others at the Site that related to the Work as indicated in the Contract Documents.
- 6.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 6.6 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

#### **ARTICLE 7. CONTRACT DOCUMENTS**

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

- 7.1 This Agreement
- 7.2 Performance Bond
- 7.3 Payment Bond
- 7.4 Insurance Certificates and Endorsements
- 7.5 General Conditions

- 7.6 Supplemental Conditions
- 7.7 The Drawings comprising of sheets number 1 through 10.
- 7.8 Contractor's Bid
- 7.9 Notice of Award and Notice to Proceed.
- 7.10 Invitation to Bid and Instructions to Bidder.
- 7.11 The documents listed in Paragraph 7 above are attached to this Agreement (except as expressly noted otherwise above). The are not Contract Documents other than those listed in this Article 7.

There are no Contract Documents other than those listed above in Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04 of the General Conditions.

#### **ARTICLE 8. MISCELLANEOUS**

- 8.1 Terms used in this Agreement which are defined in Article 7 of the General Conditions will have the meanings indicated in the General Conditions and Supplementary Conditions.
- 8.2 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 monies that may become due and monies 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.
- 8.3 OWNER and CONTRACTOR each binds itself, its partners, heirs, successors, assigns and legal representatives to the other party hereto, its partners, heirs, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 The Contract Documents are incorporated herein and made a part hereof and constitute the entire Agreement between OWNER and CONTRACTOR and may only be altered, amended or repealed by a duly executed written instrument.
- 8.5 In the event of a dispute arising out of or relating to the Agreement, the prevailing party shall be entitled to its reasonable costs, including attorney's fees through all levels of appeal.

#### **ARTICLE 9. INDEMNIFICATION**

- 9.1 The parties shall agree that Ten Dollars (\$10.00) paid to the CONTRACTOR by the OWNER for performance of this Agreement shall represent the specific consideration for the CONTRACTOR'S indemnification of the OWNER and ENGINEER as is set forth in the General Conditions.
- 9.2 It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.06, as amended. It is further the specific intent and agreement of the parties that all of the Contract Documents on the Project are hereby amended to include the foregoing indemnification and the "Specific Considerations" therefor.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. 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 their behalf.

**OWNER**

Brevard Waterworks, Inc.

By \_\_\_\_\_

(SEAL)

Attest \_\_\_\_\_

Address for giving notices:

U.S. Water Services Corporation  
4939 Cross Bayou blvd.  
New Port Richey, FL 34652

**CONTRACTOR**

\_\_\_\_\_

By \_\_\_\_\_

(SEAL)

Attest \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Agent for service in process

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

License number \_\_\_\_\_

SECTION 00610  
PERFORMANCE BOND

BOND NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_  
\_\_\_\_\_, as Principal, whose principal business address is

\_\_\_\_\_ and phone number and fax numbers are \_\_\_\_\_

and \_\_\_\_\_, as Surety, whose principal  
address is \_\_\_\_\_

\_\_\_\_\_ and phone number is: \_\_\_\_\_ are

held and firmly bound to the Brevard Waterworks, as Obligee in the sum of : \_\_\_\_\_

\_\_\_\_\_ (\$ \_\_\_\_\_) for the payment whereof we bond ourselves, our heirs,  
executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, with Obligee for Brevard Waterworks (Oakwood) Water System Replacement, Project No. 706-19 In accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract, and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that Obligee sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by Obligee; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.

The Surety, for value received, hereby stipulates and agrees that no change, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specification referred to therein shall in anywise affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions or time, alterations or additions to the terms of the Contract or to work or to the specifications.

This bond is intended to comply with provisions of Section 255.05, Florida Statutes, and all terms and conditions of said statute are incorporated herein by reference thereto, specifically including but not limited to the notice and time limitation provisions of said section. In the event of any conflict, ambiguity or discrepancy between Section 255.05, Florida Statutes, and this Bond, Florida Statutes shall control. No right of action shall accrue on this Bond to or. For the use of any person or entity other than Brevard Waterworks and those persons or corporations provided for by said statute, their heirs, executors, administrators, successors or assigns.

It is further agreed and understood that if Brevard Waterworks is required to initiate legal proceedings to recover on this Bond, Brevard Waterworks may also recover its costs relating there to, including a reasonable amount for its attorney's fees and legal assistant's fees before trial, on appeal and in bankruptcy.

IN WITNESS WHEREOF, the above parties have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2015, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered

In the presence of:

PRINCIPAL: \_\_\_\_\_  
(Company Name of Contractor)

By: \_\_\_\_\_ (Officers Signature)  
\_\_\_\_\_ (Officers name Printed)

Witnesses as to Principal Name: \_\_\_\_\_ (Signature)  
Its: \_\_\_\_\_ (Title)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, by \_\_\_\_\_ (officer's name), as \_\_\_\_\_ (title) of \_\_\_\_\_ (company name), a(n) \_\_\_\_\_ (state) corporation, on behalf of the corporation. He/she is personally known to me OR has produced \_\_\_\_\_ as identification and did (did not) take an oath.

