



CITY OF AVON PARK

Highlands County, Florida

110 East Main Street

Avon Park, Florida 33825

October 7, 2014

Avon Park City Council
110 East Main Street
Avon Park, Florida 33825

Dear Council Members:

Pursuant to City Ordinance No. 874, you are hereby notified of a Regular Meeting of the City Council on Monday, October 13, 2014, at 6:00 p.m., in the City Council Chambers located at 123 East Pine Street, Avon Park, Florida. If you are unable to attend, please contact me at 452-4403.

Sincerely,

A handwritten signature in blue ink that reads "Julian Deleon". The signature is stylized and cursive.

Julian Deleon
City Manager

**CITY COUNCIL REGULAR MEETING
CITY COUNCIL CHAMBERS
123 E. Pine St. Avon Park, FL
October 13, 2014
6:00 PM**

A. OPENING

1. Invocation
2. Pledge of Allegiance
3. Roll Call

B. CONSENT AGENDA:

4. Council Minutes – Approval of Regular Council Meeting of Sept. 22, 2014
5. Appointments to Airport CRA: John P. Barben, Patrick Danzey

C. CITIZENS/OUTSIDE AGENCIES

6. Chet Brojek- AP Noon Rotary- Request to waive alcohol Ord. for Music on the Mall events.
7. Hughston Hall- Code Enforcement concern
8. 505 N Delaney Code Enforcement lien reduction request by Mortgage Company
9. United Methodist Church request for 4 RV's to park on church site

D. COMMITTEE REPORTS/ATTY UPDATES/ ANNOUNCEMENTS

E. ADMINISTRATIVE

F.

10. **Second Reading - Ordinance 22-14** Amending Unified Development Code regarding car wash/detailing businesses.
11. **Second Reading – Ordinance 23-14** City initiated text amendment to the Comp Plan to add “Mixed Use” designation to the Future Land Use Element.
12. Contractor Approval for Airport Drainage construction
13. **Ordinance 24-14** amending retirement for management employees.
14. MLK Sports Complex Parking Construction- City Manager

F. CITIZENS PARTICIPATION

G. ADJOURN

Any person who might wish to appeal any decision made by the City Council of the City of Avon Park, Highlands County, Florida, in public hearing or meeting is hereby advised that he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based. Any person with disabilities requiring accommodations in order to participate should contact the City Manager prior to the meeting.

CITY COUNCIL REGULAR MEETING MINUTES
Council Chambers – 123 E. Pine St., Avon Park, FL
September 22, 2014
6:00 PM

Members Present: Mayor Sharon Schuler, Deputy Mayor Brenda Giles, Councilman Parke Sutherland and Councilman Terry Heston, Councilman Garrett Anderson.

Members absent: none

Others Present: City Manager Julian Deleon, and Administrative Services Director Maria Sutherland, Attorney Gerald T. Buhr, Members of Press and Audience.

Mayor Sharon Schuler called the meeting to order at 6:00 P.M. The invocation was given and the Pledge of Allegiance was recited. The roll was called and a quorum was present.

CONSENT AGENDA: City Manager, Julian Deleon, noted the items on the consent agenda. Council Minutes Regular Meeting September 8, 2014. **Motion** made by Councilman Parke Sutherland, seconded by Councilman Terry Heston to approve consent agenda as presented. Motion carried unanimously.

CITIZENS/ OUTSIDE AGENCIES: After a brief review of the upcoming Oktoberfest event slated for October 4th, 2014, a motion was made by Councilman Heston to approve the closing of Main Street as presented for the event with Councilman Garrett Anderson seconding the motion. Motion passed unanimously.

ADMINISTRATIVE

Resolution 14-12: Final Millage Rate Attorney Gerald Buhr read Resolution 14-12 into the record. Mayor Sharon Schuler opened the floor to the public. Seeing no hands the Mayor closed the public hearing. **Motion** made by Deputy Mayor Brenda Giles, Seconded by Councilman Terry Heston to approve Resolution 14-12 as read. Motion carried unanimously.

Ordinance 19-14 Second Reading. Adopting budget for FY 2014-2015. Attorney Gerald Buhr read Ordinance 19-14 into the record. Mayor Sharon Schuler opened the floor to the public and seeing no hands the Mayor closed the public hearing. **Motion** made by Councilman Terry Heston, seconded by Councilman Parke Sutherland to approve first reading of Ordinance 19-14. Motion carried unanimously.

Heartland Cultural Alliance (HCA) agreement the agreement was presented to Council for review. Mr. Malone, representative from HCA approached the podium to address any concerns the Council had regarding the use of the upstairs of the community center for the proposed museum. Some items in the current agreement were not affordable to the HCA. Councilman Sutherland touched on several items within the agreement. After additional discussion, another revision is going to be performed by Mr. Malone which will be brought back to Council.

Resolution 14-15 Main Street CRA Plan Robert Franke from LaRue Consulting provided an overview of the draft boundary expansion for the Main Street CRA district. He showed the new boundaries as discussed by Council and public input from a previous meeting. Mayor Schuler voiced her thoughts on the expansion and how the direction of the Main Street CRA has been lost due to the largesse of the new boundary. She emphasized the Main Street CRA was created as a commercial CRA and not a residential CRA. Other Council members voiced in favor of the expansion due to the existing blighted conditions of residences in the north portion of the City. Councilman Sutherland emphasized the residents in the northern portion of the City should have the same consideration of CRA funds if allowed as do the existing residents within the current Main Street boundaries. Resident Manuel Cortazal voiced his discontent with the timeliness of the web posting of the revised boundaries.

Motion by Councilman Parke Sutherland to approve Resolution 14-15 with Councilman Terry Heston seconding. Motion passed 3-2 with Mayor Schuler and Councilman Anderson casting “no”.

Ordinance 22-14 First reading Amending Unified Development Code regarding car detailing/wash businesses: Attorney Gerald Buhr read Ordinance 22-14 into the record. Mayor Sharon Schuler opened the floor to the public. Seeing no hands the Mayor closed the public hearing. **Motion** made by Councilman Terry Heston, Seconded by Councilman Parke Sutherland to approve Ordinance 22-14 as read. Motion carried unanimously.

Ordinance 23-14 First reading City initiated text amendment to the Comp Plan to add “Mixed Use” Future Land Use to the Future Land Use Element: Attorney Gerald Buhr read Ordinance 23-14 into the record. Mayor Sharon Schuler opened the floor to the public. Seeing no hands the Mayor closed the public hearing. **Motion** made by Councilman Terry Heston, Seconded by Deputy Mayor Brenda Giles to approve Ordinance 23-14 as read. Motion carried unanimously.

Brickell Building: City Manager Deleon offered an overview of the conditions of the Brickell Building. Business owner Dennis Mungall voiced his concerns of purchasing a building to be owned by government. Housing Authority Executive Director Larry Shoeman voiced his interest in the Brickell Building. Additional discussion by Council brought out potential businesses moving in that would encourage night time activity downtown. **Motion** by Deputy Mayor Brenda Giles to purchase the Brickell Building. Seconded by Councilman Terry Heston. Motion carried unanimously.

RPAC Interlocal with County: Councilman Parke Sutherland **motioned** to approve the interlocal agreement with Highlands County Board of County Commissioners for RPAC funds for the recreation building flooring replacement. Seconded by Councilman Terry Heston. Motion carried unanimously.

Disposition of Aged Equipment: City Manager Deleon provided an overview of the aged side loading garbage truck and his thought on auctioning the truck vs. selling the truck. City Attorney spoke about needed provisions in the City's Purchasing policy that disallows trade-ins. Currently we can go to auction but cannot do trade-ins. **Motion** by Mayor Schuler to amend Section 2-330 of the City's Purchasing Policy to resolve inconsistencies in disposition of city property. Seconded by Councilman Parke Sutherland. Motion carried unanimously. After additional discussion regarding other city property, a motion for allowing the City Manager to take the 2002 side loader truck and old street sweeper to Sebring Auctioneers. Motion by Deputy Mayor Brenda Giles and second by Councilman Terry Heston. Motion carried unanimously.

Meeting adjourned at 8:25pm

ATTEST: _____
Maria Sutherland

Mayor Sharon Schuler

CODE ENFORCEMENT
SPECIAL MAGISTRATE FOR
THE CITY OF AVON PARK, HIGHLANDS COUNTY, FLORIDA

C-7

CITY OF AVON PARK, FLORIDA

Case No.:

14-340

Petitioner,

Property Address:

2806 Woodluff HgTs

V

Strap No.:

A 22 332801001102806

Respondent

Hughston Hall

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

THIS CAUSE came on to be heard before the Special Magistrate for the City of Avon Park at a hearing commencing at 3 A.M./P.M. on May 28, 2014 after due notice to Respondent, and the undersigned Special Magistrate having heard testimony under oath and duly considered the evidence presented and being otherwise fully advised in the premises, does hereupon render the following Findings of Fact, Conclusions of Law and Order as follows:

FINDINGS OF FACT

1. Appearing before the Hearing Officer was the City's Code Enforcement Officer Seth Henderson.
2. Respondent was properly served notice of the subject hearing.
3. The following were present on behalf of the Respondent:
Present: Hughston F Hall
4. The Respondent was cited by way of a Violation Notice for maintaining or creating a condition generally described as use of public right of way.
5. The condition, generally described above, violates the following of the City's Ordinance(s): 2.02.14
6. 28, 2014 The Code Enforcement Officer for the City of Avon Park reported that, based on a re-inspection of the property conducted on May the above described condition has been remedied.