My Commission Expires: \_\_\_\_\_

Signature of Notary : \_\_\_\_\_  
(Legibly Printed) \_\_\_\_\_

(AFFIX OFFICIAL SEAL) Notary Public, State of \_\_\_\_\_

Commission No. \_\_\_\_\_

ATTEST: SURETY:

\_\_\_\_\_  
(Printed Company Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Surety Authorized Signature)

\_\_\_\_\_  
(Printed Name)

Witness as to Surety \_\_\_\_\_ (Signature)  
\_\_\_\_\_ (Printed Name)

**OR**

\_\_\_\_\_  
As Attorney in Fact (Signature)

\_\_\_\_\_  
(Printed Name)

**(Attach Power of Attorney)**

Witnessed by: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Telephone Number)

RECOMMENDATION FOR PAYMENT

Brevard Waterworks Project Number: 706-19

Brevard Waterworks Project Description: Water system Replacement

Application for Payment Number: \_\_\_\_\_

Current Payment Due Amount: \_\_\_\_\_

Payment to the CONTRACTOR for the CURRENT PAYMENT DUE is recommended.

\_\_\_\_\_  
USW Construction Inspector

\_\_\_\_\_  
Date

\_\_\_\_\_  
Engineer of Record

\_\_\_\_\_  
Date

\_\_\_\_\_  
USW Project Manager

\_\_\_\_\_  
Date

-END OF SECTION-

SECTION 00700

GENERAL CONDITIONS  
OF THE CONSTRUCTION CONTRACT

Adapted from EJCDC C-700, Standard General Conditions  
of the Construction Contract (2007 Edition)

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## TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| ARTICLE 1 – DEFINITIONS AND TERMINOLOGY .....  | 00700 - 7   |
| 1.01 <i>Defined Terms</i> .....  | 00700 - 7   |
| 1.02 <i>Terminology</i> .....  | 00700- 11   |
| ARTICLE 2 – PRELIMINARY MATTERS .....  | 00700 - 13  |
| 2.01 <i>Delivery of Bonds and Evidence of Insurance</i> .....                                    | 00700 - 13  |
| 2.02 <i>Copies of Documents</i> .....  | 00700 - 13  |
| 2.03 <i>Commencement of Contract Times; Notice to Proceed</i> .....                              | 00700 - 13  |
| 2.04 <i>Starting the Work</i> .....  | 00700 - 13  |
| 2.05 <i>Before Starting Construction</i> .....   | 00700 - 14  |
| 2.06 <i>Preconstruction Conference</i> .....   | 00700 - 14  |
| 2.07 <i>Initial Acceptance of Schedules</i> .....  | 00700 - 14  |
| ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE.....                                     | 00700 - 15  |
| 3.01 <i>Intent</i> .....   | 00700 - 15  |
| 3.02 <i>Reference Standards</i> .....  | 00700 - 15  |
| 3.03 <i>Reporting and Resolving Discrepancies</i> .....  | 00700 - 16  |
| 3.04 <i>Amending and Supplementing Contract Documents</i> .....                                  | 00700 - 17  |
| 3.05 <i>Reuse of Documents</i> .....   | 00700 - 17  |
| 3.06 <i>Electronic Data</i> .....  | 00700 - 17  |
| ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND<br>PHYSICAL CONDITIONS; REFERENCE POINTS ..... | 00700 - 18  |
| 4.01 <i>Availability of Lands</i> .....  | 00700 - 18  |
| 4.02 <i>Subsurface and Physical Conditions</i> .....   | 00700 - 18  |
| 4.03 <i>Differing Subsurface or Physical Conditions</i> .....                                    | 00700 - 19  |
| 4.04 <i>Underground Facilities</i> .....   | 00700 - 20  |
| 4.05 <i>Reference Points</i> .....   | 00700 - 22  |
| 4.06 <i>Hazardous Environmental Condition at Site</i> .....                                      | 00700 - 22  |
| ARTICLE 5 – BONDS AND INSURANCE .....  | 00700 - 24  |
| 5.01 <i>Performance, Payment, and Other Bonds</i> .....  | 00700 - 24  |
| 5.02 <i>Licensed Sureties and Insurers</i> .....   | 00700 - 25  |
| 5.03 <i>Certificates of Insurance</i> .....  | 00700 - 25  |
| 5.04 <i>Contractor's Liability Insurance</i> .....   | 00700 - 25  |
| 5.05 <i>Owner's Liability Insurance</i> .....  | 00700 - 27  |
| 5.06 <i>Property Insurance</i> .....   | 00700 - 27  |
| 5.07 <i>Waiver of Rights</i> .....   | 00700 - 27  |
| 5.08 <i>Receipt and Application of Insurance Proceeds</i> .....                                  | 00700 - 27  |
| 5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i> .....                           | 00700 - 27  |
| 5.10 <i>Partial Utilization Acknowledgment of Property Insurer</i> .....                         | 00700 - 27  |

TABLE OF CONTENTS (Continued)

|  | <u>Page</u> |
|--|-------------|
| ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES .....                    | 00700 - 27  |
| 6.01 <i>Supervision and Superintendence</i> .....                  | 00700 - 27  |
| 6.02 <i>Labor; Working Hours</i> .....                             | 00700 - 28  |
| 6.03 <i>Services, Materials, and Equipment</i> .....               | 00700 - 28  |
| 6.04 <i>Progress Schedule</i> .....                                | 00700 - 28  |
| 6.05 <i>Substitutes and "Or-Equals"</i> .....                      | 00700 - 29  |
| 6.06 <i>Concerning Subcontractors, Suppliers, and Others</i> ..... | 00700 - 32  |
| 6.07 <i>Patent Fees and Royalties</i> .....                        | 00700 - 33  |
| 6.08 <i>Permits</i> .....  | 00700 - 33  |
| 6.09 <i>Laws and Regulations</i> .....                             | 00700 - 34  |
| 6.10 <i>Taxes</i> .....  | 00700 - 34  |
| 6.11 <i>Use of Site and Other Areas</i> .....                      | 00700 - 34  |
| 6.12 <i>Record Documents</i> .....                                 | 00700 - 35  |
| 6.13 <i>Safety and Protection</i> .....                            | 00700 - 35  |
| 6.14 <i>Safety Representative</i> .....                            | 00700 - 37  |
| 6.15 <i>Hazard Communication Programs</i> .....                    | 00700 - 37  |
| 6.16 <i>Emergencies</i> .....                                      | 00700 - 37  |
| 6.17 <i>Shop Drawings and Samples</i> .....                        | 00700 - 37  |
| 6.18 <i>Continuing the Work</i> .....                              | 00700 - 39  |
| 6.19 <i>Contractor's General Warranty and Guarantee</i> .....      | 00700 - 39  |
| 6.20 <i>Indemnification</i> .....                                  | 00700 - 40  |
| 6.21 <i>Delegation of Professional Design Services</i> .....       | 00700 - 41  |
| ARTICLE 7 – OTHER WORK AT THE SITE .....                           | 00700 - 42  |
| 7.01 <i>Related Work at Site</i> .....                             | 00700 - 42  |
| 7.02 <i>Legal Relationships</i> .....                              | 00700 - 42  |
| ARTICLE 8 – OWNER’S RESPONSIBILITIES.....                          | 00700 - 43  |
| 8.01 <i>Communications to Contractor</i> .....                     | 00700 - 43  |
| 8.02 <i>Furnish Data</i> .....                                     | 00700 - 43  |
| 8.03 <i>Pay When Due</i> .....                                     | 00700 - 43  |
| 8.04 <i>Lands and Easements; Reports and Tests</i> .....           | 00700 - 43  |
| 8.05 <i>Insurance</i> .....  | 00700 - 43  |
| 8.06 <i>Change Orders</i> .....                                    | 00700 - 43  |
| 8.07 <i>Inspections, Tests, and Approvals</i> .....                | 00700 - 43  |
| 8.08 <i>Limitations on Owner's Responsibilities</i> .....          | 00700 - 44  |
| 8.09 <i>Undisclosed Hazardous Environmental Condition</i> .....    | 00700 - 44  |
| 8.10 <i>Evidence of Financial Arrangements</i> .....               | 00700 - 44  |
| 8.11 <i>Compliance With Safety Programs</i> .....                  | 00700 - 44  |

TABLE OF CONTENTS (Continued)