CONCLUSIONS OF LAW

7. Due and proper notice has been afforded Respondent.
8. The violation(s) as described in paragraphs 4 and 5 above did exist () at the subject property.
9. The Special Magistrate has jurisdiction over the subject matter and of Respondent.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and upon consideration of the gravity of the violation, actions taken by the Respondent to correct the violation(s), any previous violations committed by the Respondent, it is hereby ORDERED that:

- () Summary Disposition. Respondent admits to the violation(s) and requests additional time to comply. Respondent waives any defenses to the violation(s). Respondent shall have until _____, 20____ comply or a \$ _____ fine in total ()/per day () will be imposed after a finding of non-compliance at a subsequent hearing.
- () Respondent shall secure subject property within _____ days or a fine of \$ _____ in total ()/per day () will be imposed after a finding of non-compliance at a subsequent hearing.
- () Respondent shall have _____ days, or until _____, 20____, to bring the subject property into total compliance or a fine of \$ _____ in total ()/per day () will be imposed after a finding of non-compliance at a subsequent hearing.
- () Respondent shall have _____ days, or until _____, 20____, for total compliance or the City of Avon Park is hereby authorized to _____ assessing costs incurred as a lien against all property owned by the Respondent as provided by law.
- () The City of Avon Park is hereby authorized to take the steps necessary to bring the property into total compliance, which may include demolition, with the costs thereof assessed as a lien against all property owned by the Respondent as provided by law.
- () Respondent is a repeat offender, as defined by Florida Statutes, having previously been found in violation in Case(s) _____;

- () Respondent is fined as a repeat offender a fine of \$ _____ per day each and every day until the property is brought into compliance.
- () The subject property is now in compliance. This case is dismissed upon payment of a fine of \$ _____ within _____ days of _____

Code Enforcement Division
1535 SR 64 West Suite 104
Avon Park, FL 33825



Phone: 863-453-3565
Fax: 863-453-3558

CODE ENFORCEMENT

CODE ENFORCEMENT NOTICE OF VIOLATION

Date: March 18, 2014 Certified Mail Number: 70123050000009691964

Dear: HUGHSTON F HALL
2806 WOODRUFF HGTS

AVON PARK FL 33825

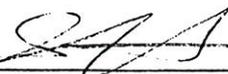
*✓ copy of return
correspondence*

Case # 14-00000340

During a recent inspection of your property located at 2806 WOODRUFF HGTS on March 18, 2014. It was discovered that the property is in violation of the Code of Ordinances of the City of Avon Park. SEE ATTACHED NOTICE OF VIOLATION.

The Code Enforcement Office requests that you correct this violation. If you have any questions you may visit our office or contact us by calling 863-453-3565 within the next thirty (30) days after the receipt of this letter.

Failure to correct this violation or contact this office may require other course of actions pursuant to section 162.12 Florida Statutes and the Code of Ordinances of the City of Avon Park.


P. S. O. SETH HENDERSON

**Dismissed
05/28/14
WRONGFULLY cited
DUE PROCESS NOT Afforded*

Violation Detail

0010 USE OF PUBLIC RIGHT OF WAY Sec. 2.02.14

Date Est: March 18, 2014 Location: Qty: 001

Violation Description

Sec. 2.02.14 USE OF PUBLIC RIGHT-OF-WAY
STREET FURNISHINGS TO INCLUDE BUT NOT LIMITED TO

BENCHES,

CHAIRS, TABLES, TRASH RECEPTACLES, ETC. SHALL NOT BE

PLACED

ON THE PUBLIC RIGHT OF WAY TO INCLUDE SIDEWALKS BY ANY
PERSON, BUSINESS OR AGENCY OTHER THAN WITH THE

APPROVAL OF

THE CITY OF AVON PARK. SAID STREET FURNISHINGS SHALL NOT
BEAR ADVERTISEMENTS OF ANY TYPE EXCEPT FOR PUBLIC

SERVICE

ANNOUNCEMENTS.

IN ALL ZONING DISTRICTS, MERCHANDISE SHALL NOT BE

DISPLAYED

OR OFFERED FOR SALE ON PUBLIC RIGHT OF WAY TO INCLUDE
SIDEWALKS UNLESS SUCH DISPLAY OR SALE IS IN CONJUNCTION

WITH

A SPECIAL EVENT APPROVED BY THE CITY OF AVON PARK.

Violation Text

Trees and plants planted on the right of way

Violation Corrective Action

Recited 06/04/14
ord. 86-31 - Planting on the Right of Way



NEWS-SUN

Highlands County's Hometown Newspaper Since 1927 50¢



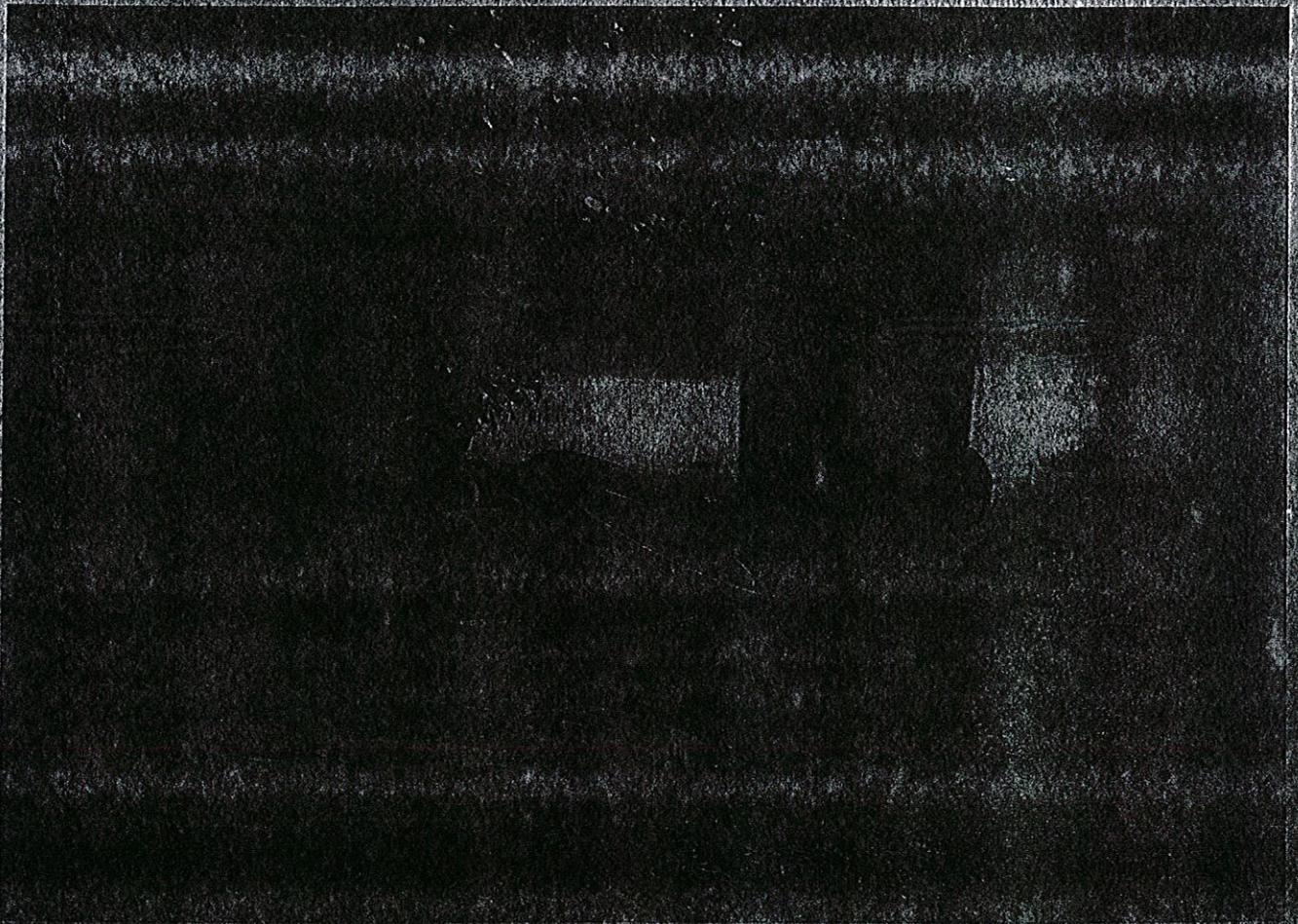
The Readers' Choice Awards are back. Vote for your favorite B9

Easy to make
and jelly roll

NS

www.newssun.com

Lack of 'curb appeal' hurting Avon Park?



Garbage bins waiting to be collected from State Street in Avon Park show some homeowners trying to get some spring cleaning done. City residents are urged to clean up their yards and streets. Photo by [unreadable]



Code Enforcement Division
Avon Park Police Department
304 W Pleasant Street
Avon Park, Florida 33825

Phone: 863-452-4401
Fax: 863-452-5090

November 5, 2010

**No Citations @ THIS TIME
2806 Woodruff*

Dear Property Owner/ Resident

The City of Avon Park Code Enforcement Division of the Avon Park Police Department has comprised "Operation Neighborhood Clean Sweep".

This program is directed toward specific areas in the city which, due to the history of code violations, require immediate and intense actions. The program is an attempt to obtain and maintain voluntary compliance with all ordinances spelled out in the City of Avon Park Code of Ordinances.

These ordinances include but are not limited to Nuisances (high weeds and grass, trash, junk, and debris), minimum maintenance (chipped flaking, faded paint, broken windows, exposed wood, and wiring), abandoned vehicles (no tags or expired tags, inoperable vehicles, illegal parking).

Effective November 09, 2010, Code Enforcement Officers and Law enforcement will be in the area of Woodruff Heights to begin our program.

ANOMILEE Xpress Amenities usage

This letter serves as notice of this program in an effort to gain your cooperation and support.

Hopefully we can work together to make our neighborhood a safer, cleaner place for us to live and raise our families.

Thank You,

Greg Warner
Code Enforcement Officer

Rec'd 3 pm
8/21/14 MS

FROM THE DESK Of;

HUGHSTON F. HALL

2806 WOODRUFF HEIGHTS
AVON PARK, FL. 33825-2950

Phone: 863/453-2680

08/20/2014

CC COPY

TO THE SERVICE of:

CITY MANAGER of AVON PARK, FL.
110 EAST MAIN St.
AVON PARK, FL. 33825

Mr. DELEON;
IN RESPONSE of A CITATION PROCESS; I, Hughston Foy Hall of 2806 Woodruff Heights, AM REQUESTING to be SCHEDULED to APPEAR BEFORE THE CITY COUNCIL for the purpose of CONTINUATION of DUE PROCESS.