|  |            |
|--|------------|
| ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION .....  | 00700 - 44 |
| 9.01 <i>Owner’s Representative</i> .....   | 00700 - 44 |
| 9.02 <i>Visits to Site</i> .....   | 00700 - 44 |
| 9.03 <i>Project Representative</i> .....   | 00700 - 45 |
| 9.04 <i>Authorized Variations in Work</i> .....  | 00700 - 45 |
| 9.05 <i>Rejecting Defective Work</i> .....   | 00700 - 45 |
| 9.06 <i>Shop Drawings, Change Orders and Payments</i> .....  | 00700 - 46 |
| 9.07 <i>Determinations for Unit Price Work</i> .....   | 00700 - 46 |
| 9.08 <i>Decisions on Requirements of Contract Documents, and<br/>    Acceptability of Work</i> ..... | 00700 - 46 |
| 9.09 <i>Limitations on Engineer’s Authority and Responsibilities</i> .....                           | 00700 - 47 |
| 9.10 <i>Compliance with Safety Programs</i> .....  | 00700 - 47 |
| ARTICLE 10 – CHANGES IN THE WORK; CLAIMS .....   | 00700 - 47 |
| 10.01 <i>Authorized Changes in the Work</i> .....  | 00700 - 47 |
| 10.02 <i>Unauthorized Changes in the Work</i> .....  | 00700 - 47 |
| 10.03 <i>Execution of Change Orders</i> .....  | 00700 - 48 |
| 10.04 <i>Notification to Surety</i> .....  | 00700 - 48 |
| 10.05 <i>Claims</i> .....  | 00700 - 48 |
| ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK....                                       | 00700 - 49 |
| 11.01 <i>Cost of the Work</i> .....  | 00700 - 49 |
| 11.02 <i>Allowances</i> .....  | 00700 - 52 |
| 11.03 <i>Unit Price Work</i> .....   | 00700 - 53 |
| ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES ..                                   | 00700 - 54 |
| 12.01 <i>Change of Contract Price</i> .....  | 00700 - 54 |
| 12.02 <i>Change of Contract Times</i> .....  | 00700 - 55 |
| 12.03 <i>Delays</i> .....  | 00700 - 55 |
| ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL<br>OR ACCEPTANCE OF DEFECTIVE WORK.....      | 00700 - 56 |
| 13.01 <i>Notice of Defects</i> .....   | 00700 - 56 |
| 13.02 <i>Access to Work</i> .....  | 00700 - 56 |
| 13.03 <i>Tests and Inspections</i> .....   | 00700 - 56 |
| 13.04 <i>Uncovering Work</i> .....   | 00700 - 57 |
| 13.05 <i>Owner May Stop the Work</i> .....   | 00700 - 57 |
| 13.06 <i>Correction or Removal of Defective Work</i> .....   | 00700 - 58 |
| 13.07 <i>Correction Period</i> .....   | 00700 - 58 |
| 13.08 <i>Acceptance of Defective Work</i> .....  | 00700 - 59 |
| 13.09 <i>Owner May Correct Defective Work</i> .....  | 00700 - 59 |
| ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION.....  | 00700 - 60 |
| 14.01 <i>Schedule of Values</i> .....  | 00700 - 60 |

TABLE OF CONTENTS (Continued)

|   |  |            |
|---|--|------------|
| 14.02   | <i>Progress Payments</i> .....                   | 00700 - 60 |
| 14.03   | <i>Contractor's Warranty of Title</i> .....      | 00700 - 64 |
| 14.04   | <i>Substantial Completion</i> .....              | 00700 - 64 |
| 14.05   | <i>Partial Utilization</i> .....                 | 00700 - 64 |
| 14.06   | <i>Final Inspection</i> .....                    | 00700 - 65 |
| 14.07   | <i>Final Payment</i> .....                       | 00700 - 65 |
| 14.08   | <i>Final Completion Delayed</i> .....            | 00700 - 66 |
| 14.09   | <i>Waiver of Claims</i> .....                    | 00700 - 66 |
| ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION ..... |  | 00700 - 66 |
| 15.01   | <i>Owner May Suspend Work</i> .....              | 00700 - 66 |
| 15.02   | <i>Owner May Terminate for Cause</i> .....       | 00700 - 67 |
| 15.03   | <i>Owner May Terminate For Convenience</i> ..... | 00700 - 68 |
| ARTICLE 16 – DISPUTE RESOLUTION.....                  |  | 00700 - 69 |
| 16.01   | <i>Methods and Procedures</i> .....              | 00700 - 69 |
| ARTICLE 17 – MISCELLANEOUS.....                       |  | 00700 - 69 |
| 17.01   | <i>Giving Notice</i> .....                       | 00700 - 69 |
| 17.02   | <i>Computation of Times</i> .....                | 00700 - 70 |
| 17.03   | <i>Cumulative Remedies</i> .....                 | 00700 - 70 |
| 17.04   | <i>Survival of Obligations</i> .....             | 00700 - 70 |
| 17.05   | <i>Controlling Law</i> .....                     | 00700 - 70 |
| 17.06   | <i>Headings</i> .....                            | 00700 - 70 |

## GENERAL CONDITIONS

### ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

#### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement* – The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. *Application for Payment* – The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid* – The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder* – The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents* – The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements* – The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order* – A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *Claim* – A demand or assertion by Owner or Contractor seeking an adjustment of

Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract* – The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price* – The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times* – The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor* or *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* or *ENGINEER* – The individual or entity named as such in the Agreement.
20. *Field Order* – A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements* – Sections of Division 01 of the Specifications.
22. *Hazardous Environmental Condition* – The presence at the Site of Asbestos,

PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens* – Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award* – The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed* – A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner* or *OWNER* – The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs* – Polychlorinated biphenyls.
31. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule* – A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual* – The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which

may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative* – The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *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.
38. *Schedule of Submittals* – A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values* – A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *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.
41. *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.
42. *Specifications* – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *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.
44. *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.

45. *Successful Bidder* – The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier* – A manufacturer, fabricator, supplier, distributor, material-man, 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 Subcontractor.
48. *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.
49. *Unit Price Work* – Work to be paid for on the basis of unit prices.
50. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive* – A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 *Terminology*

- A. The words and terms referenced in this Paragraph 1.02 are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*
  1. The Contract Documents include the terms “as allowed”, “as approved”, “as ordered”, “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,”

“suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day*

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

D. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents, or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
  - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with

services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor shall deliver to the Owner certificates of insurance (and other evidence of insurance which may be reasonably requested) which Contractor is required to purchase and maintain in accordance with Article 5.

### 2.02 *Copies of Documents*

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

### 2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. Unless otherwise agreed to in advance by the Contractor and Owner, a Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

### 2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule;
  2. a preliminary Schedule of Submittals; and
  3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representative*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides

a workable arrangement for reviewing and processing the required submittals.

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

### ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### 3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
  1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants or subcontractors any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers or has actual knowledge of and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and
  - a) any applicable Law or Regulation,
  - b) any standard, specification, manual or code, or,
  - c) any instruction of any Supplierthen Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge 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 the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  - 1. a Field Order;
  - 2. Engineer's approval of a Shop Drawing or Sample; (subject to the provisions of Paragraph 6.17.D.3); or
  - 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or
  - 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor or by Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures

within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within a reasonable time following receipt.

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

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

##### 4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. 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. Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work site and the project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Contractor to acquaint itself with any applicable conditions shall not relieve Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.
- B. Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Sub Section 2.2 as the "Utilities". Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the

Project. Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Contractor shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work. Relocation or shutdown of BREVARD WATERWORKS facilities must be requested by the Contractor in writing a minimum of ten (10) calendar days prior to the proposed Work. BREVARD WATERWORKS shall have the final decision with respect to whether the relocation or shutdown is required and when the relocation or shutdown of facilities may take place. The Work may need to be performed at night or on weekends to minimize the interruption of service or to meet the operational needs of the BREVARD WATERWORKS's facilities.

C. *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 at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

D. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely on 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 general reliance on the "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; 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 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, may be adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants or subcontractors shall 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 provided by others; 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 adjustment may 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:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.,
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants or subcontractors with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and

- safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- 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, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the 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 or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 5 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- C. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Liability Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the

employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

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

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. 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
6. include completed operations insurance;
  - a. such insurance shall remain in effect for at least two years after final payment, and
  - b. 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 (Not Used)

5.06 (Not Used)

5.07 (Not Used)

5.08 (Not Used)

5.09 (Not Used)

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

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.
  
- B. All insurance coverages of the Contractor shall be primary to any insurance or self insurance program carried by the BREVARD WATERWORKS applicable to this Project. The acceptance by BREVARD WATERWORKS of any Certificate of Insurance does not constitute approval or agreement by the BREVARD WATERWORKS that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Contract Documents. No work shall commence at the Project site unless and until the required Certificates of Insurance are received by the BREVARD WATERWORKS.

## ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specifications shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. Unless the Owner shall otherwise agree in writing, the superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
  - 1. "*Or-Equal*" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics; and
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
      - 3) it has a proven record of performance and availability of responsive service; and

- b. Contractor certifies that, if approved and incorporated into the Work:
  - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

## 2. *Substitute Items*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use as that specified;
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
  - a) all variations of the proposed substitute item from that specified, and
  - b) available engineering, sales, maintenance, repair, and replacement services; and
  - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed

substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
  1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  2. shall 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 a loss payee on the property insurance provided in Paragraph 5.06 of the Supplemental Conditions, 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, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 *Permits*

- A. Pursuant to Section 218.80, F.S., BREVARD WATERWORKS will pay for all

County permits and fees, including license fees, permit fees, impact fees or inspection fees applicable to the work. Contractor is not responsible for paying for permits issued by the County wherein the work is to be performed, but is responsible for acquiring all permits. BREVARD WATERWORKS may require the Contractor to deliver internal budget transfer documents to applicable County agencies when the Contractor is acquiring permits.

- B. All permits, fees and licenses necessary for the prosecution of the Work which are not issued by the County and which have not been acquired by the engineer on behalf of the Owner, shall be acquired and paid for by the Contractor.