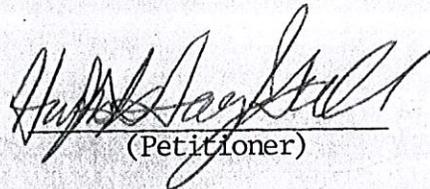
A DATE and TIME-SETTING ALLOTMENT for the CIRCUMSTANCE and SITUATIONAL PRESENTATION. Approximate TIME NECESSARY, 15-20 MINUTES. Both VERBAL and TELESTRATIVE (CD & PHOTOGRAPHIC) along with SIX PERSONALIZED PACKETS. Packets AVAILABLE at YOUR REQUEST.

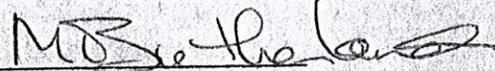


This REQUEST HAVING BEEN DISCUSSED and DEEMED NECESSARY during TESTIMONY @ THE MAGISTRATIVE HEARING of August Thirteenth, 2014th.

Please NOTE that THE MAGISTRATE-INFERRED that SHE BE E-MAILED (As to YOUR APPROPRIATE RESPONSE).

Thanking YOU IN ADVANCE, for YOUR MOST COURTEOUS RESPONSE to these PARTICULARS.


(Petitioner)

Signatory Receiver 

cchFH, Cnsel.

C-8



**LIEN SEARCH
PROFESSIONALS, INC.**

8918 W Broward Blvd #301
Plantation, Florida 33317
Fax: 964-843-9674

August 12, 2014

City Of Avon Park
Lien Dept
Phone: (863) 452-4400
Fax: (863) 453-0070

Client File No: 14-1398
Seller: Federal National Mortgage Association a/k/a Fannie Mae
Buyer: TO BE DETERMINED
Address: 505 N Delaney Avenue, Avon Park, FL 33825
Parcel ID: A-22-33-28-010-0010-0011

The South half of Lot 1, Block 1, Town of AVON PARK, Section 22, Township 33 South,
Range 28 East, Highlands County, Florida.

Dear Sir or Madam:

Our client has been selected as the closing agent for the above referenced transaction. Please advise if you have any outstanding, pending and/or certified liens, special assessments, open/outstanding balances and/or open/pending/expired permits for the subject property. Please include a detailed statement/account history

Enclosed is a self-addressed stamped envelope to return the requested information. Please email the requested information to me at orders@liensearchprof.com.

Thank you in advance for your assistance with this matter. If you have any further questions, please contact me at orders@liensearchprof.com.

Sincerely,
Bonnie Newman

Lien Search Professionals, Inc.

For City Use

Acct: # N/A

Balance due 0

Good thru date N/A

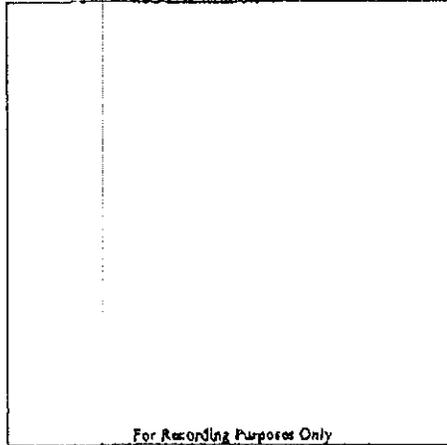
Payment mail to: N/A

Customer Service Representative: Seth Henderson *[Signature]* 8-12-14
Code Enforcement
City of Avon Park

THIS INSTRUMENT
SHOULD BE RETURNED TO:

Sat
18.50
AIR

Janet Shields
City of Avon Park
Code Enforcement
1535 State Road 64 West Suite 104
Avon Park, FL 33825
Work: (863) 452-4401
Work 2: (863) 453-3565



For Recording Purposes Only

BEFORE THE CODE ENFORCEMENT SPECIAL MAGISTRATE
OF THE CITY OF AVON PARK, FLORIDA

CITY OF AVON PARK, a Florida
Municipal Corporation

Petitioner,

Vs

MABLE PARRISH

CE CASE

12-110

ADDRESS

505 N. DELANEY AVE
AVON PARK, FL 33825

and all unknown parties claiming
by, through, under or against the
said named respondents, whether
living or not, and whether said
unknown parties claims as heirs,
 devisees, grantees, assignees,
licensors, creditors, trustees, parties
in possession, or in any other
capacity claiming by, through or
under, or against the said named
respondents.

Respondent.

ORDER IMPOSING ADMINISTRATIVE FINE / LIEN

1. This case came on for hearing before the Code Enforcement Special Magistrate on 7/31/2012, at which time the Special Magistrate heard testimony under oath, received evidence, and issued an Order which was reduced to writing and furnished to the Respondent(s).

IT IS HEREBY ORDERED THAT:

An order imposing a lien in the amount of ONE THOUSAND SIX HUNDRED NINETY EIGHT DOLLARS AND NINETY FIVE CENTS (\$1,698.95) is hereby imposed. This Order will be recorded in the public records of Highland County or any other county pursuant to the law, and when so recorded shall constitute a lien against any and all real and personal property of the Respondent pursuant to Chapter 162, Florida Statutes, Section 162.09. The recording of this Order is for the following described land located within Avon Park, Highlands County, Florida, to wit:

LEGAL DESCRIPTION: A-22-33-28-010-0010-0011

TOWN OF AVON PARK
IN 22-33-
3% OF LOT 1 BLK 1

DONE AND ORDERED this 17 day of April, 2013 at Avon Park, Highlands County Florida.

CITY OF AVON PARK, FLORIDA

By: [Signature]
Michael D. Durham, Special Magistrate

STATE OF FLORIDA
COUNTY OF HIGHLANDS

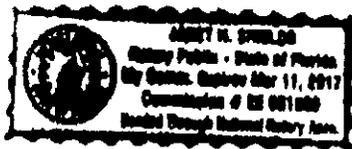
This forgoing instrument was acknowledged before me this 17 day of April, 2013 by Michael D. Durham as City of Avon Park Code Enforcement Special Magistrate, who is personally known to me.

City Clerk/ Notary at large

Notary Expires March 11, 2017

[Signature]
Janet H. Shields

This instrument prepared by Janet Shields, Code Enforcement Secretary, City of Avon Park, Florida





City of Avon Park
1535 SR 64 W. Ste. 4
Avon Park, FL 33825
863-453-3565

June 16, 2014

**NOTICE TO APPEAR
BEFORE THE CODE ENFORCEMENT SPECIAL MAGISTRATE**

Case Number: 12-00000110

Manner of Service: CERTIFIED MAIL / RRR

FEDERAL NATIONAL MTG ASSOC
3900 WISCONSIN AVE NW
WASHINGTON DC 20016-2892

Violation Location: 505 N DELANEY AVE

TAX ID 22332810001000011

You are hereby **NOTIFIED TO APPEAR** before the Code Enforcement Special Magistrate on **JUNE 25TH 2014 at 3:00 PM**. The hearing will be held in the City Council Chamber located at **123 E. Pine Street**. Your case may be decided even if you fail to appear without a continuance, so if you have valid cause not to appear, you must contact the Code Enforcement Division below, and seek a continuance of your case.

Violation: ORDINANCE NO 22-603; MINIMUM MAINTENANCE; PROPERTY IS OVERGROWN, SCATTERED TRASH, JUNK AND DEBRIS TO INCLUDE OLD CAR PARTS.

Date of Notice of Violation: **APRIL 12, 2012**

If a person decides to appeal any decision made by the Special Magistrate with respect to any matter discussed at this hearing, he or she will need a record of the proceedings for such purposes, and may need to ensure that a verbatim record of the proceedings is made, which record includes testimony and evidence upon which the appeal would be based, pursuant to Florida Statute 286.0105. Verbatim transcripts are not furnished by the City. Any person with a disability requiring reasonable special accommodations in order to participate in this meeting, or if you have any questions regarding this Notice, please call Joe Sliva at (863) 453-3565.

Sincerely,

NOTICE OF POSTING

DATE: JUNE 16TH, 2014

CASE # 12-00000110

ADDRESS: 505 N DELANEY AVE

A-22332810001000011

**THIS PROPERTY IS IN VIOLATION OF THE CITY
OF AVON PARK CODE OF ORDINANCE AND/OR
MINIMUM MAINTENANCE STANDARDS AND
GUIDELINES FOR THE COMMUNITY
REDEVELOPMENT AREA
AND/OR NUISANCE , OVERGROWN PROPERTY**

**Failure to respond or comply will result in the City of Avon Park
taking action(s) to remedy the violation up to and including
demolition.**

As per Avon Park City Code of Ordinance 22-608

**ALL INTERESTED PARTIES CONTACT
THE CODE ENFORCEMENT OFFICE AT
(863) 453-3565**



Code Enforcement Officer

303 N. 1st Ave

1902

1902



10 203 - 19
203 W. Delaware



303 W. 11th Ave

1/14

1/14



CITY OF AVON PARK, FLORIDA

Petitioner,

V

Case No.:

12-110

Property Address:

505 N. DELANEY

Strap No.:

A22332801000100011

Respondent

MABLE PARRISH |

AFFIDAVIT OF POSTING AND OF MAILING

BEFORE ME, the undersigned authority, personally appeared Scott Henderson who, after being by me duly sworn stated the following under oath:

1. My name is Scott Henderson, I am over the age of eighteen (18) years old, and I otherwise sui juris. I have direct knowledge of the facts set forth below.

2. I am a Code Enforcement Officer for the City of Avon Park, Highlands County, Florida.

3. On the 12th day of APRIL, 2014, a Notice of Violation was issued to the above Respondent for an alleged violation of the Code of Ordinances of the City of Avon Park. Pursuant to section 162.12, Florida Statutes, a notice of this alleged violation and hearing thereon was provided to the Respondent by certified mail, return receipt requested, to the Respondent at the address listed in the tax collector's office for tax purposes and at any other address provided to the City of Avon Park by the Respondent which was/were returned as unclaimed or refused.