#### 6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having a material 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 and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

C. *Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

#### 6.12 *Record Documents*

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

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons and property in the performance of their work nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety programs with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. 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 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).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall

continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

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

1. *Shop Drawings*

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

2. *Samples*

- a. Submit number of Samples specified in the Specifications.
  - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
  - a. 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.;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials offered with respect to indicated use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the

submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures*

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

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom

Contractor is responsible; or

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

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

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

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

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

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

7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the 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 real or personal property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused by any 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 an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws or Regulations.

- B. In any and all claims against Owner or Engineer or any of their , officers, directors, members, partners, employees, agents, consultants, or subcontractors 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 be limited in any way by the amount or types of insurance provided by Contractor under Article 5 of the General Conditions.
- D. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the sole negligence or willful misconduct of Owner or Engineer or to the officers, directors, members, partners, employees, agents, and consultants and subcontractors of each and any of them.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for

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

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

## ARTICLE 7 – OTHER WORK AT THE SITE

### 7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
  - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, Contractor may cut or alter the work of others 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 *Legal Relationships*

- A. Paragraph 7.01.A is not applicable for utilities not under the control of Owner.
- B. Each subsequent other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

## ARTICLE 8 – OWNER'S RESPONSIBILITIES

### 8.01 *Communications to Contractor*

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

### 8.02 *Furnish Data*

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

### 8.03 *Pay When Due*

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

### 8.04 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to 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 relating to existing surface or subsurface structures at or contiguous to the Site.

### 8.05 *Insurance*

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

### 8.06 *Change Orders*

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

8.07 *Inspections, Tests, and Approvals*

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

8.08 *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.

8.09 *Undisclosed Hazardous Environmental Condition*

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

8.10 *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.

8.11 *Compliance With Safety Programs*

- A. While on the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.B.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's Work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

#### 9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### 9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, if any,
  - 1. as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21;
  - 2. as to Change Orders, see Articles 10, 11, and 12; and
  - 3. as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an

adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer'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.

9.10 *Compliance with Safety Programs*

- A. While on the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of the Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.C.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
  - 1. changes in the Work which are:
    - a) ordered by Owner pursuant to Paragraph 10.01.A,
    - b) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or
    - c) 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 the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part,
  2. approve the Claim, or
  3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not

submitted in accordance with this Paragraph 10.05.

## ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

### 11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. 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 all fringe benefits which shall include, but not be limited to 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, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
  - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  - 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and

submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 11.02 *Allowances*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*
  - 1. Contractor agrees that:
    - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
    - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*
  - 1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

### 12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined

as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 10 percent;
  - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
  - c. in the event such change Work is performed by a Subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all Subcontractors' and sub subcontractors' direct labor and material costs and actual equipment costs shall be permitted;
  - 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; and
  - e. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays*

- A. Should Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Contractor, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes or lockouts, Contractor shall notify the BREVARD WATERWORKS in writing within forty eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Contractor may have had to request a time extension.

- B. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which BREVARD WATERWORKS may be responsible, in whole or in part, shall relieve Contractor of his duty to perform or give rise to any right to damages or additional compensation from BREVARD WATERWORKS. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against BREVARD WATERWORKS will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.
- C. Owner and Engineer and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

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. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, 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 Owner and 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. If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work

to be specifically inspected, tested or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Design Professional the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the Design Professional and BREVARD WATERWORKS.

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

#### 13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and

Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

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

#### 13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
  2. correct such defective Work; or
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued

incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

#### 14.02 *Progress Payments*

##### A. Applications for Payments

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

- a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
  - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.
4. Monthly payments to Contractor shall in no way imply approval or acceptance of Contractor's work.
5. Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached as Section 00850, showing that all materials, labor, equipment and other bills associated with that portion of the Work for which payment is being requested have been paid in full. The BREVARD WATERWORKS shall not be required to make payment until and unless these affidavits are furnished by the Contractor.
6. Contractor agrees and understands that funding limitations exist and that the expenditure of funds must be spread over the duration of the Project at regular intervals based on the Contract Amount and Progress Schedule. Accordingly, prior to submitting its first monthly Application for Payment, Contractor shall prepare and submit for BREVARD WATERWORKS's and Design

Professional's review and approval, a detailed Project Funding Schedule, which shall be updated as necessary and approved by BREVARD WATERWORKS to reflect approved adjustments to the Contract Amount and Contract Time. No voluntary acceleration or early completion of the Work shall modify the time of payments to Contractor as set forth in the approved Project Funding Schedule.

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 in accordance with Florida Prompt Payment Act, § 255.0705, et.seq., Florida Statutes.

D. *Reduction in Payment*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination 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 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

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

#### 14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any

substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance,

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

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

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

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

C. *Payment Becomes Due*

1. The amount recommended by Engineer for Final Payment, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor as otherwise provided herein.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the

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

#### 14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
  - 1. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

### ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

#### 15.01 *Owner May Suspend Work*

- A. BREVARD WATERWORKS shall have the right to suspend all or any portions of the Work upon giving Contractor not less than two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds six (6) months, the Contractor shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.
- B. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which BREVARD WATERWORKS may be responsible, in whole or in part, shall relieve Contractor of his duty to perform or give rise to any right to damages or additional compensation from BREVARD WATERWORKS. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against BREVARD WATERWORKS will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

#### 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 repeated violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest reasonable price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

#### 15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
- 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.

### 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 Paragraph 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. All notices required or made pursuant to this Agreement by the Contractor to the BREVARD WATERWORKS shall be in writing and delivered by hand or by United

States Postal Service Department, first class mail, postage pre-paid, return receipt requested, addressed to the following:

Brevard Waterworks, Inc.  
4939 Cross Bayou Blvd.  
New Port Richey, FL 34652  
Attn: Gary Deremer

- B. All notices required or made pursuant to this Agreement by BREVARD WATERWORKS to Contractor shall be made in writing and shall be delivered by hand or by United States Postal Service Department, first class mail, postage pre paid, return receipt requested, or by Federal Express, addressed to the following:

Corporate Name of Contractor:  
Address (including city, state and zip):

Name of person with their title to whose attention the notice should be sent:

Telephone Number:

Fax Number:

- C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

#### 17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### 17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

#### 17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

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

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

++ END OF GENERAL CONDITIONS ++

SECTION 00800  
SUPPLEMENTARY CONDITIONS

SCOPE

These Supplementary Conditions amend or supplement the General Conditions of the Construction Contract. All provisions of the General Conditions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to the singular and plural thereof.

The address system used in these Supplementary Conditions conforms to the address system used in the General Conditions, with the prefix "SC" added thereto.

SC-4.02            Add a new Paragraph immediately after Paragraph 4.02.B that is to read as follows:

SC-4.02.C In the preparation of the Drawings and Specifications, Engineer has relied upon:

1. The following report of explorations and tests of subsurface conditions at the Site.
  - a. No geotechnical subsurface soil exploration or analysis was performed or provided to the Engineer for the project.
  - b. The technical data contained in such report upon which Contractor may rely are: the boring method, the locations and logs of the borings, the levels of subsurface water (if any), laboratory test methods and results, and similar factual data. Bore hole information represents subsurface characteristics to the extent indicated, only for the point location of the bore hole and, with regard to the level of subsurface water (if any), only at the time the boring was made. Contractor shall make its own interpretations of the subsurface characteristics to be encountered between bore holes and its own interpretations of the fluctuation of the level of subsurface water (if any) at and between bore holes.
  - c. A copy of the above report is available for review at the office of the ENGINEER, upon 48 hours' notice.

SC-4.06            Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

SC-4.06.A. In the preparation of the Drawings and Specifications, Engineer has not utilized any report or drawing related to a Hazardous Environmental Condition identified at the Site.

SC-4.06.B (Not Used)

SC-5.04

Add a new paragraph immediately after Paragraph 5.04.B that is to read as follows:

SC-5.04.C The limits of liability for the insurance required by Paragraph 5.04 shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

#### WORKER'S COMPENSATION

State: Statutory  
Applicable Federal:  
(e.g. Longshoremen's) Statutory  
Employer's Liability: \$1,000,000.00

#### COMPREHENSIVE GENERAL LIABILITY

Bodily Injury: \$1,000,000.00 Each Occurrence  
Property Damage: \$1,000,000.00 Each Occurrence

Comprehensive General Liability Insurance shall include:

Contractual Liability, Explosion, Collapse and Underground Coverages  
and Products and Completed Operations Coverages.

#### COMPREHENSIVE AUTOMOBILE LIABILITY

Bodily Injury: \$1,000,000.00 Each Occurrence  
Property Damage: \$1,000,000.00 Each Occurrence

Comprehensive Automobile Liability shall include coverage for any owned auto, non-owned autos and hired autos.

SC-5.05 through SC-5.08, inclusive.

Add new paragraphs immediately after Paragraph 5.04 that are to read as follows:

SC-5.05. *Property Insurance*

- A. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost of the Work. This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, Engineer, and other individuals or entities identified herein, - and the officers, directors, members, 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 insured, additional insured, or loss payee as their interest may appear;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false-work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood) ;
  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 start-up; 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. Contractor shall purchase and maintain equipment breakdown insurance which will include the interests of Owner, Contractor, Subcontractors, Engineer, and other individuals or entities identified

in this Paragraph SC-5.05, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured, additional insured, or loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph SC-5.05 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 or loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph SC-5.06.
- D. The risk of loss within any deductible amount applicable to the policies of insurance purchased in accordance with this Paragraph SC-5.05 will be borne by Contractor, Subcontractors, or others suffering such loss.