4. On the 16th day of JUNE, 2014, I posted notice of the alleged violation and hearing thereon at the property upon which the violation is alleged to exist and at the primary municipal government office. A copy of the notice posted, stamped with the date of posting, is attached hereto.

5. On the 16th day of JUNE, 2014, I mailed, via first class mail, a

notice of the alleged violation and hearing thereon, to the Respondent at the address listed in the tax collector's office for tax purposes and at any other address provided to the City of Avon Park by the Respondent.

FURTHER AFFIANT SAYETH NOT.

Dated this 24th day of JUNE, 2014.



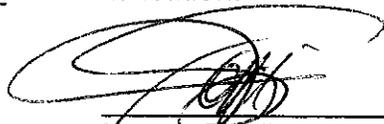
Code Enforcement Officer

**STATE OF FLORIDA
COUNTY OF HIGHLANDS**

The foregoing instrument was acknowledged before me this 24th day of JUNE, 2014, by SETH HENDERSON, Code Enforcement Officer for the City of Avon Park, who is personally known to me or who provided

N/A as identification.





Notary Public
My Commission Expires:

**THIS INSTRUMENT
SHOULD BE RETURNED TO:**

**Janet Shields
City of Avon Park
Code Enforcement
1535 State Road 64 West Suite 104
Avon Park, FL 33825
Work: (863) 452-4401
Work 2: (863) 453-3565**

For Recording Purposes Only

**BEFORE THE CODE ENFORCEMENT SPECIAL MAGISTRATE
OF THE CITY OF AVON PARK, FLORIDA**

CITY OF AVON PARK, a Florida
Municipal Corporation

Petitioner,

Vs MABLE PARRISH

CE CASE 12-110

ADDRESS 505 N. DELANEY AVE
AVON PARK, FL 33825

and all unknown parties claiming by, through, under or against the said named respondents, whether living or not, and whether said unknown parties claims as heirs, devisees, grantees, assignees, lienors, creditors, trustees, parties in possession, or in any other capacity claiming by, through or under, or against the said named respondents.

Respondent.

 **COPY**

ORDER IMPOSING ADMINISTRATIVE FINE / LIEN

1. This case came on for hearing before the Code Enforcement Special Magistrate on 7/31/2012 , at which time the Special Magistrate heard testimony under oath, received evidence, and issued an Order which was reduced to writing and furnished to the Respondent(s).

IT IS HEREBY ORDERED THAT:

An order imposing a lien in the amount of **ONE THOUSAND SIX HUNDRED NINETY EIGHT DOLLARS AND NINETY FIVE CENTS (\$1,698.95)** is hereby imposed. This Order will be recorded in the public records of Highland County or any other county pursuant to the law, and when so recorded shall constitute a lien against any and all real and personal property of the Respondent pursuant to Chapter 162, Florida Statutes, Section 162.09. The recording of this Order is for the following described land located within Avon Park, Highlands County, Florida, to wit:

LEGAL DESCRIPTION: A-22-33-28-010-0010-0011

**TOWN OF AVON PARK
IN 22-33-
S 1/4 OF LOT 1 BLK 1**

DONE AND ORDERED this 17 day of April, 2013 at Avon Park, Highlands County Florida.

CITY OF AVON PARK, FLORIDA

By: [Signature]
Michael D. Durham, Special Magistrate

STATE OF FLORIDA
COUNTY OF HIGHLANDS

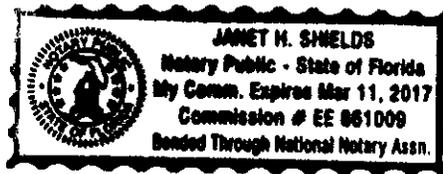
This forgoing instrument was acknowledged before me this 17 day of April, 2013 by Michael D. Durham as City of Avon Park Code Enforcement Special Magistrate, who is personally known to me.

City Clerk/ Notary at large

Notary Expires March 11, 2017

[Signature: Janet H. Shields]

This instrument prepared by Janet Shields, Code Enforcement Secretary, City of Avon Park, Florida



City of Avon Park

2301 US 27 South
Avon Park, Florida 33825
Phone 863-452-4427 Fax 863-452-4428

DATE: December 18, 2012

Avon Park Code Enforcement

DESCRIPTION	AMOUNT
Court Order Clean Up of Property at 505 N. Delaney Ave., Avon Park, FL Case # 12-110	
Labor	
Mitchell Strickland	\$ 333.88
Officer Over Five Inmates	\$ 84.93
Brenda Sliva	\$ 49.74
John Chisholm	\$ 23.81
Darrell Davis	\$ 22.00
Jerry Bennett	\$ 63.10
Equipment Used - Cost	
Truck, Trailer, Mower, Weed eaters, Calm Truck and Pole Saw	\$ 633.34
Landfill Charges - Ticket # 1427980, 1427261 and 1424830	\$ 444.15
Tires	\$ 44.00
Work Completed on 10/09/12	
TOTAL	\$ 1,698.95

Make all checks payable to **City of Avon Park**

If you have any questions concerning this invoice, contact N: Brenda Sliva, 863-452-4427.



Eric T. Zwayner
 Attorney at Law
 505 N. Delaney Ave.
 Avon Park, FL 33825

Tax Collector Home Search Reports Shopping Cart

2011 Roll Details — Real Estate Account At 505 DEL

Real Estate Account #A223328-01000100011

2011	2010	2009
Paid	Paid	Paid

Owner: PARRISH MABLE
 505 N DELANEY AVE
 AVON PARK, FL 33825
 Situs: 505 DELANEY
 AVON PARK

Account number: **A223328-01000100011**
 Alternate Key: 1001430
 Millage code: 10
 Millage rate: 21.1803
 Escrow company: SUNTRUST/VALUTREE REAL
 EST SER (199)
 ATTN: CARYN WYATT
 1001 SEMMONS AVE
 RICHMOND, VA 23285

Assessed value: 58,300
 School assessed value: 58,300

Exemptions

HOMESTEAD BANDED: 8,300
 HOMESTEAD: 25,000
 WIDOW: 500

Location is not guaranteed to be accurate

Property Appraiser

2011 annual bill	View	Legal description	Location
Ad valorem:	\$583.76	TOWN OF AVON PARK IN 20-33-28 3	Book, page, item: 1142-
Non-ad valorem:	\$165.00	1/2 OF LOT 1 BLS 1	1098-
Total tax:			Property class:
			Range: 28E
			Township: 33S
			Section: 022
			Block: 0010
			Lot: 0011
			Value code: 01
			Use code: 01

Paid 2011-11-21 \$718.81
 Receipt #001-11-00012071

7011 0470 0001 4783 3905

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL MAIL

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$2.75	

Sent To: Suntrust

Street, Apt. No., or PO Box No.

City, State, ZIP+4

U.S. Form 3800, August 2006 See Reverse for Instructions

[Street Map](#)

INSPECTION HISTORY

HIGHLANDS COUNTY BCC

CASE NO : CE12070168
 ADDRESS : 505 N DELANEY AVE
 OWNER : PARRISH MABLE
 DATE : Jul 24, 2012
 DESCRIP : AVON PARK CODE ENFORCEMENT CALLED AND ASKED FOR
 SITE INSPECTION OF THIS HOME.

DATE	TIME	TYPE	INSP	COMMENTS
07/24/12	16:10:39	INS	SY	<p>THIS IS A CONCRETE BLOCK HOME WITH A RAISED WOOD FLOOR SYSTEM. THE ROOF IS FINISHED WITH SHINGLES BUT HAS A THICK LAYER OF TREE LIMBS AND LEAVES ON THE ROOF. THIS WILL CAUSE THE SHINGLES TO ROT IF NOT CLEANED OFF. THE HOME WAS LOCKED, BUT BY LOOKING THROUGH THE WINDOWS I SAW NO AREAS OF LEAKS OR CEILING DAMAGE. THERE IS ONE WINDOW MISSING THAT HAS BEEN BOARDED OVER BUT ALL OTHER DOORS AND WINDOWS ARE IN PLACE. THERE IS QUITE A BIT OF TRASH, BOXES, AND OLD CLOTHES IN THE HOME AND ALSO IN THE YARD AND CARPORT. WITH THE REPLACEMENT OF THE WINDOWS, CLEAN UP OF THE ROOF AND YARD DEBRIS AND AN INTERIOR INSPECTION THE HOME SHOULD BE IN USABLE CONDITION AGAIN.</p> <p>COMPLAINT RECORDED BY hmckinne</p>
07/24/12	16:06:14	CRE	SY	

CITY OF AVON PARK, FLORIDA

Case No.:

12-110

Petitioner,

Property Address:

505 N. Delaney Ave

V

Strap No.:

A223328010001

Respondent

Mable Parrish

AFFIDAVIT OF POSTING AND OF MAILING

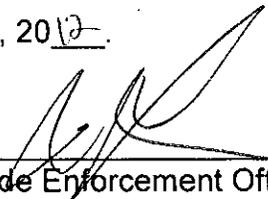
BEFORE ME, the undersigned authority, personally appeared Cmdr. Jason Lister, who, after being by me duly sworn stated the following under oath:

1. My name is Jason Lister, I am over the age of eighteen (18) years old, and I otherwise sui juris. I have direct knowledge of the facts set forth below.
2. I am a Code Enforcement Officer for the City of Avon Park, Highlands County, Florida.
3. On the 12 day of April, 2012, a civil citation was issued to the above Respondent for an alleged violation of the Code of Ordinances of the City of Avon Park. Pursuant to section 162.12, Florida Statutes, a notice of this alleged violation and hearing thereon was provided to the Respondent by certified mail, return receipt requested, to the Respondent at the address listed in the tax collector's office for tax purposes and at any other address provided to the City of Avon Park by the Respondent which was/were returned as unclaimed or refused.
4. On the 23 day of July, 2012, I posted notice of the alleged violation and hearing thereon at the property upon which the violation is alleged to exist and at the primary municipal government office. A copy of the notice posted, stamped with the date of posting, is attached hereto.
5. On the 20 day of July, 2012, I mailed, via first class mail, a

notice of the alleged violation and hearing thereon, to the Respondent at the address listed in the tax collector's office for tax purposes and at any other address provided to the City of Avon Park by the Respondent.

FURTHER AFFIANT SAYETH NOT.

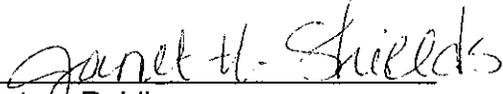
Dated this 30 day of July, 2012.



Code Enforcement Officer

**STATE OF FLORIDA
COUNTY OF HIGHLANDS**

The foregoing instrument was acknowledged before me this 30 day of July, 2012, by Jassen Lester, Code Enforcement Officer for the City of Avon Park, who is personally known to me or who provided _____ as identification.



Notary Public
My Commission Expires: 3/11/2013



NOTICE OF POSTING

DATE: JULY 20, 2012

CASE# 12-000000110

ADDRESS: 505 N DELANEY AVE

AVON PARK, FL 33825

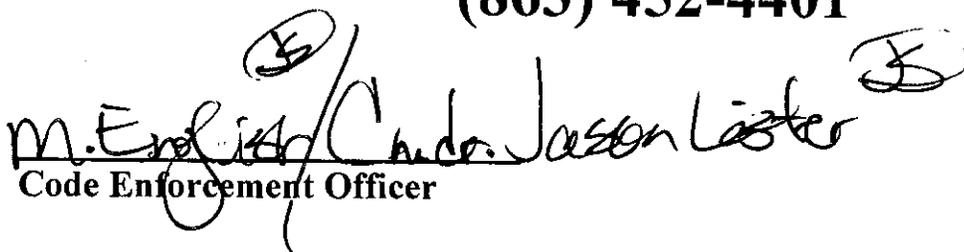
A-22-33-28-100-0100-0011

**THIS PROPERTY IS IN VIOLATION OF THE CITY
OF AVON PARK CODE OF ORDINANCE AND/OR
MINIMUM MAINTENANCE STANDARDS AND
GUIDELINES FOR THE COMMUNITY
REDEVELOPMENT AREA
AND/OR NUISANCE , OVERGROWN PROPERTY**

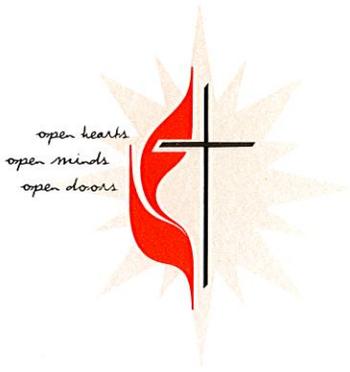
**Failure to respond or comply will result in the City of Avon Park
taking action(s) to remedy the violation up to and including
demolition.**

As per Avon Park City Code of Ordinance 22-608

**ALL INTERESTED PARTIES CONTACT
THE CODE ENFORCEMENT OFFICE AT
(863) 452-4401**


Code Enforcement Officer

C-9



First United Methodist Church

200 SOUTH LAKE AVENUE
AVON PARK, FL 33825

Church (863) 453-3759

The people of The United Methodist Church™

September 17, 2014

Mayor Schuler
110 E. Main Street
City of Avon Park, FL 33825

Dear Mayor:

The First United Methodist Church would like to request approval of four (4) RV's to park on site for a period of three weeks, which should start January 23rd through February 14, 2015.

We are submitting an application with the NOMADS organization for help to do maintenance work on our buildings at that time. We will furnish utilities for them and sewer will be dumped off-site at an approved dump site.

Thank you, for your consideration on this matter.

Yours in Christ,

John Palmer
Trustee President

F-10

ORDINANCE NO. 22-14

AN ORDINANCE OF THE CITY OF AVON PARK, FLORIDA, AMENDING THE AVON PARK LAND DEVELOPMENT CODE; AMENDING ARTICLE 2, ADDING “CAR WASH AND AUTO DETAILING” TO TABLE 2.04.01(A), TABLE OF LAND USES; AMENDING ARTICLE 3, SECTION 3.08.09 AND ADDING NEW SECTION, 3.11.00, SUPPLEMENTAL DEVELOPMENT STANDARDS; AND AMENDING ARTICLE 9, PROVIDING DEFINITIONS FOR CAR WASH AND AUTO DETAILING; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3167(c), Florida Statutes, empowers the City to adopt land development regulations to guide the growth and development of the City; and

WHEREAS, pursuant to Section 166.041(3)(c)(2), Florida Statutes, the City Council of the City of Avon Park has held meetings and hearings regarding the proposed amendments to the Unified Land Development Code, with due public notice having been provided, to obtain public comment, and considered all written and oral comments received during public hearings, including supporting documents; and

WHEREAS, in exercise of its authority, the City Council of the City of Avon Park has determined it necessary to adopt these amendments, which are shown in Exhibit “A”, attached hereto and made a part hereof, to encourage the most appropriate use of land consistent with public interest; and,

NOW, THEREFORE, be it enacted by the City Council of the City of Avon Park, Florida:

Section 1. Article 2, Table 2.04.01(A); Article 3, Section 3.08.09; Article 3, Section 3.11.00; and Article 9 are hereby amended as shown in Exhibit “A”.

Section 2. **Severability:** If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

Section 3. **Effective Date:** This ordinance shall take effect immediately upon adoption at second reading.

This Ordinance shall be codified in the Code of Ordinances of the City of Avon Park, Florida. A certified copy of this enacting ordinance shall be located in the Office of the City Clerk of Avon Park. The City Clerk shall also make copies available to the public for a reasonable publication charge.

INTRODUCED AND PASSED on First Reading at the regular meeting of the Avon Park City Council held on the 22nd day of September, 2014

PASSED AND DULY ADOPTED, on second reading at the meeting of the Avon Park City Council duly assembled on the _____ day of _____, 2014.

CITY OF AVON PARK, FLORIDA

Sharon Schuler, Mayor

ATTEST:

Maria Sutherland, City Clerk

Approved as to form:

Gerald T. Buhr, City Attorney

Motion made by _____ **seconded by** _____.

The vote was ___ for ___ against with ___ abstentions and ___ absent

F-11

ORDINANCE NO. 23-14

AN ORDINANCE OF THE CITY OF AVON PARK, FLORIDA, AMENDING THE AVON PARK COMPREHENSIVE PLAN, REVISING THE FUTURE LAND USE ELEMENT TO ADD THE FUTURE LAND USE DESIGNATION OF MIXED USE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 163, Part II, Florida Statutes, establishes the Community Planning Act (“Act”), which empowers and mandates the City of Avon Park, Florida, (the “City”) to plan for future development and growth and to adopt and amend comprehensive plans, or elements or portions thereof, to guide the future growth and development of the City; and

WHEREAS, pursuant to the Act, the City has adopted a comprehensive plan (“Comprehensive Plan”); and,

WHEREAS, the Act authorizes a local government desiring to revise its comprehensive plan to prepare and adopt comprehensive plan amendments; and

WHEREAS, the City has prepared a text amendment to the Future Land Use Element of the Comprehensive Plan to amend Policy 1.1(f), which would create the “Mixed Use” Future Land Use designation; and,

WHEREAS, in exercise of its authority the Council has determined it necessary to adopt this amendment to the Plan, which is attached hereto as **Exhibit “A”** and by this reference made a part hereof, to insure that the Plan is in full compliance with the laws of the State of Florida; and

WHEREAS, pursuant to Section 163.3184, Florida Statutes, the City Council held a meeting and hearing on Ordinance 23-14, with due public notice having been provided, to obtain public comment, and considered all written and oral comments received during public hearings, including support documents.

WHEREAS, in the exercise of its authority, the City Council has determined that it is necessary to adopt the proposed text amendment to the Future Land Use Element contained herein to encourage the most appropriate use of land, water, and resources consistent with the public interest; to deal effectively with future problems that may result from the use and development of land within the City; and to ensure that the Comprehensive Plan is in full compliance with State law; and

WHEREAS, the City Council finds that the proposed text amendment to the Future Land Use Element contained herein is in the best interests of the health, safety, and welfare of the general public and the City’s residents, furthers the purposes of, and is consistent with, the City’s Comprehensive Plan, and is consistent with and compliant with State law, including, but not limited to, Chapter 163, Part II, Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF AVON PARK, FLORIDA THAT:

Section 1. The Future Land Use Element of the City's Comprehensive Plan is hereby amended to include the text amendment set forth in Exhibit "A," which is attached hereto and incorporated herein by reference, and which amends Policy 1.2(f) to create the "Mixed Use" Future Land Use designation.

Section 2. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

Section 3. All existing ordinances or parts of existing ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. An official, true and correct copy of this Ordinance and the City's Comprehensive Plan, as adopted and amended from time to time, shall be maintained by the City Clerk. The City Clerk will make copies available to the public for a reasonable publication charge.

Section 5. Within ten (10) days of final passage and adoption of this Ordinance, the City shall forward a copy hereof, and all supporting data and analysis, to the Florida Department of Economic Opportunity and any other agency or local government that provided timely comments to the City, as required by Section 163.3184(3)(c)2, Florida Statutes.

Section 6. The effective date of this Plan amendment, if the amendment is not timely challenged, shall be 31 days after the State Land Planning Agency notifies the local government that the plan amendment package is complete. If timely challenged, this amendment shall become effective on the date the State Land Planning Agency or the Administration Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Council, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status, a copy of which resolution shall be sent to the state land planning agency.

INTRODUCED AND PASSED on First Reading this 22nd of September, 2014.

PASSED AND DULY ADOPTED, on Second Reading with a quorum present and voting, by the City Council of Avon Park, Florida, this _____ of _____, 2014.

CITY OF AVON PARK, FLORIDA

Sharon Schuler, Mayor

ATTEST:

Maria Sutherland, City Clerk

Approved as to form:

Gerald T. Buhr, City Attorney

Motion made by _____ **seconded by** _____.

The vote was ____ **for** ____ **against with** ____ **abstentions and** ____ **absent**

F-12

Agenda Item Summary
October 13, 2014

Subject: Contractor Approval for Airport Drainage construction

Item No.

Placed on Agenda by: M. Sutherland

Total Amount of Project: \$824,900 (grant funded)

Staff Review: yes

Attorney Review: yes

Recommended Motion:

Approve City Council to enter a contract with **L&SF Engineering Consultants Corporation** for the work required in accordance with the Plans and Specifications of the City's Invitation to Bid 14-0 for the low bid amount \$824,900.00

Background:

The City "went out to bid" for the construction of the airport drainage ponds. This project has been ongoing since 2005.

Attachments: Bid tabulation & letter from design engineer

Cool and Cobb Engineering Company

September 08, 2014

Mr. Julian Deleon, P.E.
City Manager
City of Avon Park
110 E. Main Street
Avon Park, FL 33825

Re: Bid Recommendation: Avon Park Airport Drainage Project

Dear Mr. Deleon,

I have completed the background checks regarding the low bidder "L&SF Engineering Consultants, Corporation". Attached are the notes I made from phone conversations I had with the references the low bidder gave in their 09/04/14 submittal submission. After reviewing all of the facts and the references given, I hereby recommend "the City Council enter into a Contract with L&SF Engineering Consultants, Corporation for the work required in accordance with the Plans and Specifications of the City ITB 14-01 for the low bid amount of \$824,900.00".

A tabulation of all bids received is attached for your consideration. A copy of the Budget amount is also attached for your consideration.

Please let me know when you plan to submit this recommendation to the City Council and I will plan to attend the meeting.

Please call if you have any questions regarding this recommendation.

Sincerely,



Carl E. Cool, P.E.
Professional Engineer

cc: Maria Sutherland
Luis Sepulveda

Carl E. Cool, P.E.
203 W. Main Street
Avon Park, FL 33825
Fla. License No. 16921
(863) 657-2323
Fax: (863) 657-2324
Email: carl@coolandcobb.com

**CITY OF AVON PARK ITB: 14-01
REFERENCE CALL NOTES ON L&SF ENGINEERING CONSULTANTS, CORP.**

Date: 09/04/14

Company: City of Eagle Lake

Spoke To: Pete Gardner, City Manager

Project Description: Drainage Project Improvements for the City of Eagle Lake

Project Budget: \$503,000.00

Project Schedule: Project not yet complete and is a few weeks behind schedule. The delay is not the fault of the Contractor

Contractor Responses: Very Good; Deals with issues immediately

Would Contactor recommend Bidder for additional work? Yes

Date: 09/04/14

Company: City of Leesburg

Spoke To: Mike Cavanaugh

Project Description: 12 Unit Apartment Complex Renovation for the City

Project Budget: \$450,000.00

Project Schedule: Completed on time

Contractor Responses: Good; Easy to work with

Would Contactor recommend Bidder for additional work? Yes

Date: 09/04/14

Company: Wal-Mart

Spoke To: L. Hardman

Project Description: Pressure Grouting, Sidewalk and Field Grading work at the Palm Harbor Wal-Mart

Project Budget: \$160,000.00

Project Schedule: Completed on time

Contractor Responses: Outstanding; The Contractor always responded to my concerns addressed

Would Contactor recommend Bidder for additional work? Yes

Date: 09/05/14

Company: Pinellas County School Board

Spoke To: Dr. Rahgoza

Project Description: Weir Repair and Pipe Replacement

Project Budget: \$70,000.00

Project Schedule: Project completed on time even with Subcontractor issues

Contractor Responses: Good; Contractor took care of problems with subcontractors and completed work on time and within budget.

Would Contactor recommend Bidder for additional work? Yes

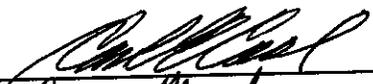
AVON PARK AIRPORT DRAINAGE PROJECT

AUGUST 21, 2014 ITB: 14-01

BID TABULATION SHEET

TIME 2:00pm

People opening bids:

	Printed Name	Signature
1	<u>CARL COUL</u>	
2	<u>Cara Morehouse</u>	<u>Cara Morehouse</u>
3	<u>Earlene Robinson</u>	<u>Earlene Robinson</u>

	COMPANY	BID AMOUNT
1	B.R.W. Contracting Inc.	\$ 1,138,293.48
2	Dickerson Florida Inc.	\$ 958,448.00
3	Go Underground Utilities Inc.	\$ 944,866.00
4	Dallas 1 Construction & Development	\$ 1,096,875.00
5	Cobb Site Development Inc.	\$ 876,876.00
6	L. & SF Engineering Consultants Corp.	\$ 824,900.00
7	Excavation Point	\$ No Bid
8		\$
9		\$
10		\$

SECTION 00700

**STANDARD GENERAL CONDITIONS OF
CONSTRUCTION CONTRACT**

CITY OF AVON PARK

AIRPORT DRAINAGE IMPROVEMENTS

AT

**CITY OF AVON PARK AIRPORT
AVON PARK, FLORIDA**

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

SECTION 00700

**STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

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**STANDARD GENERAL CONDITIONS OF THE
CONSTRUCTION CONTRACT**

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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 submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
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*—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, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or 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 discussed in Paragraph 1.02.B through F 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 the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of 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 and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.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 Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 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, or 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 its 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 the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the 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.

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, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

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

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, 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 equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* 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 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 written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, 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, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the 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 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured 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. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. 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.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. 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 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 coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - 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 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, 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 a loss payee;
 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, falsework, 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), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

members, 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 a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

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

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

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

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

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

6.05 *Substitutes and "Or-Equals"*

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

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- 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, 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, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

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

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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 or 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, if any. The Supplementary Conditions identify any 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 program 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 the indicated application, 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 Drawings 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 is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

- B. In any and all claims against Owner or Engineer or any of their 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 extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

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

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or 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 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, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.

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

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful 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 wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties 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 the Site.

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

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

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.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

9.07 *Determinations for Unit Price Work*

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor 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 will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

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.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If 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 fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of 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 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

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

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. 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 safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, 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 shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of 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, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or

- involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
- b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor 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.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

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

C. Payment Becomes Due:

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

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when

so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

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

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

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

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

ORDINANCE NO. 24-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA; AMENDING THE DEFINED CONTRIBUTION RETIREMENT PLAN FOR THE MANAGEMENT LEVEL EMPLOYEES OF AVON PARK, FLORIDA; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council established a Retirement Plan and Trust for the Employees of Avon Park pursuant Ordinance 03-02 dated January 14, 2002; and

WHEREAS, the Retirement Plan and Trust agreement was executed on March 15, 2002; and

WHEREAS, the Plan and Trust authorizes the City Council to amend the Plan and Trust, in whole or in part, either retroactively or prospectively, by delivering to the Trustee a written amendment in accordance with the limitations set out in that section; and

WHEREAS, management level employees include the following titles: City Manager and Department Heads.

WHEREAS, a general employee is any non-sworn, full-time employee who is not a management level employee and does not participate in another City-sponsored retirement system.

WHEREAS, the City Council desires to amend the Plan and Trust to prospectively change the vesting schedule for Department Head and City Manager titles, while leaving the vesting schedule the same for general employees.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF AVON PARK, FL:

SECTION 1. The City Council of the City of Avon Park, in its capacity as the Trustee of the Retirement Plan and Trust for the employees of Avon Park hereby approves the changes as set out forth below, with additions to the Plan and Trust indicated by underlining (underlining) and deletions by strike through (~~stricken through~~).

Non-elective Contributions – Participating Employer Non-elective Contributions will be made on the following basis (must specify):

A fixed rate employer contribution of 10.77% of employees annual compensation per pay period.

Vesting for Participating Employer Non-elective Contributions and Matching Contributions

A Participating Employer may establish a vesting schedule for Participating Employer Non-elective Contributions and Matching Contributions. This means that if the Participant leaves the Participating Employer’s employment prior to completing a specified minimum period of service (not to exceed 5 years), the Participant forfeits the Participating Employer’s Non-elective Contributions and Matching Contributions. However, upon Death, Disability, or the Termination of the Plan, the Participant is 100% vested in the Participant’s Participating Employer Non-elective Contributions and Matching Contributions, notwithstanding any vesting schedule. If a vesting schedule is established, it is the Participating Employer’s responsibility to

calculate the Participants service and report it to the Plan Administrator. The Participating Employer hereby elects the following:

A General Employee Participant becomes Vested in his or her Plan Account according to:

Immediate vesting

-or-

The schedule marked below

Vested percentage	[]	[]	[]	[]	[X]
Years of Vesting Service					
1	0%	0%	20%	0%	0%
2	0%	0%	40%	20%	0%
3	100%	0%	60%	40%	0%
4	****	0%	80%	60%	0%
5	****	100%	100%	80%	50%
6	****	****	****	100%	60%
7	****	****	****	****	70%
8	****	****	****	****	80%
9	****	****	****	****	90%
10	****	****	****	****	100%

A Department Head and City Manager – excepting any such individual whose employment contract with the City contains a conflicting vesting provision, in which case such contract provision will control – becomes Vested in his or her Plan Account according to:

Immediate vesting

-or-

The schedule marked below

Vested percentage	[]	[]	[]	[]	[X]
Years of Vesting Service					
1	0%	0%	20%	0%	0%
2	0%	0%	40%	20%	100%
3	100%	0%	60%	40%	****
4	****	0%	80%	60%	****
5	****	100%	100%	80%	****
6	****	****	****	100%	****
7	****	****	****	****	****
8	****	****	****	****	****
9	****	****	****	****	****

SECTION 2. The City Council of Avon Park hereby empowers the Chairperson or its appointee of the City of Avon Park the authority to execute such documents and agreements as are required to effectuate this amendment of the Plan.

SECTION 3. All Ordinances or parts of Ordinances, in conflict with this Ordinance are hereby repealed.

SECTION 4. This Ordinance shall be effective immediately upon passage.

INTRODUCED AND PASSED on First Reading the _____ day of _____, 2014.

PASSED AND DULY ADOPTED, on Second Reading with a quorum present and voting by the City Council of Avon Park, Florida, this _____ day of _____ 2014.

CITY OF AVON PARK, FLORIDA

Sharon Schuler, Mayor

ATTEST:

Maria Sutherland, City Clerk

APPROVED AS TO FORM:

Gerald T. Buhr, City Attorney

PUBLIC HEARING CITY OF AVON PARK, FLORIDA

Notice is given that the City of Avon Park, Florida, will consider approval of Ordinance 24-14 at the regular City Council meeting scheduled for October 27, 2014, at the Council Chambers, located at 123 East Pine Street, Avon Park, FL starting at 6:00 PM.

ORDINANCE NO. 24-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA; AMENDING THE DEFINED CONTRIBUTION RETIREMENT PLAN FOR THE MANAGEMENT LEVEL EMPLOYEES OF AVON PARK, FLORIDA; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Interested persons can appear and be heard on this matter at the Council Meeting by attending the meeting and signing the request form. Copies of background materials may be reviewed or obtained at the office of the City Clerk, M-F, 8:30 to 5:00 PM at 110 East Main Street, Avon Park, FL 33825.

If a person decides to appeal any decision made by the Board with respect to any matter discussed at any meeting or hearing, he will need a record of the proceedings for such purposes, he may need to ensure that a verbatim record of the proceedings is made, which record includes testimony and evidence upon which the appeal is based, per Florida Statute 286.0105. Verbatim transcripts are not furnished by the City. Any person with a disability requiring reasonable special accommodations in order to participate in this meeting should contact the City Clerk with the request at (863) 452-4411.

Agenda Item Summary

F-14

Subject: MLK Sports Complex Work, Additional Parking Areas

Item No.

Placed on Agenda by: City Manager

Total Amount of Project: \$250,000

Staff Review: Yes

Attorney Review: Yes

Recommended Motion(s):

Motion to authorize the Mayor and City Manager to reallocate infrastructure funding, to sign the needed budgetary adjustment forms, and authorize Excavation Point Inc to complete the MLK Complex, and City public parking areas associated with the work described within the Exhibits of this agenda item.

Background: The City has obtained the needed drainage permits to redesign and reconfigure the MLK Sports Complex parking lot. Below is an illustration of the extensive flooding experienced during a light storm event. The entire parking lot floods out regularly.



The proposed design consists of earthwork removing all shell, clay base, stockpiling for later use in subgrade. The new grades are configured for proper drainage; therefore, the engineered plan grades for field elevations are critical to minimize future flooding. The design requires the removal/excavation of approximately 3800 cubic yards of material (Approximately 210 truck loads will be removed) to create the necessary stormwater storage areas, and site grade to capture and treat drainage runoff. This removed material will need to be hauled from the site to the City's public work's complex. Also included is the construction and excavation of landscape islands in the existing asphalt roadway. The project also includes the excavation of retention ponds and ALL finish grading for sod landscaping. A separate proposal has been obtained for the monument dedication sign. The existing roadway State Street would be incorporated with the parking area.

The Storm drainage inlets are relatively simple, approximately 160' of culvert pipes with concrete structures for erosion control. The new Base and Asphalt is designed utilizing County standard, providing 97 new paver parking spaces. The existing roadway will be resurfaced and integrated with the newly paved parking lot to create another 50 parking spaces. The total parking spaces will be 147 spaces. Perimeter sidewalk and curbing where necessary is also proposed in the new site plan.

Parking lot lighting is to be provide using decorative fixtures and lighting for the proposed monument sign on Delaney Avenue. All disturbed areas will be restored and sodded. Soils testing and construction surveying is also included for the Drainage As-Built drawings.

In addition to this work, this proposal also contains the sealing and striping of the City Hall parking lot and the City's public parking area near the Sandwich depot C4 business district.

This work proposal has been developed by using the bid line items from our active infrastructure construction contract with Excavation Point for site work, concrete and asphalt paving. These improvements would be funded from the Infrastructure Fund by reprioritizing the City's CIP for 2014/2015 as follows:

Reallocate Street Paving	\$100,000
Reallocate Sidewalk	\$50,000
Stormwater Projects	\$100,000

The available amounts are \$250,000 to complete the MLK complex, along with the remaining rehabilitation of other public parking areas. This would commit all of our paving and sidewalk replacement budget for the active fiscal year.

Attachments: Site Plan for Improvements,
 EPI/Avon Park Infrastructure Contract Unit Pricing



City of Avon Park
Attn: Julian DeLeon
110 East Main Street
Avon Park, Florida 33825
Email JDeleon@AvonPark.cc

**Proposal
10/01/14**

MLK SPORTS COMPLEX

Clearing & Earthwork

Item No. 18 – Grade Swale & Remove Excess Material
Approx: 3,812 CY @ \$16.50 CY \$ 62,898.00

Storm Drain

Item No. 23 – Remove & Replace Type C Basin Top to Grade
Approx: 1-Type C Inlet @ \$960.00 EA \$ 960.00

Item No. 8 – Concrete Flume Construction 3' x 4', 6" Thick
Approx: 2-Flumes (4-MES) @ \$425.00 EA \$ 850.00

Item No. 35 - Subcontractor & Materials (10%)
Approx: 20'-10" CMP, 100'-18" HDPE, & 40'-15" HDPE \$ 1,720.00

Item No. 30 - Cost for Trackhoe & Two Man Skilled Work Crew
Approx: 1 Day @ \$1,440.00 DAY \$ 1,440.00

Base

Item No. 36 – Shell Base Installed, 6" Thick
Approx: 3,786 CY @ \$15.00 CY \$ 56,790.00



City of Avon Park
Attn: Julian DeLeon
110 East Main Street
Avon Park, Florida 33825
Email JDeleon@AvonPark.cc

Curbing

Item No. 3 – Concrete Curb & Gutter, Type F
Approx: 320 LF @ \$14.50 LF \$ 4,640.00

Item No. 7 – Concrete Valley Curb
Approx: 80 LF @ \$13.75 LF \$ 1,100.00

Sidewalk

Item No. 9 – Concrete Sidewalk, 5’ Wide & 4” Thick
Approx: 144 SY @ \$23.85 SY \$ 3,435.00

Asphalt

Item No. 15 – HMA Overlay S-III
Approx: 485 TN @ \$95.00 TN \$ 46,075.00

Signage & Striping

Item No. 35 - Subcontractor & Materials (10%)
Approx: 100 Car Stops, 4-HC Spaces, 3-Stops with Bar,
160 Park Lines, & 1 Crosswalk \$ 6,780.00

Lighting

Item No. 35 - Subcontractor & Materials (10%)
Approx: 7 Lights & Monument Lights \$ 28,103.00



City of Avon Park
Attn: Julian DeLeon
110 East Main Street
Avon Park, Florida 33825
Email JDeleon@AvonPark.cc

Sod

Item No. 35 - Subcontractor & Materials (10%)
Approx: 30,000 SF of Sod \$ 7,200.00

Construct Layout

Item No. 35 - Subcontractor & Materials (10%)
Layout Services for Work \$ 5,000.00

Soils Testing

Item No. 35 - Subcontractor & Materials (10%)
Testing of Soil Material \$ 1,800.00

CITY HALL

Lot and Drives

Item No. 35 - Subcontractor & Materials (10%)
Sealcoat and Restripe Entire Parking Lot and Drives.
Replace Broken Carstops \$ 7,515.00



City of Avon Park
 Attn: Julian DeLeon
 110 East Main Street
 Avon Park, Florida 33825
 Email JDeleon@AvonPark.cc

SANDWICH DEPOT

Lot and Drives

Item No. 35 - Subcontractor & Materials (10%)
 Sealcoat and Restripe Entire Parking Lot and Drives. \$ 2,346.00

Total \$238,652.00

Note: Price excludes permitting, impact fees, bond, surveying, certified as-builts, any damage or relocation to undesignated underground utilities, sod, landscaping, and irrigation.

Thank You,

Accepted By: _____

Tal Rancourt
President

Dated: _____

CONTRACT

This is an Agreement dated as of the 5th day of December in the year 2013 by and between City of Avon Park, a Florida municipal corporation ("City") and Excavation Point Inc. 7944 S George Blvd Sebring Florida 33875 ("Contractor").

1. **PREMISE.** The City issued an Invitation to Bid for Annual infrastructure services for the City of Avon Park, FL. The specifications for these services are included as part of this contract as Attachment "A".
2. **AGREEMENT.** In consideration of the mutual promises herein and other good and valuable considerations, the parties agree that Contractor will provide, at Contractor's cost and expense, all machinery, equipment, tools, superintendence, labor, insurance and all other accessories, materials and services necessary to provide the work in accordance with the bid specifications which are made a part hereof, upon the terms and conditions set forth herein.
3. **COMMENCEMENT AND COMPLETION.** The Contractor will be required to commence work under this contract within fifteen (15) calendar days after the receipt by him of the Notice to Proceed.
4. **PRICE AND TERM.** The Contractor bid price for services is based per linear foot and/or square yard as described in Contractor's bid tabulation sheet as Attachment "B". Contractor may submit invoices to City once per month for work performed until completion of job. It must be clearly understood this is a total firm price for work defined in the specifications. Only unexpected or unknown major or extensive additional work not originally specified will be negotiable for an increase in compensation for services rendered using an agreed upon lump sum or unit process, and must be agreed to in writing by the City. This contract will have a duration of one (1) year, starting on date mutually agreed upon in this contract.
5. **LAWS AND REGULATIONS.** Contractor shall comply with all laws, ordinances, rules, orders and regulations relating to performance of the work and the protection of persons and property.

6. **WORKMANSHIP.** Contractor shall, in a good workman like manner, perform all work pursuant to the specifications and construction plans.
7. **LABOR:** Contractor shall be responsible to hire labor of legal working status in the United States of America for work within the service area as Attachment "C". The Contractor will provide proof of legal working status of same Contractor and/ or Contractor's employees and sub-contractors and their employees who are awarded any or all portions of this bid. Contractors may avail themselves with E-Verify to determine legal status verification. Davis-Bacon Rules may also apply. The City reserves the right to revoke award at any time if Contractor does not allow for Contractor and his employee verification and subcontractor(s) and their employee(s) verification prior to commencement of work and/or hires illegal workers after commencement of work within the service area. The City of Avon Park is not responsible in any way; for any Federal, State or local legal repercussions the Contractor or his subcontractors may incur as a result of employee verifications.
8. **DRUG-FREE WORKPLACE.** Contractor acknowledges that the City is a drug-free workplace. Contractor covenants that all employees of Contractor working upon City property shall be subject to implementation of all possible provisions to maintain a drug-free environment and that Contractor will adhere to the provisions of Florida Statute 287.087.
9. **INSPECTION AND CORRECTION OF WORK.** All work by Contractor will be monitored and or inspected by the appropriate persons including the Public Works Director or otherwise designated by the City Manager from time to time. Contractor shall notify the City of completion of work. The City's inspector will then inspect the work and, if they find that it has not been satisfactorily done in accordance with the specifications and construction plans, said work shall be promptly corrected by Contractor, at Contractor's expense.
10. **INSURANCE.** The Contractor, upon his part, agrees to protect, indemnify, save harmless, and insure the City from any liability to any persons for injuries to the person, including homicide, or damage to property, resulting from the acts or omissions of the Contractor for performing his obligations under this contract. The parties expressly recognize that the relationship

between the City and the Contractor is that of independent contractors, and that neither Contractor, nor any of his servants, agents, or employees shall ever be considered to be an agent, servant or employee of the City. Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence work hereunder until such insurance is obtained and approved by City:

- a. **Workers' Compensation Insurance.** Workers Compensation for all employees shall be carried with State or Federal Statutory limits and include employers liability with limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each employee by disease and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) policy limit.
- a. **Commercial General Liability:** Occurrence Form required: (Contractor/Vendor) shall maintain commercial general liability (CGL) insurance with a limit of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location/project in the amount of ONE MILLION DOLLARS (\$1,000,000). Products and completed operations aggregate shall be ONE MILLION DOLLARS (\$1,000,000). CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage, and property damage resulting from explosion, collapse, or underground (x, c, u) exposures, personal injury and advertising injury. Fire damage liability shall be included at ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- c. **Commercial Automobile Liability Insurance:** Contractor shall maintain automobile liability insurance with a limit of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000)

each accident for bodily injury or property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy shall be endorsed to provide contractual liability coverage.

11. **DAMAGE TO PROPERTY.** Contractor agrees that any damage caused by personnel or equipment shall be repaired or replaced promptly, at Contractor's expense.
12. **EQUIPMENT AND SAFETY.** All equipment utilized by Contractor to provide the services under this contract must be free of mechanical defects or other conditions, which may cause injury to persons or property of City or third parties. Contractor hereby agrees to hold City harmless from any damages or injuries that may occur during Contractor's work under this contract. Contractor shall comply with all safety and health regulations, which may be applicable to services rendered under this contract.
13. **ACCEPTANCE AND FINAL PAYMENT:** Upon notice that the work is ready for final inspection and acceptance, a representative from the City's inspector will promptly make such inspection. When he finds the work is acceptable under the contract and the contract is fully performed, he will promptly report to the City Manager the work provided for in this contract has been completed, and accepted by him under the terms and the conditions thereof.
14. **EARLY TERMINATION:** Should the Contractor violate any provision of this contract, or if the service levels being provided by Contractor do not meet the expectations of City on a consistent and continuing basis, City may cancel this contract upon fifteen (15) days written notice thereof from City to Contractor.
15. **DEFAULT:** Should either party seek to enforce the terms of this contract through the courts, the prevailing party shall be entitled to recover all costs thereof, including a reasonable attorney's fee and paralegal's expenses, from the losing party, before trial, at trial and on appeal.
16. **MULTIPLE ORIGINALS:** This agreement is executed in multiple copies, each of which shall be deemed an original.

IN WITNESS WHEREOF the parties have executed this Agreement
the day and year first written above.

Signed and sealed by the CONTRACTOR
in the presence of



Michelle Sheets, Witness

CONTRACTOR
Excavation Point Inc



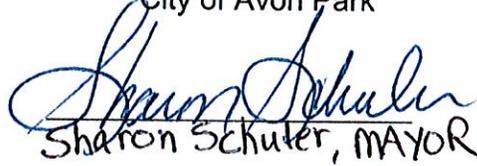
Tal Rancourt, President

Signed and sealed by the OWNER
In the presence of



Cheryl Tietjen
City Clerk

OWNER
City of Avon Park



Sharon Schuler
Sharon Schuler, MAYOR

INFRASTRUCTURE CONSTRUCTION/REPAIR ANNUAL CONTRACT

ITEM	PRODUCT	EPI	
	All pricing includes labor, materials and equipment, unless otherwise indicated on line item below	Price	
1	Concrete Curb and Gutter (Type "D") (Order minimum will be 80 ft)	10.77	LF
2	Remove and Replace Concrete Curb and Gutter (Type "D") (Order minimum will be 80 ft)	15.75	LF
3	Concrete Curb and Gutter (Type "F") (Order minimum will be 80 ft)	14.50	LF
4	Remove and Replace Concrete Curb and Gutter (Type "F") (Order minimum will be 80 ft)	19.75	LF
5	Concrete Traffic Separator (4' wide)	20.75	LF
6	Remove Concrete Curb (Type "D") or (Type "F") (Order minimum will be 100 ft)	7.00	LF
7	Concrete Valley Curb (Order minimum will be 80 ft)	13.75	LF
8	Concrete flume construction 3 ft by 4 ft, 6" thick	425.00	EA
9	Concrete Sidewalk (5' wide & 4" thick) (Order minimum will be 40 LF)	23.85	SY
10	Concrete Sidewalk (8' wide & 4" thick) (Order minimum will be 40 LF)	23.85	SY
11	Driveway/sidewalk construction, Misc. Concrete 4 to 8" thick <10 Cubic Yards	247.00	CY
12	Driveway/sidewalk construction, Misc. Concrete 4 to 8" thick >10 Cubic Yards	225.00	CY
13	Remove concrete sidewalk 4" thick	11.25	SY
14	Remove Concrete driveway/sidewalk 4" to 8" thick	50.00	TON
15	HMA Overlay S-III	95.00	TON
16	Mill road 1" thick	2.85	SY
17	Mill road 1.5" thick	3.25	SY
18	Grade swale and Remove Excess material (Sod not included)	16.50	CY
19	Cost to excavate new percolation pond/retention pond.(5000 CY Minimum)	1.75	CY
20	Cost to load and transport material less than 1-mile (5000 CY Minimum)	2.00	CY
21	Adjust Manhole to Grade	175.00	EA
22	Adjust Type "C" Basin top to Grade	385.00	EA
23	Remove and Replace Type "C" Basin top to Grade	960.00	EA
24	Adjust Water Valve Box to Grade	85.00	EA
25	Remove and Replace Water Valve Box	125.00	EA
26	ADA Ramp new	325.00	EA
27	ADA Ramp Remove and Replace	440.00	EA
28	Detectable Warning for ADA	265.00	EA
29	Cost for rubber tire backhoe and two man skilled work crew	1080.00	DAY
30	Cost for trackhoe and 2-man skilled work crew (Minimum machine size shall be capable of processing 15 metric tons, machine size 150 or larger)	1440.00	DAY
31	Cost for <u>one skilled utility</u> underground employee. (No equipment or tools, with an 8-hour minimum work day	28.00	HR
32	Cost for welding and fabrication (City purchases materials)	55.00	HR
33	Cost to install and operate Dewatering system (well point with 10 points for a 5-day minimum order.	530.00	DAY
34	Cost to install and operate Dewatering system (well point with 10 points for a 10-day minimum order.	530.00	DAY
35	Subcontractor and materials Markup for additional services as requested by the City. Three written prices are required by the City for purchases over \$500.	10	%



CERTIFICATE OF LIABILITY INSURANCE

OP ID: LL

DATE (MM/DD/YYYY)
11/08/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER FIRST INSURANCE OF LAKE PLACID 258 E INTERLAKE BLVD. LAKE PLACID, FL 33852 Laurie M. Slade		Phone: 863-465-7000 Fax: 863-465-7141	CONTACT NAME: _____ PHONE (A/C No. Ext): _____ FAX (A/C No.): _____ E-MAIL ADDRESS: _____ PRODUCER CUSTOMER ID #: EXCAP-1
INSURED Excavation Point, Inc. 7844 S. George Blvd. Sebring, FL 33872		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Owners Insurance Co.	NAIC # 32700
		INSURER B: Auto Owners Insurance Co.	18988
		INSURER C: Bridgefield Employers	
		INSURER D: _____	
		INSURER E: _____	
		INSURER F: _____	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INUR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> contractual incl <input checked="" type="checkbox"/> XCU incl, GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X	72728871	12/30/2013	12/30/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	9542217700	07/16/2013	07/16/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ \$ _____ \$ _____
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000		4125735800	12/30/2013	12/30/2014	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ _____ \$ _____
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NJ) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A 83046827	12/30/2013	12/30/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input checked="" type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Commercial Auto policy. Project: Roadway and Sidewalk Reconstruction services for the City of Avon Park. Bid #09-06

CERTIFICATE HOLDER		CANCELLATION	
CITY OF A City of Avon Park fax 863-452-4413 110 E. Main St. Avon Park, FL 33825		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Laurie M. Slade	

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