SC-5.06. *Additional Insureds*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph SC-5.05 will protect Owner, Contractor, Subcontractors, Engineer, and all other individuals or entities identified in Paragraph SC-5.05 to be listed as insureds or additional insured or loss payees (and the officers, directors, members, 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 loss or damage the insurers will have no rights of recovery against any of the insureds or additional insured or loss payees thereunder.

SC-5.07. *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph SC-5.05 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, additional insureds or loss payees as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph SC-5.07.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.
- 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.

SC-5.08. *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 SC-5.05 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.

SC-6.02.B Add new paragraphs immediately after Paragraph 6.02.B that are to read as follows:

SC-6.02.B.1 Except where otherwise prohibited by Laws or Regulations, regular working hours at the Site are defined as up to eight hours per day, beginning no earlier than 7:00 a.m. and ending no later than 7:00 p.m.

SC-6.02.B.2 Maintenance and cleanup activities may be performed during hours other than regular working hours provided that such activities do not require the startup or operation of construction equipment.

SC-6.02.B.3 If it shall become absolutely necessary to perform Work at night or on Saturdays, Sundays, or legal holidays, written notice shall be submitted to Owner and Engineer at least 4 days in advance of the need for such Work. Owner will only consider the performance of such Work as can be performed satisfactorily under the conditions. Good lighting and all other necessary facilities for carrying out and observing the Work shall be provided and maintained where such Work is being performed at night.

SC-6.02.B.4 If Owner authorizes Work during other than regular working hours, Contractor shall reimburse Owner for all Owner's additional costs associated with such Work, including, but not necessarily limited to, the overtime costs for Owner's, and Engineer's personnel on the Site and other additional costs assessed against or incurred by the Owner. At Owner's option, such additional costs may either be deducted from Contractor's progress payments or deducted from the retained amount prior to release following Substantial Completion.

SC-6.09. Add a new paragraph immediately after Paragraph 6.09.C that is to read as follows:

SC-6.09.D Refer to Article SC-18 for Laws and Regulations that, by terms of said Laws and Regulations, are to be included in the Contract Documents. The failure to include in Article SC-18 any Law or Regulation applicable to the performance of the Work does not diminish Contractor's responsibility to comply with all Laws and Regulations applicable to the performance of the Work.

SC-6.10. Add a new paragraph immediately after Paragraph 6.10.A, that is to read as follows:

SC-6.10.B Owner is exempt from payment of sales and compensating use taxes of the State of Florida and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

SC-6.12 Add a new paragraph immediately after Paragraph 6.12.A, that is to read as follows:

SC-6.12.B Contractor will be required to review with Engineer the status of record documents in connection with the Engineer's review of an Application for Payment. Failure to maintain record documents current may be just cause for Engineer to recommend withholding of payments for Work performed.

SC-6.15 Add a new paragraph immediately after Paragraph 6.15.A that is to read as follows:

SC-6.15.B Contractor shall be responsible for coordinating exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with all Laws and Regulations. Contractor shall provide a centralized location for the maintenance of the material safety data sheets or other hazard communication information required to be made available by any employer on the Site. Location of the material safety data sheets or other hazard communication information shall be readily accessible to the employees of employers on the Site.

SC-6.17 Add the following new paragraphs immediately after Paragraph 6.17.E that are to read as follows:

SC-6.17.F Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval or acceptance of submittal with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, Samples, or other submittals or items requiring approval or acceptance, and Contractor shall reimburse Owner for Engineer's charges for such time.

SC-6.17.G In the event that Contractor requests a substitution for a previously approved item, Contractor shall reimburse Owner for Engineer's charges for such time unless the need for such substitution is beyond the control of Contractor.

SC-16.01 Add new paragraphs immediately after Paragraph 16.01.A that are to read as follows:

SC-16.01.B Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The

request for mediation shall be submitted in writing to the "American Arbitration Association" and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

SC-16.01.C Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

SC-16.01.D If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor,

1. elects in writing to demand arbitration of the Claim, pursuant to Paragraph SC-16.02, or
2. agrees with the other party to submit the Claim to another dispute resolution process.

SC-16.02 Add a new paragraph immediately after Paragraph 16.01 that is to read as follows:

SC-16.02 *Arbitration*

- A. All Claims or counter claims, disputes, or other matters in question between Owner and Contractor arising out of or relating to the Contract Documents or the breach thereof (except for Claims that have been waived by the making or acceptance of final payment as provided by Paragraph 14.09), including but not limited to those not resolved under the provisions of Paragraph SC-16.01.B and SC-16.01.C may be decided by arbitration in accordance with the "Construction Industry Arbitration Rules of the American Arbitration Association", subject to the conditions and limitations of this Paragraph SC-16.02. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the 30-day period specified in Paragraph SC-16.01.D. and in all other cases within a reasonable time after the Claim or counter claim, dispute, or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable