

HERITAGE HARBOUR SOUTH
COMMUNITY DEVELOPMENT DISTRICT

Lake/Pond Aquatic Maintenance

Bid No. HHS-2011-01

Date: October 2010

DOCUMENT 00001

**HERITAGE HARBOUR SOUTH
COMMUNITY DEVELOPMENT DISTRICT**

Lake/Pond Aquatic Maintenance

**Bid Set
and
Contract Documents**

Heritage Harbour South Community Development District Bid No. HHS-2011-01

Date: October 2010

Document 00002

PROJECT DATA

Project Title: Lake/Pond Aquatic Maintenance

Project Number: District Bid No. HHS-2011-01

Project Address: Northeast Quadrant of I-75 and State Road 64
Bradenton, Florida

Project Owner: Heritage Harbour South Community Development
District

Board of Supervisors: Chuck Faust, Chairman
Anthony Burdett, Vice Chairman
Rosalie Ann Celio, Assistant Secretary
W. Lee Bettes, Assistant Secretary
Joseph Jaudon, Assistant Secretary

Owner's Representative: James P. Ward
District Manager
513 N.E. 13th Avenue
Fort Lauderdale, FL 33301
Phone: 954-658-4900
E-Mail: ward9490@comcast.net

Project Manager: Matt Morris and Bill Riley
Morris-Riley Development Management, LLC
4195 Tamiami Trail South
Venice, FL 34293
Phone: (941)228-4729, (941)961-4550
Email: mmorris@morris-riley.com, briley@morris-riley.com

Project Consultant: SAME AS PROJECT MANAGER

END OF PROJECT DATA

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LIST OF DRAWINGS

Heritage Harbour South Lake/Pond Aquatic Maintenance
District Bid No. HHS-2011-01

Heritage Harbour South Community Development District Location Map
Heritage Harbour South Community Development District Lake Maintenance Map

END OF LIST OF DRAWINGS

DOCUMENT 00010

**HERITAGE HARBOUR SOUTH COMMUNITY DEVELOPMENT DISTRICT
NOTICE TO BIDDERS**

NOTICE IS HEREBY GIVEN that the Heritage Harbour South Community Development District, Florida will be accepting sealed bids for:

**Lake/Pond Aquatic Maintenance
District Bid No. HHS-2011-01**

The work shall generally consist of: furnishing labor, supervision, equipment, supplies, tools, materials, and services to perform complete aquatic maintenance of the District's lakes and ponds in the Heritage Harbour South Community Development District.

Sealed bids will be received by the Project Manager until **12:00 P.M. on Wednesday, November 3rd, 2010** at the offices of Morris-Riley Development Management located at 1922 53rd Avenue East; Bradenton, Florida 34203. Bids received after this time will be returned unopened.

Project Documents

Project Manuals may be obtained from the offices of Morris-Riley Development Management 8:00 a.m. – 5:00 p.m., Monday–Friday upon a payment of a \$50.00 non-refundable fee, for each Project Manual. Project Manuals may also be downloaded in digital (pdf file) format from www.morris-riley.com (click on the “Download Bid Documents” link) for no fee.

Bids shall be submitted on the form(s) provided. The Project Manual must be submitted as part of the proposal.

Mandatory Pre-Bid Conference

A mandatory Pre-Bid Conference is scheduled for **9:00 a.m. Tuesday, October 19th, 2010**, at the **River Strand Golf and Country Club, (Clubhouse) located at 7155 Grand Estuary Trail; Bradenton, Florida 34212**. All contractors planning to submit a bid are required to attend this meeting. Contractors should allow sufficient time to insure arrival prior to the indicated time. Bids from those who have failed to attend will not be opened. Contractors arriving past the indicated time will not be eligible to submit a bid.

Bid Documents

Envelope containing bid must be sealed and be clearly marked, "**Bid Number HHS-2011-01 – Lake/Pond Aquatic Maintenance**"

All bid prices shall be guaranteed firm for a minimum of 60 calendar days after the submission of the bid. No bidder may withdraw his bid within 60 calendar days after the bid opening date.

Bids will be opened and read aloud in the office of the Project Manager at **12:00pm Wednesday, November 3rd, 2010**. Award of bid will be made at the Board of Supervisor's Meeting.

Any questions concerning this Notice to Bidders shall be in writing directed to Morris-Riley Development Management (Attn: Matt Morris and Bill Riley), at mmorris@morris-riley.com and briley@morris-riley.com.

All bidders/proposers are advised that the District will not supply or sell materials to bidders/proposers in connection with submission or preparation of bids, or any other matter, including but not limited to envelopes, labels or tape.

Bidders/proposers shall demonstrate successful performance of projects of a similar magnitude, scope, value and trade as this project.

The Board of Supervisors of the Heritage Harbour South Community Development District reserves the right to reject any and all bids, to waive any informality in a bid and to make awards in the best interests of the District.

Document 00100
INSTRUCTIONS TO BIDDERS

ARTICLE 1.0
DEFINITION OF TERMS

- 1.1 Addenda:** A written and/or graphic document issued by the Owner prior to the opening of the Bid to modify or interpret any portion of the Work, Project or bid documents.
- 1.2 Additive Alternates:** Work items added to the Bid Base, at Owner's discretion.
- 1.3 Bid Base:** The amount stated on the Bid Form without Additive or Deductive Alternates for which the Bidder offers to perform the Work as described in the Project Manual. The Bid Base must be based on the estimated quantities of the bid.
- 1.4 Bidder:** A person or entity that timely submits a Responsive/Responsible Project bid.
- 1.5 Business Day:** Monday through Friday, excluding District observed holidays, between the hours of 8:00 a.m. and 5:00 p.m. local time.
- 1.6 Calendar Days:** Consecutive days of the week or month, without regard to weekends and holidays.
- 1.7 District:** The Heritage Harbour South Community Development District, Florida.
- 1.8 Project Manager/Project Consultant:** Shall both mean the person or entity designated by the Owner as responsible for providing engineering and inspection services for the Project.
- 1.9 Deductive Alternates:** Work items removed from the Bid Base at the Owner's discretion.
- 1.10 Lowest Responsive/Responsible Bidder:** The person or entity who has submitted a Bid that conforms in all material respects to the Project Manual and whose Overall Bid price, including all cost to the Owner, is the lowest price for the Project, as determined at Owner's sole discretion.
- 1.11 Notice of Intent to Award:** A notice posted by the Project Manager stating the recommendation to the District of which Bidder is the Lowest Responsive/Responsible Bidder.
- 1.12 Overall Bid:** The amount stated on the Bid Form with additive and/or deductive alternates, as selected by the Owner, at time of award for which the Bidder offers to perform the Work as described in the Project Manual.
- 1.13 Owner:** The Heritage Harbour South Community Development District, Manatee County, Florida.
- 1.14 Project:** Shall have the same meaning as "Work" and may be used interchangeably.
- 1.15 Project Manual:** This includes the Notice To Bidders, Instructions To Bidders, Bid Form, Contractor's Qualification Statement, Bid Security/Bond, Addenda, Agreement, General

Conditions, Supplemental Conditions, Bonds, Certification of Payment Forms, Consent of Surety, Project Closeout, Closeout Package Checklist, Specifications and Drawings, all of which shall also constitute the bidding documents.

- 1.16 Protest Committee:** Shall consist of the Owner's District Manager, and the Project Manager and shall have the authority to review, settle and resolve all bid protests. The Owner's District Manager shall serve as the chairperson of the committee. The District Attorney or designee shall be counsel to the committee.
- 1.17 Unit Price Bid:** The amount(s) stated in the Bid Form as a price per unit of measurement for materials, equipment and/or labor as described in the Project Manual.
- 1.18 Work:** Shall include all aspects of the construction project proposed in the Project Manual and other bidding documents.

ARTICLE 2.0 **PUBLIC ENTITY CRIMES STATEMENT**

In accordance with §287.133 (2) (a) Florida Statutes, a person or affiliate who has been placed on the convicted Contractor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor or supplier, subcontractor, or Project Manager under contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in §287.017, Fla. Stat., for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted Contractor list.

ARTICLE 3.0 **QUALIFICATION OF BIDDERS**

- 3.1** When included in the bidding documents, the Bidder shall complete the CONTRACTOR'S QUALIFICATION STATEMENTS, along with any other evidence of his satisfactory experience and ability to perform the proposed Work. The failure of Bidder to demonstrate successful performance of projects of a similar magnitude, scope, value and trade as this project may be deemed to be grounds for declaring the Bidder to be non-responsible.
- 3.2** If requested by the Owner, the Bidder shall submit a certified financial statement, prepared within 30 days of submission of the bid proposal, indicating current financial resources, liabilities, capital equipment, and financial history performance.
- 3.3** Bidders shall be disqualified and their unopened Bids shall be rejected for any of the following specific reasons:
 - A. Reason to believe that collusion exists among the Bidders.
 - B. The Bidder is involved directly or indirectly in litigation or arbitration against the Owner within the past 5 years.

- C. The Bidder has defaulted on any previous Contract with the Owner within the past 5 years or is in arrears on an existing Contract.
- D. The submittal of more than one Bid from an individual, firm, partnership, corporation or association under the same or different names. All parties shall be disqualified.
- E. Untimely bid proposals shall be automatically and absolutely disqualified and returned unopened. Excuses for the untimely submittal shall not be accepted. The time as documented by the Project Manager's office shall determine the timeliness of the Bid.

3.4 Bidders may be deemed to be non-responsible and their Bids may be rejected for any of, but not limited to, the following reasons:

- A. Determination of a lack of competency as may be revealed by qualification statements, financial statements, experience records or other questionnaires.
- B. The Bidder's uncompleted or pending workload on other projects, which in the judgment of the Owner may cause detrimental impact on timely completion of the Work.
- C. The appearance of an unbalanced bid proposal, as determined by the Owner.
- D. If the Bidder makes false statements or provides false information to any portion of the bidding documents.
- E. If the Bidder fails to demonstrate successful performance of projects of a similar magnitude, scope, value and trade as this project.

3.5 Bidders may be deemed to be non-responsive and their Bids may be rejected for any of, but not limited to, the following reasons:

- A. If the Bidder fails to submit a complete Bid.
- B. If the Bidder fails to abide by any of the provisions of the Bid documents.

ARTICLE 4.0 **SUBMISSION AND RECEIPT OF BIDS**

4.1 It shall be the sole responsibility of the Bidder to have his Bid delivered, whether by hand, U.S. Mail, or other delivery service, to the office of the Project Manager before the closing hour and date shown for the receipt of Bids. Bids thus delayed shall not be considered and shall be returned unopened.

4.2 Bidders shall use the Bid Form furnished by the Owner, shall submit only one Bid, shall fill in all blank spaces in the Bid, shall not remove any part of the Project Manual and failure to do so may cause the Bid to be non-responsive and thereby rejected.

- 4.3 Bidding documents shall be completed in ink or typewritten, and all signatures shall be in blue ink. Bidding documents having any erasures or corrections shall be initialed by the Bidder in blue ink.
- 4.4 Bid Base Amounts shall be in both words and numerals, and in case of a discrepancy between the two, the amount written in words shall govern.
- 4.5 In the event of a mathematical error in the extension of unit price, or addition of total price, the unit price shall prevail.
- 4.6 Each bid shall be signed with the firm name by an officer or an employee having the authority to bind the company or firm by his signature; failure to do so may cause the Bid to be invalid and thereby rejected.
- 4.7 The Owner will not supply or sell materials to Bidders, in connection with submission or preparation of Bids, or any other matter, including but not limited to envelopes, labels or tape.

ARTICLE 5.0
MODIFICATION AND WITHDRAWAL OF BID

Prior to the time of Bid opening, a Bidder may withdraw his Bid at any time, by submitting a Notice of Withdrawal of Bid letter, but may not resubmit it. Such Bid shall be returned to the Bidder subsequent to the Bid opening. Bids may not be modified after submittal. After the Bid opening, no Bid may be withdrawn, cancelled or modified for a period of 60 days after the time and date designated for the receipt of Bids.

ARTICLE 6.0
OPENING OF BIDS

All Bids submitted will be opened and read aloud publicly at the offices of Morris-Riley Development Management, on the date and at the time stated in the Notice to Bidders, or as may be amended by addendum.

ARTICLE 7.0
BIDDING DOCUMENTS

- 7.1 Complete sets of bidding documents may be obtained from the Office of the Project Manager, identified in the Notice to Bidders.
- 7.2 Complete sets of bidding documents shall be used by Bidders in preparation of Bids; neither the Owner or the Owner's Project Manager assume any responsibility for errors or misrepresentations resulting from the use of incomplete sets.
- 7.3 It shall be the Bidder's responsibility to thoroughly familiarize himself with the bidding documents prior to the submittal of his Bid; no allowance shall be made by the Owner for the Bidder's failure to do so.

ARTICLE 8.0
EXAMINATION OF CONDITIONS

It shall be the Bidder's responsibility to submit the Acknowledgment of Inspection Form and visit the proposed Project site and to thoroughly familiarize himself with the nature and extent of the work to be performed and all local existing site conditions, to make his own estimate of the facilities and difficulties attending the execution of the Work; no allowance shall be made by the Owner for the Bidder's failure to do so.

ARTICLE 9.0
PRICES TO BE FIRM

The Bidder warrants by virtue of his Bid that the prices, terms and conditions contained herein shall be firm for a period of not less than 60 calendar days from the date of the Bid opening.

ARTICLE 10.0
DEFAULT PROVISION

In the event of default by the Bidder, the Owner may procure the goods and/or services from other sources and hold the Bidder responsible for any excess costs, including but not limited to Project costs and administrative and legal fees, incurred as a result of the Bidder's default. The Owner may take such action, as it deems appropriate, legal or otherwise, for damages and/or specific performance.

ARTICLE 11.0
SIGNED BID CONSIDERED AN OFFER

The signed Bid shall be considered an offer on the part of the Bidder, which offer shall be deemed irrevocable upon submittal and accepted upon award by the District's Board of Supervisors.

ARTICLE 12.0
TAXES

The Owner is exempt from State of Florida Sales Tax, and is exempt from certain other taxes imposed by the State and/or Federal governments. The Owner's exemption status and privilege cannot be used by the Contractor and shall not be relied upon for this Project.

ARTICLE 13.0
LAWS AND REGULATIONS

All applicable laws and regulations of the Federal Government, State of Florida, Special Districts, and ordinances of Manatee County shall apply to any Contract awarded as a result of this Bid. The laws of the State of Florida shall govern any contract awarded as a result of this Bid.

ARTICLE 14.0
QUANTITIES

14.1 The quantities shown herein are estimated only. No guarantee or warranty is given or implied by the Owner as to the total amount that may or may not be awarded or purchased from any resulting Contract.

- 14.2** The Owner reserves the right to increase and/or decrease the quantities at the time of award and for the duration of the Contract at the firm Unit Prices Bid herein.
- 14.3** The quantities contained herein are for the Bidder's information only and will be used for tabulation and determination of the overall lowest responsive and responsible Bidder.

ARTICLE 15.0
QUALITY

All items used in the manufacture or construction of any supplies, materials or equipment covered by this Bid shall be new, not used, remanufactured or demonstrator. The item(s) bid or the components of the item(s) bid shall be the current model, or of the best quality and highest grade workmanship unless otherwise specified herein.

ARTICLE 16.0
MATERIAL SAMPLES

Material Samples, when requested, shall be furnished prior to or at the Bid opening unless otherwise specified, and shall be delivered and retrieved free of expense to the Owner and if not used in testing or destroyed, will be upon written request of the Bidder within ten (10) calendar days of the Bid award returned.

ARTICLE 17.0
BRAND NAMES

Whenever proprietary names are specified, whether or not followed by the words "or equal", it shall be subject to equals as approved and accepted as "equal" by the Owner, as it shall be the Owner's prerogative to select which items are the lowest bid, item by item, meeting specifications from the information furnished by the Bidder with his Bid and/or sample inspection and/or testing of the items specified herein.

ARTICLE 18.0
ACCEPTANCE OF MATERIAL

The materials delivered under this Bid shall remain the property of the Contractor until accepted to the satisfaction of the Owner. All materials shall comply with the items herein and the specifications. In the event the material and/or service supplied to the Owner is found to be defective or does not conform to the specifications, the Owner reserves the right to cancel the order upon written notice to the Contractor and return the product to the Contractor at the Contractor's expense, or cease use of the service, without any obligation.

ARTICLE 19.0
DELIVERY

- 19.1** Any materials necessary to perform the Work shall be delivered or brought to the Project Site by the Contractor. Owner will not take delivery of any materials directly.

ARTICLE 20.0
MANUFACTURER'S CERTIFICATION

The Owner reserves the right to request from Bidder(s) separate manufacturer's certification of all statements made in the Bid.

ARTICLE 21.0
COPYRIGHTS AND PATENT RIGHTS

The Bidder warrants that there has been no violation of copyrights and patent rights in manufacturing, producing or seeing the goods and/or services ordered as a result of this Bid, and the Bidder agrees to hold the Owner, its officers, employees and agents harmless from all liability, losses or expenses from such violation.

ARTICLE 22.0
MATERIAL SAFETY DATA SHEETS

The Bidder shall include with his Bid, when applicable, manufacturer's Material Safety Data Sheets (MSDS) for those items required to have an MSDS by Federal law.

ARTICLE 23.0
FLORIDA TRENCH SAFETY ACT

The Bidder shall include with his Bid, when applicable, all documentation required by the Florida "Trench Safety Act", Section 553.63 Florida Statutes. The unit prices and total prices presented in the Bid, and those presented in any subsequent change orders shall include the Bidder's cost for compliance with the applicable trench safety standards.

ARTICLE 24.0
CONFLICT OF INSTRUCTIONS

If a conflict exists between the general conditions and the instructions stated herein and the specific conditions and the instructions, the Owner's interpretation shall govern.

ARTICLE 25.0
INTERPRETATION OF BIDDING DOCUMENTS

QUESTIONS AND ANSWERS

- 25.1** All questions requiring clarification or interpretation of the bidding documents shall be made in writing and shall reach the Owner and its Project Manager at least five (5) Business Days prior to the date for receipt of Bids. No questions shall be responded to during the five (5) Business Days prior to the date for receipt of Bids.
- 25.2** Questions regarding the Notice to Bidders, Instructions to Bidders, Bid Form, Bid Security, Contractor's Qualification Statement, Agreement between Owner and Contractor, Bonds, Insurance, General Conditions and Supplemental Conditions shall be directed to the Owner. Questions relating to Soil Investigation Data, Material/Equipment Substitutions Technical Specifications, and plans and drawings shall be directed to the Project Manager, when applicable. Any modification or interpretation of the bidding documents, is the sole and exclusive judgment of the Owner or its Project Manager, shall be made in writing in the form of an Addendum to all those who are recorded by the Owner or its Project Manager as having a complete set of bidding documents.

- 25.3** Interpretations or modifications of the bidding documents made in any manner other than an Addendum issued by the Owner or its Project Manager shall not be binding.
- 25.4** A Bidder, prior to submitting his Bid, shall ascertain that he has received all Addenda issued, and shall acknowledge their receipt in the Bid Form.
- 25.5** Costs for those matters not questioned and not responded to by Addendum shall be the responsibility of the Bidder to include such costs in his Bid.

ARTICLE 26.0 **SUBSTITUTIONS**

The Bidder represents that his Bid is based upon the materials, equipment and services described in the bidding documents. Requests for substitutions, unless otherwise stated, will be considered in the same manner as SECTION 25.0 INTERPRETATION OF BIDDING DOCUMENTS.

ARTICLE 27.0 **RESERVATIONS FOR REJECTIONS AND AWARD**

- 27.1** The Owner reserves the right to accept or reject all Bids or parts of Bids, to waive irregularities and technicalities and to request rebids.
- 27.2** The Owner reserves the right to award contracts on such item(s) or service(s) the Owner deems will serve its best interests.
- 27.3** The Owner reserves the right to award contracts on a split order basis, or such combinations that will best serve the interests of the Owner.
- 27.4** No premiums, rebates or gratuities shall be permitted, either with, prior to, or after delivery of goods or services on any resulting award, any such violation may result in the cancellation of said award of contract.
- 27.5** In the event of a sole bidder, Owner reserves the right to reject the sole bid.

ARTICLE 28.0 **CONTRACT AWARD AND EXECUTION**

- 28.1** Until final award of Contract, the Owner reserves the right to reject bids, with or without cause and to waive any informality or irregularity.
- 28.2** Upon acceptance of a Bid and award of the contract, the successful Bidder shall deliver the executed Contract, along with required bonds and any other items requested, to the Owner within fourteen (14) Calendar Days. Failure to do so will be deemed as a breach of agreement by the Bidder, result in forfeiture of bid security as described in the Instructions to Bidders and may result in Owner's cancellation of the award of the Contract. If the Owner determines that the Contract, required bonds or any other requested items are not properly executed, completed or provided, Owner shall notify Contractor of such deficiency, after which Contractor shall have seven (7) Calendar Days to cure such deficiency. Failure to do so will also be deemed as a breach of agreement by the Bidder, result in forfeiture of bid security and may result in Owner's cancellation of the award of the Contract.

- 28.3** The Owner reserves the right to hold all proposals and bid guarantees for a period not to exceed 60 days after the date of bid opening stated in the Notice to Bidders.
- 28.4** In no case will the award be made until all necessary investigations have been made into the responsibility of the low bidder and the Owner is satisfied that the bidder is qualified to do the Work and has the necessary organization, capital and equipment to carry out the provisions of the contract within the time specified.

ARTICLE 29.0
BID PROTEST PROCEDURE

- 29.1** After a Notice of Intent to Award a contract is posted, any actual or prospective Bidder who is aggrieved in connection with the pending award of the contract or any element of the process leading to the award of the contract may protest to the District Manager. **A protest must be filed by close of District business on the 3rd Business Day after posting (excluding the day that the Notice is posted) or any right to protest is forfeited.** The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest and the Bid Protest Bond are received at the District Manager's office.
- 29.2** Bid Protest Bond shall compensate the District for the expenses of administering the protest. If the protest is decided in the protester's favor, the entire deposit shall be returned to the protester. If the protest is not decided in the protester's favor, the deposit shall be forfeited to the District. **The deposit shall be in the form of cash or a cashier's check, and shall be the greater of one percent (1%) of the amount of the pending award or five thousand (\$5,000.00) dollars.** Disqualified Bidders shall deposit cash or a cashier's check equal to 1% of the engineer's Project estimate or \$5,000.00 whichever is greater.
- 29.3** Protest Committee: Shall consist of the Owner's District Manager, and the Project Manager and shall have the authority to review, settle and resolve all bid protests. The Owner's District Manager shall serve as the chairperson of the committee. The District Attorney or designee shall be counsel to the committee. The Protest Committee's review of all properly filed protests shall be formal and subject to Florida's sunshine law.
- 29.4** If the Protest Committee determines that the pending award of a contract or any element of the process leading to the award involved a significant violation of law or applicable rule or regulation, all steps necessary and proper to correct the violation shall be taken. If the committee determines that the protest has merit, the District Manager shall direct that all appropriate steps be taken to remedy. Appeals go to District Board of Supervisors for final determination.
- 29.5** In the event of a timely protest, the District Manager shall stay the award of the contract unless after consulting with the District Attorney, the District Manager determines that the award of the contract without delay is necessary to protect substantial interests of the District. The continuation of the bid award process under these circumstances shall not preempt or otherwise affect the protest.
- 29.6** A Notice of Intent to reject all bids is subject to the bid protest procedure.

ARTICLE 30.0
INSURANCE

30.1 Insurance:

- A. **Requirements:** Before performing any Work, Contractor shall procure and maintain, during the life of the contract, unless otherwise specified, insurance listed below. The policies of Contractor shall provide Statutory Workers' Compensation, and Employer's Liability insurance with limits of not less than \$1,000,000 per employee per accident, \$1,000,000 disease aggregate and \$1,000,000 per employee per disease for all personnel on the worksite. If applicable, coverage for the Jones Act and US Longshoremen and Ironworkers Exposures must also be included. (Elective exemptions will NOT satisfy this requirement. Certificates evidencing an employee leasing company as employer will not be accepted).

In the event the Contractor has "leased" employees, the Contractor or the employee leasing company must provide evidence of a Workers' Compensation policy for all personnel on the worksite. All documentation must be provided for review and approval by the Owner.

The Contractor is responsible for the Workers' Compensation of any and all subcontractors used by the Contractor. Evidence of workers' compensation insurance coverage for all subcontractors must be submitted prior to any Work being performed.

- B. **Commercial General Liability:** Including but not limited to bodily injury, property damage, contractual liability, products and completed operations (without limitation), watercraft or aircraft liability if those vehicles will be utilized, and personal injury liability with limits of not less than \$2,000,000 each occurrence, covering all work performed under this contract.
- C. **Business Automobile Liability:** Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 each occurrence covering all Work performed under this contract.

Contractor further agrees coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. If private passenger automobiles are used in the business, they must be commercially insured. If the Contractor is shipping a product via common carrier, the Contractor shall be responsible for any loss or damage sustained in delivery/transit/loading and unloading.

- C. **Umbrella Liability:** Umbrella policies are acceptable to provide the total required liability limits.

D. **Hazardous Materials Insurance:** For the purpose of this section, the term “hazardous materials” includes all materials and substances that are now designated or defined as hazardous by Florida or Federal law or by the rules or regulations of Florida or any Federal Agency. If work being performed involves hazardous materials, the need to procure and maintain any or all of the following coverage will be specifically addressed upon review of exposure. However, if hazardous materials are identified while carrying out this contract, no further work is to be performed in the area of the hazardous material until the Owner has been consulted as to the potential need to procure and maintain any or all of the following coverage through an addendum to the contract:

1. **Contractors Pollution Liability** – For sudden and gradual occurrences and in an amount no less than \$1,000,000 per claim and \$3,000,000 in the aggregate arising out of work performed under this contract, including but not limited to, all hazardous materials identified under the contract.
2. **Asbestos Liability** – For sudden and gradual occurrences and in an amount no less than \$1,000,000 per claim and \$1,000,000 in the aggregate arising out of work performed under this contract.
3. **Disposal** – When applicable, the Contractor shall designate the disposal site and furnish a Certificate of Insurance from the disposal facility for Environmental Impairment Liability Insurance, covering liability for sudden and accidental occurrences in an amount not less than \$3,000,000 per claim and \$3,000,000 in the aggregate and shall include liability for non-sudden occurrences in an amount not less than \$6,000,000 per claim and \$6,000,000 in the aggregate.
4. **Hazardous Waste/Materials Transportation** – When applicable, the Contractor shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with Endorsement MCS90 for liability arising out of the transportation of hazardous materials with an amount not less than \$3,000,000 annual aggregate and provide a valid EPA identification number.

Certificates of insurance shall clearly state the hazardous material exposure work being performed under the contract.

F. **Builders’ Risk – Property Coverage:** When applicable, a special form coverage shall include, but not be limited to:

1. Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project
2. Theft coverage
3. Waiver of Occupancy Clause endorsement, which will enable the District to occupy the facility under construction/renovation during such activity
4. Limits of insurance to equal 100% of the insurable completed contract amount of such addition(s), building(s) or structure(s), on an agreed amount/replacement cost basis, and

5. Maximum deductible clause of \$10,000 each claim; exceptions may be made for Windstorm and Flood deductibles.
- G. **Builders' Risk – Installation Coverage:** For installation, Contractor must provide Builders' Risk installation coverage to include coverage for materials stored at the project site, property while in transit, and property stored at a temporary location for the amount of materials involved in this contract.
- H. **Policy form:** All policies required by this contract, with the exception of Workers' Compensation, or unless specific approval is given by the Owner, are to be written on an occurrence basis, shall name Heritage Harbour South Community Development District and Morris-Riley Development Management, LLC as Additional Insured during the Project and for a minimum of five (5) years following the end of the Project (include wording on Certificate). Insurer(s), with the exception of Workers' Compensation, shall agree to waive all rights of subrogation against the Heritage Harbour South Community Development District.
- I. Insurance requirements itemized in this contract and required of the Contractor shall be provided on behalf of all sub-contractors to cover their operations performed under this contract. The Contractor shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to sub-contractors.
- J. Each insurance policy required by this contract shall:
1. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability
 2. Not be suspended, voided or canceled by either party except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to the Owner, except the cancellation notice period for non-payment of premiums for Workers' Compensation notice shall be 10 days.
- K. The Heritage Harbour South Community Development District shall retain the right to review, at any time, coverage, form, and amount of insurance.
- L. The procuring of required policies of insurance shall not be construed to limit Contractor's liability nor to fulfill the indemnification provisions and requirements of this contract.
- M. The Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this contract and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject.
- N. Claims Made Policies will be accepted for Pollution Liability (Hazardous Materials), and such other risks as are authorized by the Owner. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two years. If provided as an option, the Contractor agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected. Any new policy shall maintain the original retroactive date evidenced at the commencement of the contract.

- O. Certificates of Insurance evidencing Claims Made or Occurrence Form Coverage and conditions to this Contract are to be furnished to Heritage Harbour South Community Development District, 17200 Royal Palm Boulevard, Weston, FL 33326 prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract, when applicable. All insurance certificates shall be received by the Owner before the Contractor will be allowed to commence or continue work. (all insurance carriers must have their corresponding AM Best carrier ID listed on the COI)
- P. Notices of Accidents (occurrences) and Notices of Claims associated with work being performed under this Contract, shall be provided to the Contractor's/ Sub/Project Manager's insurance company and Risk Management as soon as practicable after notice to the insured.
- Q. The insurance required for this Project shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. The Contractor shall furnish information concerning reduction of coverage with reasonable promptness in accordance with the Contractor's information and belief.

R. Coverages Required	Minimum Limits	
1. Workers' Compensation	Statutory Limits – State of Florida	
2. Employers' Liability	\$1,000,000 accident/disease \$1,000,000 policy limit, disease \$1,000,000 each employee, disease	
3. Automobile Liability Combined single limit	\$1,000,000	
4. General Liability	For projects under \$1,000,000.	For projects. \$1,000,000 or over
• General aggregate	\$2,000,000	\$5,000,000.
• Products and completed operations aggregate	\$2,000,000	\$5,000,000.
• Personal and advertising injury	\$2,000,000	\$2,000,000.
• Each occurrence	\$2,000,000	\$2,000,000.
• Project specific aggregate	\$1,000,000	\$5,000,000
5. Builder's Risk/Installation Floaters		
a. Roadways, Buildings if over \$25,000	100% of Completed Value	
b. Machinery/equipment if over \$25,000	100% of Completed Value	
c. Deductible	≤ \$10,000	
6. Pollution Liability (Bodily injury and property damage)	\$1,000,000, if applicable	

Other Insurance required:

Contractor shall be responsible for all deductible amounts.

30.2 Property Insurance:

- A. **Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain insurance protecting the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.
- B. **Waivers of Subrogation.** The Contractor and Project Manager waive all rights against each other and the Owner and any of their Subcontractors, Sub-subcontractors, agents and employees, Suppliers, if any, for damages to the extent covered by insurance obtained pursuant to the Project requirements or other insurance applicable to the Work. The Owner when appropriate, shall require of the Project Manager, Project Manager's Project Managers, separate contractors, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- D. The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of at this power; if such objection be made, the Owner as fiduciary shall, in that case, make settlement with insurers in accordance with directions of a court of competent jurisdiction.
- E. Partial occupancy or use in accordance with Paragraph 9.7 of the General Conditions of the Contract for Construction shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

30.3 Insurance Agent Statement: The Apparent Low Bidder shall submit the Insurance Agent Statement as described below.

ARTICLE 31.0

Determination of Apparent Low Bidder

Subsequent to the submission of Bids, the Project Manager shall determine the Bidder that the Project Manager believes to be the lowest responsive/responsible Bidder, (the "Apparent Low Bidder"). Upon such determination, the Project Manager shall fax or email to the Apparent Low Bidder a "Notice of Apparent Low Bidder." Such Notice shall provide that the Insurance Agent Statement must be submitted to the Owner by 5:00 pm on the third Business Day after the date of the faxed Notice (excluding the day that the Notice is faxed). If the Insurance Agent Statement is not submitted by such time, the Bidder forfeits the Bid Bond.

END OF INSTRUCTIONS TO BIDDERS

NOTICE OF APPARENT LOW BIDDER

You are hereby notified pursuant to the attached Bidder's List that you are the Apparent Low Bidder for **Heritage Harbour South Community Development District Bid No. HHS-2011-01, Project Title Lake/Pond Aquatic Maintenance.**

Please submit the original Insurance Agent Form (Document 00400) to the attention of **Morris-Riley Development Management** by **5:00 pm** on the third Business Day after the date of this Notice (excluding the date that this Notice is faxed).

Dated this _____ day of _____, 2010.

Document 00200
NOTICE OF PRE-BID CONFERENCE

Project: Lake/Pond Aquatic Maintenance

District Bid No. HHS-2011-01

A Pre-Bid Conference has been scheduled as follows:

DATE: **Tuesday, October 19, 2010**

TIME: **9:00 am**

LOCATION: **River Strand Golf and Country Club (Clubhouse)**
7155 Grand Estuary Trail
Bradenton, FL 34212

This conference is: Mandatory Voluntary None Scheduled.

END OF NOTICE OF PRE-BID CONFERENCE

Document 00210

SPECIFICATIONS

ARTICLE 1.0 SCOPE OF WORK

- 1.1 Work Locations** - The work specified in this section of the bid documents consists of furnishing all labor, supervision, equipment, supplies, tools, materials, services and all other necessary incidentals required to perform complete aquatic maintenance of all lake areas depicted on the attached exhibit, which are generally located east of River Heritage Boulevard and Heritage Greens Way, North of State Road 64 and south of Port Harbour Parkway within the Heritage Harbour development.
- 1.2 Aquatic Maintenance** – The contractor shall maintain all lakes, either by chemical or physical means, associated with the project in a condition where they are clear of any exotic and/or nuisance species of aquatic plant, algae, weeds or any other type of unsightly and/or harmful substances, including, but not limited to, water hyacinths, cattails, broadleaf weeds and grasses, torpedograss, hydrilla and other noxious or invasive weeds, including bottom rooted aquatic weeds that are unsightly or may impede the flow of water in the lakes and flow ways.

Aquatic weeds shall not occupy more than 1% of any lake/pond at any one time. All nuisance, exotic or non-beneficial lake bank grasses and weeds will be controlled from the water body's control elevation into the water body at all times, including during the dry season when the water level may recede.

The Contractor shall remove all nuisance and exotic vegetation from littoral zones, while maintaining and allowing beneficial and attractive plant species to develop. The Project Manager reserves the right to determine which littoral zone vegetation should remain.

The Contractor shall schedule applications and site visits in accordance with the provisions of these specifications. Applications shall be scheduled a minimum of once per month during the dry season and twice per month during the wet season. The Contractor shall schedule a field visit on Tuesday and Friday of each week, or such other day as determined by the Project Manager in their sole discretion every to review the condition of the Project Lakes and Ponds, and provide written (email is acceptable) reports on the condition of the Lakes/Ponds by 12:00 P.M. of the day following the iste visit. The report shall list at a minimum, a complete list of each lake/pond, any aquatic materials, algae, weeks, trash, unsightly and/or harmful substances, etc., found and the corrective action to be taken and the date the corrective action is schedule.. The Project Manager will attend one of the scheduled site visits each week, the time and starting location of the site visit to be determined by the Project Manager to review the condition of the lakes/ponds, at which time the Project Manager may, at his discretion, provide further direction to Contractor regarding maintenance of the lakes/ponds.

The Contractor shall also be available to address any issues related to aquatic maintenance that occur between regular applications and site visits. The Contractor shall be available 24 hours per day, 7 days a week, and shall respond within 8 hours of receiving notification from the Project Manager of any situation that the Project Manager directs the Contractor to take corrective action.

The District reserves the right to require Contractor to perform additional applications, or to remove material manually as the District Manager and/or Project Manager deem necessary to maintain an acceptable level of service.

- 1.3 Litter Control** –The Contractor shall be responsible for removal and disposal of any litter and debris within the lakes and ponds that are part of this project.

ARTICLE 2.0 **EXTRA WORK**

The Contractor shall do extra Work not specified herein that may be ordered in writing by the Owner. For the Work, the Contractor shall be paid at the rate named in the Contract for the Work of a similar nature and character. Except as hereinafter provided, all extra Work ordered and performed in accordance with this paragraph will be paid for at the price in the written order for such Work. The price (or rate) shall have been approved by the Owner and mutually agreed upon by the Contractor.

ARTICLE 3.0 **SUPERVISION AND RESPONSIBILITY OF CONTRACTOR**

The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the Work an unfit person or anyone not skilled in the Work assigned to him. Subcontractors whose work is unsatisfactory to the Owner or who are considered by the Owner's representative as careless, incompetent, unskilled or disorderly or who use threatening or abusive language to any person shall be dismissed from work upon notice from the Owner and shall not be employed to perform the Work thereafter. No liquor, alcoholic beverages or drugs shall be allowed on the site of the Work.

- 3.1 Supervisor** – The Contractor shall maintain a Supervisor for this project, and such supervisor shall be available by cellular telephone at all times. The Supervisor shall be able to manage all facets of the aquatic maintenance and management for the Contractor. The Supervisor must have excellent communication skills and be capable of directing all regular maintenance and additional services and coordinating these with the Project Manager. The Supervisor shall constantly use his experience and training to prevent, detect and control adverse conditions by physically inspecting the lakes and property.
- 3.2 Employee Performance** - The Contractor shall employ personnel competent to perform the work specified herein. The Owner reserves the right to request the removal of a contractor's employee from performing maintenance on the Owner's grounds where such employee's performance or actions are obviously detrimental to the program.
- 3.3 Uniforms** - Contractor shall provide all employees with color coordinated uniforms that shall meet the Owner's public image requirements and be maintained by Contractor so that all personnel are neat, clean and professional in appearance at all times. Non-uniform clothing will not be permitted, including for new employees.
- 3.4 Vehicles** - Contractor shall keep all vehicles in good repair, free from leaking fluids, properly registered, of uniform color and shall bear the company name on each side in not less than 1 ½" letters.

3.5 Equipment Safety - Contractor shall keep all equipment in an efficient and safe operating condition while performing work under the contract. Equipment shall have proper safety devices maintained at all times while in use. If equipment does not contain proper safety devices and/or is being operated in an unsafe manner, the Owner may direct the contractor to remove such equipment and/or the operator until the deficiency is corrected to the satisfaction of the Owner. The contractor shall be responsible and liable for injury to persons and property caused by the operation of the equipment.

Contractor shall remove any and all nuisance vegetation from equipment prior to entry in lakes/ponds.

3.6 Schedule of Work - The Contractor shall furnish to the Project Manager, for its approval, a schedule of work to be completed during the upcoming month. The Project Manager reserves the right to direct the Contractor to rearrange the schedule to meet the needs of the Owner.

3.7 Storage - The Contractor shall be responsible for the safe storage of all materials and equipment at his sole expense.

3.8 Chemicals - The Contractor shall furnish to the Project Manager the name of the chemical, manufacturer's label and Manufacturer's Safety Data Sheet (MSDS) for all chemicals used on-site. The contractor shall utilize only approved chemicals and methods. Should a specific chemical be banned, the Contractor shall continue the Work utilizing other approved chemicals or methods. The rate of Chemical application shall be limited to avoid fish kills and unnecessary impacts to desirable vegetation.

3.9 Discovery and Notification - If the Contractor discovers damages, vandalism or theft, the Contractor shall immediately notify the Owner of same, and shall file a police report of the occurrence.

3.10 Miscellaneous – The Contractor will haul and dispose of any weeds and/or vegetation removed by physical or mechanical means.

Contractor shall use care to avoid damage to adjacent lawns and shrubbery.

ARTICLE 4.0 **CONTRACTOR LICENSING AND MINIMUM QUALIFICATIONS**

Along with the sealed bids, all bidders must provide the necessary documentation to demonstrate that they meet the following minimum qualifications:

4.1 Service and Incorporation - Company shall have been in continuous service and incorporated in the State of Florida for a minimum of three (3) years.

4.2 Licenses - The Company must be fully licensed with all required State and/or Local government licenses and permits.

4.3 Education and Degree - Company must have at least one full time employee with a degree in horticulture, biology or a related field to manage this project.

END OF SECTION

Document 00300

BID

To

THE HERITAGE HARBOUR SOUTH COMMUNITY DEVELOPMENT DISTRICT, FLORIDA

PROJECT: **Lake/Pond Aquatic Maintenance**

DISTRICT BID NO.: **HHS-2011-01**

COMMENCEMENT: UPON OWNER'S ISSUANCE OF
"NOTICE TO PROCEED"

FINAL
COMPLETION: 365 CALENDAR DAYS FROM "NOTICE TO PROCEED"

Made as of the _____ day of _____, Two Thousand and
_____.

BIDDER: _____

ADDRESS: _____

CONTACT PERSON: _____

PHONE: _____

FAX: _____

E-MAIL: _____

ORGANIZATION
TYPE:

_____ INDIVIDUAL

_____ PARTNERSHIP

_____ CORPORATION

_____ OTHER

ARTICLE 1.0
ACCEPTANCE OF BID

This Bid shall be open to acceptance and is irrevocable for sixty (60) Calendar Days from the Bid closing date.

ARTICLE 2.0
EXECUTION OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

2.1 Upon Owner's acceptance of this Bid within the aforementioned time period, the Bidder shall within fourteen (14) Calendar Days after Notice of Award 1) Execute the Agreement Between Owner and Contractor, 2) Furnish the required Certificates of Insurance and 3) Provide all Internal Revenue Service documents, as required by law.

2.2 Should the Bidder fail to execute the Agreement, and/or furnish the required Bonds, and/or furnish the required Certificates of Insurance and any other items requested, within the specified time period, the Owner reserves the right to cancel the Award of Bid.

ARTICLE 3.0
SUBMITTAL OF BID

The Bidder shall submit the Bid on the forms provided in the Project Manual.

ARTICLE 4.0
BIDDER'S ACKNOWLEDGMENTS

4.1 By submission of this bid, the Bidder acknowledges that he has thoroughly examined all plans, specifications, bid and Contract Documents; understands the insurance requirements and will comply fully with such requirements; thoroughly familiarized himself with all existing site conditions; that no allowances shall be made by the Owner for the Bidder's failure to do same; the Bidder offers to enter into an Agreement with the Owner to furnish all labor, materials, equipment to perform all work included in and in accordance with the plans, specifications, bid and Contract Documents.

4.2 The Bidder agrees to be bound by the bid protest procedures, as outlined in Article 29 of the Instructions to Bidders.

4.3 The Bidder agrees that this contract is not subject to arbitration. The Bidder is not entitled to Attorney fees should any portion of this contract be subject to litigation.

4.4 The Bidder agrees to the change order procedures, as outlined in Article 7 of the General Conditions of the Contract.

4.5 If the Bidder makes false statements or provides false information to any portion of the bidding documents, the Bidder acknowledges that he may be disqualified, in accordance with Section 3.4 (D) of the Instructions to Bidders.

4.6 The Bidder understands and agrees with the form of the bidding documents as presented, absent any inadvertent drafting or technical errors, and agrees to not attempt to negotiate the terms and conditions of this Project.

4.7 The Bidder acknowledges that the terms and conditions of the Contract Documents are not subject to negotiation.

ARTICLE 5.0
REPRESENTATIONS

5.1 The Owner is expressly relying upon the Bidder's representations for awarding this Project. Therefore, the Bidder unequivocally represents that the statements and information provided in response to this bid are truthful.

5.2 The Bidder and all persons signing on behalf of the bidding person or entity, has the legal authority to bind the Bidder to the terms and conditions of this Project.

5.3 There are no legal impediments, conditions or orders, which would preclude the Bidder from satisfactorily performing the Contractor's duties as outlined in the bidding documents.

ARTICLE 6.0
BID AMOUNTS

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

**HERITAGE HARBOUR SOUTH COMMUNITY DEVELOPMENT DISTRICT
Lake/Pond Aquatic Maintenance
Bid No. HHS-2011-01**

The bidder offers the following for providing all labor, materials, equipment, etc. to perform aquatic maintenance in accordance with the attached specifications.

Total Annual Amount \$ _____

For “Extra Work” requested by the District:

Labor Cost per Hour

(For Work directed by the District other than specified herein)

Classification	Straight Time	Overtime
Spray Technician	\$ _____/hour	\$ _____/hour
Supervisor/foreman	\$ _____/hour	\$ _____/hour
Biologist	\$ _____/hour	\$ _____/hour

Signature of Bidder: _____

Printed Name and Title: _____

Date of Bid: _____

ARTICLE 7.0
ACKNOWLEDGMENT OF ADDENDUM

The Bidder hereby acknowledges the receipt of the following addenda issued by the Owner and/or Project Manager and incorporated into and made part of the Contract Documents for this Project.

Addendum No. _____

Date _____

Addendum No. _____

Date _____

Addendum No. _____

Date _____

Addendum No. _____

Date _____

Addendum No. _____

Date _____

Addendum No. _____

Date _____

Signature

Title

ARTICLE 8.0
SIGNATURES & SEAL

Contractor:

Witness

Name of Contractor

Print Name

Signature

Witness

Print Name, Title

Print Name

_____ day of _____, _____

(CORPORATE SEAL)

END OF BID

**Document 00400
INSURANCE AGENT STATEMENT**

I have reviewed the requirements with Bidder, _____ and Bidder meets the insurance requirements as required by Article 31 of the Instructions to Bidders. In addition:

The policies described in the Bid documents carry the following deductibles:

Liability policies are *occurrence* _____ *claims made* _____

Insurance Agent

Signature
(Corporate Seal or Notary Required)

STATE OF _____)
_____) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, partner on behalf of _____, a _____ partnership, () who is personally known OR () who has produced _____ as identification.

Notary Public
Print Name: _____
My Commission Expires: _____

(Form to be submitted by apparent low bidder by 5:00 pm on the third Business Day after the date of the faxed "Notice of Apparent Low Bidder" (excluding the day the Notice is faxed)).

Document 00420
CONTRACTOR'S QUALIFICATION STATEMENT

THE UNDERSIGNED CERTIFIES UNDER OATH THE TRUTH AND CORRECTNESS OF ALL STATEMENTS AND OF ALL ANSWERS TO THE QUESTIONS MADE HEREINAFTER.

Submitted to: **Heritage Harbour South Community Development District**
513 NE 13TH AVENUE
FORT LAUDERDALE, FLORIDA 33301

PROJECT TITLE: Lake/Pond Aquatic Maintenance

DISTRICT BID NO. HHS-2011-01

TYPE OF CONTRACTOR _____ General _____ Landscape
_____ Water & Sewer _____ Paving & Drainage
_____ Other Specify _____

ORGANIZATION: _____

ADDRESS: _____

PHONE: _____ FAX: _____

PRINCIPAL OFFICE: _____

1. Years your organization has been in business as a contractor? _____
2. Years your organization has been in business under its present business name? _____
3. If a corporation, answer the following:
 - (A) Date of incorporation: _____
 - (B) State of incorporation: _____
 - (C) President's name: _____
 - (D) Vice President's name: _____
 - (E) Secretary's name: _____
 - (F) Treasurer's name: _____
 - (G) All Directors' names: _____

(H) All Shareholders' names:

4. If an individual or partnership, answer the following:

(A) Date of organization: _____

(B) Name and address of all partners
(state whether general or limited
partnership):

5. If other than a corporation or partnership, describe organization and name of principals:

6. List states and categories in which your organization is legally qualified to do business. Indicate registration or license numbers, if applicable. List states in which partnership or trade name is filed. List Broward County Certificate of Competency Number and name of Certificate Holder where applicable. _____

7. We normally perform the following work with our own forces: _____

8. Have you ever failed to complete any work awarded to you? Yes____ No ____
If so, note when, where and why. _____

9. Within the last five years, has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a contract?
Yes _____ No _____ If yes, attach a separate sheet of explanation.

10. Within the last five years, have you ever had a performance, payment or bid bond called?
 Yes _____ No _____ If yes, attach a separate sheet of explanation.
11. Have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against the District?
 Yes _____ No _____ If yes, attach a separate sheet of explanation.
12. Within the last five years, have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against any other governmental entity in Florida?
 Yes _____ No _____ If yes, attach a separate sheet of explanation.
13. On a supplemental sheet, list major projects your organization has in progress, giving the name of project, owner, landscape/architect or architect/engineer, contract amount, percentage of project completed and the scheduled completion date.
14. On a supplemental sheet, list similar major projects your organization has completed in the past five (5) years, giving the name of the project, architect/engineer, contract amount, date of completion, and percentage of the cost of the work performed with your own forces.
15. On a supplemental sheet, list the equipment that your organization owns, leases or will lease or purchase that will be utilized to complete this project.
16. On a supplemental sheet, list the work experience of the key individuals of your organization, who will be working on this project.
17. On a supplemental sheet, list the section of work, name of subcontractor and work experience of the key individuals of your subcontractors who will be working on this project.
18. On a supplemental sheet, list the substitution labor/equipment/materials specified, if any, which are proposed on this project.
19. On a supplemental sheet, list the suppliers who will be furnishing materials and/or equipment to this project.
20. Trade References: _____

21. Bank Reference: _____

22. Name of bonding company and name and address of agent (if applicable to this project).

Signature

Title

Name

Date

ITEM 13 SUPPLEMENT: PROJECTS IN PROGRESS

Project Title

Project Title

Address

Address

Owner

Owner

Owner's Phone Number

Owner's Phone Number

Contract Value

Contract Value

Percent Complete Completion Date

Percent Complete Completion Date

Project Title

Project Title

Address

Address

Owner

Owner

Owner's Phone Number

Owner's Phone Number

Contract Value

Contract Value

Percent Complete Completion Date

Percent Complete Completion Date

END OF ITEM 13 SUPPLEMENT: PROJECTS IN PROGRESS

ITEM 14 SUPPLEMENT: SIMILAR PROJECTS LAST FIVE YEARS

Project Title

Project Title

Address

Address

Owner

Owner

Owner's Phone Number

Owner's Phone Number

Contract Value

Contract Value

Percent Complete Completion Date

Percent Complete Completion Date

Project Title

Project Title

Address

Address

Owner

Owner

Owner's Phone Number

Owner's Phone Number

Contract Value

Contract Value

Percent Complete Completion Date

Percent Complete Completion Date

END OF ITEM 14 SUPPLEMENT: SIMILAR PROJECTS LAST FIVE YEARS

ITEM 15 SUPPLEMENT: EQUIPMENT LIST

The following Equipment will be utilized to complete this Project:

EQUIPMENT

END OF ITEM 15 SUPPLEMENT: EQUIPMENT LIST

ITEM 16 SUPPLEMENT: WORK EXPERIENCE OF KEY PERSONNEL OF YOUR ORGANIZATION WHO WILL BE WORKING ON THIS PROJECT

Name

Name

Title

Title

Education

Education

Years With This Organization

Years With This Organization

Professional/Trade Experience

Professional/Trade Experience

Name

Name

Title

Title

Education

Education

Years With This Organization

Years With This Organization

Professional/Trade Experience

Professional/Trade Experience

END OF ITEM 16 SUPPLEMENT: WORK EXPERIENCE OF KEY PERSONNEL OF YOUR ORGANIZATION WHO WILL BE WORKING ON THIS PROJECT

ITEM 17 SUPPLEMENT: SUBCONTRACTORS

The following work will be performed (or provided) by Subcontractors and coordinated by the Contractor:

SUBCONTRACTOR NAME:

_____/_____
NAME OF SUBCONTRACTOR KEY INDIVIDUAL/TITLE

SECTION OF WORK:

PROFESSIONAL/TRADE EXPERIENCE:

SUBCONTRACTOR NAME:

_____/_____
NAME OF SUBCONTRACTOR KEY INDIVIDUAL/TITLE

SECTION OF WORK:

PROFESSIONAL/TRADE EXPERIENCE:

SUBCONTRACTOR NAME:

_____/_____
NAME OF SUBCONTRACTOR KEY INDIVIDUAL/TITLE

SECTION OF WORK:

PROFESSIONAL/TRADE EXPERIENCE:

END OF ITEM 17 SUPPLEMENT: SUBCONTRACTORS

ITEM 18 SUPPLEMENT: SUBSTITUTIONS

The following substitution to the labor/materials/equipment specified, if any, are proposed by the Contractor:

SPECIFICATION

SUBSTITUTION

END OF ITEM 18 SUPPLEMENT: SUBSTITUTIONS

ITEM 19 SUPPLEMENT: MATERIAL/EQUIPMENT SUPPLIERS LIST

The following Suppliers will be furnishing materials and/or equipment on this Project:

MATERIAL AND/OR EQUIPMENT

SUPPLIER

END OF ITEM 19 SUPPLEMENT: MATERIAL/EQUIPMENT SUPPLIERS LIST

ACKNOWLEDGMENT OF INSPECTION

The Contractor hereby acknowledges that the site(s) and/or condition(s) specified herein have been inspected prior to submission of this Bid.

Deviation(s) from existing conditions, plans, or specifications evidenced by the Contractor shall be listed below. The Contractor shall not be relieved from his obligations to comply with all plans and specifications by his failure to note any deviations which may exist.

DEVIATIONS: YES _____ NO _____ (IF YES, DESCRIBE DEVIATIONS BELOW)

Inspection
Date_____

Inspected
By_____

Title_____

Signature_____

END OF ACKNOWLEDGMENT OF INSPECTION

Document 00440

**HERITAGE HARBOUR SOUTH COMMUNITY DEVELOPMENT DISTRICT, MANATEE
COUNTY, FLORIDA
Sworn Statement Under §287.133(3)(a), Florida Statutes
Public Entity Crimes**

(This form must be signed in the presence of a notary public or other officer authorized to administer oaths.)

1. This sworn statement is submitted with Bid, Proposal or contract No. _____

2. This sworn statement is submitted by: _____
(name of entity submitting sworn statement)

whose business address is: _____

Federal Identification Number
(FEIN) is: _____
(if applicable)

Social Security Number: _____
(if the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement)

3. My name is: _____
(print name of individual signing this document)

and my relationship to the entity is: _____

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

5. I understand that a "convicted" or "conviction" as defined in §287.133(1)(b), Florida Statutes, means a finding of guilt of a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

6. I understand that an "affiliate" as defined in §287.133(1)(a), Florida Statutes means:
(a) A predecessor or successor of a person or a corporation convicted of a public entity crime; or

(b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, share holders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima-facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

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

8. Based on the information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies)

a. _____ Neither the entity submitting the sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

b. _____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989 and (Please indicate which additional statement applies)

1. _____ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order)

2. _____ The person or affiliate was placed on the convicted list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order)

3. _____ The person or affiliate has not been placed on the convicted vendor list. (Please describe any action taken by or pending with the Department of General Services)

Signature _____

Date _____

STATE OF _____)

) ss:

COUNTY OF _____)

Sworn to and subscribed before me this _____ day of _____,
_____ by _____ who (check one) is personally known to me or
 has produced _____ as identification.

Notary Public, State of

Print or Type Name of Notary Public

My commission expires:
(Seal)

(Not valid without seal or stamp)

END OF PUBLIC ENTITY CRIMES STATEMENT

NON-COLLUSION AFFIDAVIT

The undersigned Bidder/Proposer has not divulged discussed or compared his/her Bid Proposal with any other Bidders/Proposers and has not colluded with any other Bidder/Proposer or parties to this Bid/Proposal whatsoever.

Signature

Name

Title

Date

STATE OF _____)
) ss:
COUNTY OF _____)

Sworn to and subscribed before me this _____ day of _____,
_____ by _____ who (check one) [] is personally known to me or []
has produced _____ as identification.

Notary Public, State of

Print or Type Name of Notary Public

My commission expires:

END OF NON-COLLUSION AFFIDAVIT

AGREEMENT BETWEEN OWNER AND CONTRACTOR

AGREEMENT

Made as of the _____ day of _____ in the year of

BETWEEN the Owner: Heritage Harbour South Community Development District
513 Northeast 13th Avenue
Fort Lauderdale, Florida 33301

and the **Contractor:**
(Name and address)

The Project is: Heritage Harbour South Community Development District –
Lake/Pond Aquatic Maintenance

The Project Manager is: Morris-Riley Development Management, LLC
4195 Tamiami Trail South, #113
Venice, Florida 34293

The Owner and Contractor agree as follows:

ARTICLE 1.0
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. **The Contract Documents shall not be changed and are not subject to negotiation.**

ARTICLE 2.0
THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

ARTICLE 3.0
DATE OF COMMENCEMENT

- 3.1** The Date of Commencement is the date from which the Contract Time is measured, and shall be the date set forth in the NOTICE TO PROCEED as issued by the Owner. Should the Contractor incur costs prior to the issuance of the NOTICE TO PROCEED, any such costs shall be incurred at the Contractor's risk, and the Owner shall not reimburse the Contractor for any such costs under any circumstances. Notwithstanding the foregoing, Owner may reimburse Contractor for actual costs incurred relating to performance and payment bonds and insurance, with submittal of invoices, in the event that Owner terminates this Contract for convenience, as provided in the General Conditions. If Contractor fails to commence the Work within one (1) week of the date set forth in the NOTICE TO PROCEED, Owner may terminate the Contract immediately, without providing an opportunity to cure.

ARTICLE 4.0
CONTRACT SUM

- 4.1** The Owner shall pay the Contractor, for the Contractor's performance of the Work the Contract Sum of (\$_____), subject to additions and deductions as provided in the Contract Documents.
- 4.2** The Contract Sum is based upon the cost agreed upon by the parties, for the satisfactory performance of the Work in accordance with the Contract Documents.
- 4.3** The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Sum shall be determined in one of the following ways at the Owner's option:
- (A) Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of items involved without additional fees.
- (B) By mutual acceptance of a lump sum price.

ARTICLE 5.0
PROGRESS PAYMENTS

- 5.1** Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certifications of Payment issued by the Project Manager, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below, elsewhere in the Contract Documents and in accordance with Part VII of Chapter 218, Florida Statutes, as may be amended from time to time, entitled the "Local Government Prompt Payment Act."
- 5.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

- 5.3 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Project Manager may require. This Schedule, unless objected to by the Project Manager, shall be used as a basis for reviewing the Contractor's Applications for Payment.
- 5.4 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- 5.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- (A) Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values.
- (B) Subtract the aggregate of previous payments made by the Owner; and
- (C) Subtract amounts, if any, for which the Project Manager has withheld or nullified.

ARTICLE 6.0
MISCELLANEOUS PROVISIONS

- 6.1 Where reference is made in this Agreement to a provision of the General Conditions or other Contract Documents, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

ARTICLE 7.0
TERMINATION OR SUSPENSION

- 7.1 The Contract may be terminated by the Owner or the Contractor as provided in the General Conditions.
- 7.2 The Work may be suspended by the Owner as provided in the General Conditions.

ARTICLE 8.0
ENUMERATION OF CONTRACT DOCUMENTS

- 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:
- 8.1.1 The Agreement is this executed Agreement Between Owner and Contractor.

- 8.1.2 The General Conditions are the General Conditions of the Contract for Construction.
- 8.1.3 The Supplementary and other conditions of the Contract are those contained in the Project Manual dated October 2010:
- 8.1.4 The Specifications are those contained in the Project Manual listed in the Table of Contents.
- 8.1.5 The Drawings are dated October 2010 unless a different date is shown below: Drawings are listed in 00004.

Sheet Number	Title
---------------------	--------------

- 8.1.6 The Addenda, if any, are in Section 900 and summarized below:

Number	Date
---------------	-------------

- 8.1.7 The Certification of Payment forms and Project Closeout Forms are those contained in the Project Manual.
- 8.1.8 Other documents forming part of the Contract Documents are as follows:

00001	TITLE PAGE
00002	PROJECT DATA
00003	TABLE OF CONTENTS
00004	LIST OF DRAWINGS
00010	NOTICE TO BIDDERS
00100	INSTRUCTIONS TO BIDDERS
00110	PRE-BID CONFERENCE(S)
00300	*BID FORM
00400	*INSURANCE AGENT STATEMENT
00420	*CONTRACTOR'S QUALIFICATION STATEMENT
00430	*ACKNOWLEDGMENT OF INSPECTION
00440	*PUBLIC ENTITY CRIMES STATEMENT
00450	*NON-COLLUSION AFFIDAVIT
00500	AGREEMENT BETWEEN OWNER & CONTRACTOR
00510	ACKNOWLEDGMENT IF INDIVIDUAL
00520	ACKNOWLEDGMENT IF PARTNERSHIP
00530	ACKNOWLEDGMENT IF CORPORATION
00620	CERTIFICATE(S) OF INSURANCE
00630	CONFORMANCE WITH OSHA STANDARDS
00640	HAZCOM TRAINING/INFORMATION
00700	GENERAL CONDITIONS
00800	SUPPLEMENTAL CONDITIONS
00900	ADDENDA

**HERITAGE HARBOUR SOUTH COMMUNITY DEVELOPMENT DISTRICT
LAKE/POND AQUATIC MAINTENANCE
District Bid No. HHS-2011-01**

AGREEMENT BETWEEN OWNER AND CONTRACTOR

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: Heritage Harbour South Community Development District through its Board of Supervisors, signing by and through its Chairman, authorized to execute same by Commission action on the _____ of _____, ____; and _____ authorized to execute same.

HERITAGE HARBOUR SOUTH COMMUNITY DEVELOPMENT DISTRICT, through its Chairman

ATTEST:

By: _____
Charles Faust, Chairman

James P. Ward, Secretary

____ day of _____, ____

By: _____
James P. Ward, District Manager

____ day of _____, ____

ACKNOWLEDGMENT OF CONTRACTOR, IF A PARTNERSHIP

State of _____, County of _____

On this _____ day of _____, _____, before me personally came and appeared _____ to me known and known to me to be one of the members of the partnership of _____ described in and who executed the foregoing Agreement and acknowledged that (s)he executed same on behalf of said partnership and that the same is the act and deed of the said partnership and that (s)he has the authority to do so.

STATE OF _____)
) ss:
COUNTY OF _____)

Sworn to and subscribed before me this _____ day of _____, _____ by _____ who (check one) [] is personally known to me or [] has produced _____ as identification.

Notary Public, State of _____

Print or Type Name of Notary Public

My commission expires:

END OF ACKNOWLEDGMENT - PARTNERSHIP

Document 00530

ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION

State of _____, County of _____

On this _____ day of _____, _____, before me personally came and appeared _____ to me known and who, being

duly sworn, did depose and say that (s)he is the

_____ of _____, the

corporation described in and which executed the foregoing Agreement; that (s)he knows the seal of the said corporation; that one of the impressions affixed to the said Agreement is an impression of the said seal; that (s)he is the proper official of the said corporation designated to execute such Agreement; that (s)he has the authority to do so; that (s)he has executed same for and on behalf of the said corporation; and that his/her act is the act and deed of the said corporation.

STATE OF _____)
) ss:
COUNTY OF _____)

Sworn to and subscribed before me this _____ day of _____,
_____ by _____ who (check one) [] is personally known to me or []
has produced _____ as identification.

Notary Public, State of

Print or Type Name of Notary Public

My commission expires:

END OF ACKNOWLEDGMENT - CORPORATION

Document 00620

CERTIFICATE(S) OF INSURANCE

ATTACH

CERTIFICATE(S) OF INSURANCE

TO THIS PAGE

UPON EXECUTION OF

AGREEMENT BETWEEN OWNER & CONTRACTOR

ACKNOWLEDGMENT OF CONFORMANCE

WITH O.S.H.A. STANDARDS

To the Heritage Harbour South Community Development District, Florida:

_____, hereby acknowledges and agrees that as Contractor for the Heritage Harbour South Community Development District, Florida, within the limits of the Heritage Harbour South Community Development District, Florida, that we have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health Act of 1970, and all State and local safety and health regulations, and agrees to defend, indemnify and hold harmless the Heritage Harbour South Community Development District, Florida, its officials, employees, service providers, and its agents against any and all legal liability or loss the Heritage Harbour South Community Development District, Florida may incur due to the Contractor's failure to comply with such act.

Contractor:

Witness

Name of Contractor

Print Name

Signature

Witness

Print Name, Title

Print Name

_____ day of _____, _____

(CORPORATE SEAL)

END OF O.S.H.A. STANDARDS

Document 00640
HAZCOM TRAINING/INFORMATION

ARTICLE 1.0
TRAINING

- 1.1** This is to verify that I have been given training information as required by OSHA's Hazard Communication Standard. Training has included:
- (A) Potential chemical and physical hazards for the areas in which contract operations are being conducted.
 - (B) The location and availability of Material Safety Data Sheets.
 - (C) Detection of the presence of hazardous chemicals.
 - (D) Facility precautions and safety procedures.
 - (E) Emergency procedures in the event of accidental exposures to hazardous materials, including emergency phone numbers and the location of safety equipment.
 - (F) Hazardous chemical labeling systems used in contracted work area.
 - (G) Directions to and appropriate locations for eating, drinking, smoking and sanitation facilities.

ARTICLE 2.0
INFORMATION

- 2.1** I understand that I may not bring onto this Project any substances considered hazardous without prior written consent of the Heritage Harbour South Community Development District.
- 2.2** I understand the method of disposal of any hazardous substance must be approved by the Heritage Harbour South Community Development District.
- 2.3** I have been given the locations in which contract operations will take place and I understand how to evacuate safely from the areas in the event of an emergency.
- 2.4** I have been given an opportunity to ask questions about the Hazard Communication Standard and to have those questions answered.

ARTICLE 3.0
CONTAMINATION, CLEAN-UP AND REMEDIATION

I understand that I will be responsible for any contamination and accidental exposures which I have caused during this Project, and that I shall be solely responsible for the notification, clean-up and remediation as prescribed by and in accordance with all applicable Federal, State and local agencies having jurisdiction.

I have read and understand the above statements. I agree to perform all services in accordance with these statements and all governing laws and regulations.

Contractor:

Witness

Name of Contractor

Print Name

Signature

Witness

Print Name, Title

Print Name

_____ day of _____, _____

(CORPORATE SEAL)

END OF HAZCOM TRAINING/INFORMATION

Document 00700

GENERAL CONDITIONS OF THE CONTRACT

TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. OWNER
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTORS
6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7. CHANGES IN THE WORK
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE AND BONDS
12. UNCOVERING AND CORRECTION OF WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

ARTICLE 1
GENERAL PROVISIONS

1.0 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles and identified references to Articles, Sections and Paragraphs in the document.

1.1 INTERPRETATION

In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.2 DEFINITION OF CONTRACT TERMS

- a. **Allowance** is the Contractor's cost for materials and equipment delivered at the Project site and all required taxes, less applicable trade discounts.
- b. **Change Order** is a written instrument prepared by the Project Manager and signed by the Contractor and approved by the Owner.
- c. **Claim** is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief pursuant to the Contract. The term "Claim" also includes other disputes and matters between the Owner, Project Manager or Contractor arising out of or relating to the Contract.
- d. **Construction Change Directive** is a written order prepared and signed by the Project Manager and approved by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.
- e. **Project Manager** is the person or corporation identified in the Agreement between Owner and Contractor and on the Project Data Sheet.
- f. **Contract Days shall mean consecutive calendar days unless otherwise specifically defined.**
- g. **Contract Documents** represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written. Unless specifically enumerated in the Agreement, the Contract Documents includes other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, Drawings, the Contractor's bid or portions of addenda relating to bidding requirements).
- h. **Contract Sum** is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

- i. **Contract Time** the period of time, including authorized adjustments, allotted in the Contract Documents for the Work.
- j. **Contractor** is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- k. **Project Manager** is the individual or entity identified on the Project Data Sheet as the Project Manager.
- l. **Date of Commencement** of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the Contractor or by persons or entities for which the Contractor is responsible.
- m. **Drawings** are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings as so specified.
- n. **Fifty (50) percent completion** is the point at which the Owner has expended 50 percent of the total cost of the Work as identified in the Contract Documents together with all costs associated with existing change orders and other additions or modifications to the Work provided for in the Contract Documents.
- o. **Final Completion** is the complete performance of the Work required in accordance with the Contract Documents.
- p. **Mobilization** is to perform preparatory work and operations in mobilizing for beginning work on the project, including, but not limited to, those operations necessary for equipment, supplies, and incidentals directly related to the project site and for the establishment of temporary offices, buildings, safety equipment and first aid supplies, and sanitary and other facilities, including the costs of bonds and required insurance for the start of the work and excluding the cost of construction materials.
- q. **Modification** is a written amendment to the Contract signed by the Owner, Project Manager and/or Contractor.
- r. **Own Forces** shall mean the Owner's employees, Project Managers and independent contractors that perform Work on the Owner's behalf under a separate construction agreement.
- s. **Owner** is the Heritage Harbour South Community Development District and its dependent Districts.
- t. **Owner's Representative** is the District Manager or his/her designee.
- u. **Product Data** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

- v. **Project** is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.
- w. **Project Manual** This includes the Notice To Bidders, Instructions To Bidders, Bid Form, Contractor's Qualification Statement, Bid Security/Bond, Addenda, Agreement, General Conditions, Supplemental Conditions, Bonds, Certification of Payment Forms, Consent of Surety, Project Closeout Checklist, Specifications and Drawings, all of which shall also constitute the bidding documents.
- x. **Samples** are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- y. **Shop Drawings** are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, Supplier or distributor to illustrate some portion of the Work.
- z. **Specifications** are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- aa. **Subcontractor** is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the Project site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- bb. **Substantial Completion** is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.
- cc. **Sub-subcontractor** is a person or entity that has a direct or indirect Contract with a Subcontractor to perform a portion of the work at the Project site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
- dd. **Supplier** is a person or entity that provides equipment and/or materials to the Contractor or Subcontractors for use and/or incorporation into the Project.
- ee. **Work** means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.3 EXECUTION, CORRELATION AND INTENT

- A. The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor fails to sign all the Contract Documents, the Project Manager shall identify such unsigned Documents. The Contract may

- be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Project Manager and Contractor, (2) between the Owner and a Subcontractor, Sub-subcontractor, SubProject Manager, Sub-subProject Manager or Suppliers (3) or between any persons or entities other than the Owner and Contractor. The Project Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Project Manager's duties.
- B. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
 - C. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
 - D. Organization of the Specifications into division, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
 - E. Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.4 OWNERSHIP AND USE OF PROJECT MANAGER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Drawings, Specifications and other documents prepared by the Project Manager are instruments of the Project Manager's service through which the Work is to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment Supplier shall own or claim a copyright in the Drawings, Specifications and other Documents prepared by the Project Manager, and unless otherwise indicated, the Project Manager shall be deemed the author of them and Owner will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Project Manager, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Project Manager and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment Supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Project Manager. The Contractor, Subcontractors, Sub-subcontractors and material or equipment Suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Project Manager appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown

on the Drawings, Specifications and other documents prepared by the Project Manager. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Project Manager's copyright or other reserved rights.

ARTICLE 2

OWNER'S RESPONSIBILITIES

- 2.1** Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary easements.
- 2.2** Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.3** Unless otherwise provided in the Contract Documents, after the contract is executed between the parties, the Contractor will be furnished, free of charge, three (3) copies of Drawings and Project Manuals as are necessary for execution of the Work.
- 2.4** The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors,) Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.5 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed by the Owner's Representative may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Paragraph 6.1.C.

2.6 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents with due diligence and fails to provide a schedule of repairs and commence the repairs within a period of time, to be determined by the District in its sole discretion, after receipt of written notice from the Owner, the Owner may after such period of time, without prejudice to other remedies the Owner may have, withhold progress payments until the Contractor substantially completes the repairs cited in the Owner's notice. If the Contractor fails to substantially complete the repairs, the Owner may contract with another contractor for the necessary repairs. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Contractor's failure to substantially complete the repairs may, at the Owner's sole discretion, be a reasonable basis for the Owner to terminate the contract.

2.7 OWNER'S RIGHT TO PERFORM WORK AT THE SITE

- A. The Owner and other contractors and subcontractors may be working at the site during the performance of the Contract, and the Contractor's Work may be interfered with as a result of such concurrent activities. Contractor shall fully cooperate with Owner and other contractors to avoid any delay or hindrance of any work. Owner may require that certain facilities be used concurrently by Contractor and other parties and Contractor shall comply with such requirements.
- B. If any part of the Contractor's Work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the Owner or separate contractor's work as fit and proper to receive Contractor's Work; except as to defects which may subsequently become apparent in such work performed by others.

ARTICLE 3 **CONTRACTOR'S RESPONSIBILITIES**

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- A. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner and shall at once report to the Owner and Project Manager all errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Project Manager for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Owner and Project Manager. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner and Project Manager, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the costs attributable to the correction.
- B. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Owner and Project Manager at once.
- C. The Contractor shall perform the Work in accordance with the Contract Documents and submittals.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

- A. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over

means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents specifically provide otherwise.

- B. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a Contract with the Contractor.
- C. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Project Manager in the Project Manager's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
- D. The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3 SIGNATORY

- A. Certification of Payment and all other written communications to the Owner shall be signed by the individual whose name appears on the Agreement between the Owner and Contractor.
- B. Certifications of Payment not bearing the proper signatory shall be rejected by the Owner.

3.4 COMMUNICATION

The Contractor shall employ and maintain on the Project site at all times supervisory personnel who can effectively communicate with the Owner and Project Manager. The Owner shall have the right to determine whether the supervisory personnel's ability to communicate is effective.

3.5 EMERGENCY SITUATIONS

The Contractor shall furnish the Owner the name(s) and local telephone numbers(s) of supervisory persons who are available 24 hours per day, 7 days a week (including holidays) in the event of an emergency related to the Project.

3.6 TELEPHONE, FACSIMILE AND E-MAIL ADDRESS

The Contractor, through the course of the Project shall maintain an e-mail address, a local telephone number to his office and the Project site personnel. The Contractor through the course of Project shall maintain use of a facsimile machine at his office with local number.

3.7 LABOR AND MATERIALS

- A. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- B. The Contractor shall enforce strict discipline and good order among the Contractor's employees and Subcontractors and their employees and all other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.8 WARRANTY

The Contractor warrants to the Owner and Project Manager that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. The Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All manufacturers' product warranties shall be registered in the Owner's name and for its sole benefit.

3.9 TAXES

The Contractor shall pay sales, consumer, use and all other taxes for the Work or portions thereof provided by the Contractor.

3.10 PERMITS, FEES AND NOTICES

- A. **PERMITS** The Contractor shall be responsible for securing all Federal, State, County, Municipal and Special Taxing District permits applicable to this Project.
- B. **PERMIT FEES** The Contractor shall be responsible for payment of Federal, State, County, Municipal and Special Taxing District permit fees applicable to this Project.
- C. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.
- D. It is not the Contractor's responsibility to ascertain whether the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly provide written notice to the Owner and Project Manager of the necessary changes. The necessary changes will be made by the appropriate Modification document.
- E. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner and Project Manager, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.11 ALLOWANCES

- A. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.
- B. Unless otherwise provided in the Contract Documents:
 - 1. Materials and equipment under an Allowance shall be selected promptly by the Owner to avoid delay in the Work;
 - 2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the Contract Sum and not in the Allowances;
 - 3. Whenever costs are more or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the Allowances under Paragraph 3.11 and (2) changes in Contractor's costs under provision (2) of this section.

3.12 SUPERINTENDENT

- A. The Contractor shall employ a competent Superintendent, who is conversant in the English language, and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. All communications shall be confirmed in writing. The name of the Superintendent shall be supplied to the Owner and Project Manager in writing prior to commencing Work.
- B. The Superintendent shall possess the necessary knowledge and skills to effectively communicate with the Owner and Project Manager. The Owner shall have the right to determine whether the Superintendent's communication is effective.

3.13 CONTRACTOR'S SCHEDULES

- A. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner and Project Manager's information a Contractor's schedule for the Work. The schedule shall not exceed time limits contained in the Contract Documents. It shall identify significant milestones including long lead items and critical path supplies, shall denote achievement or delays of critical milestones as relate to the ability to complete the Project, according to the Contract Documents and shall be updated and distributed at regular intervals as required by the conditions of the Project. The schedule shall be related to the entire Project and shall provide for expeditious and practicable execution of the Work.
- B. The Contractor shall prepare and keep current, for the Project Manager's approval, a schedule of submittals that is coordinated with the Contractor's schedule and allows the Project Manager reasonable time to review submittals.

C. The Contractor shall conform to the most recent schedules.

3.14 USE OF SITE

A. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

B. The Contractor shall maintain the Project site in a safe manner and shall take extreme care to avoid attractive nuisances and hazards to the public. The construction area shall be secured from unauthorized and/or inadvertent entry at all times.

C. The Contractor shall not be permitted to store materials on-site.

3.15 CLEANING UP

A. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract.

B. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

D. The Contractor shall not be permitted to use the Owner's solid waste facilities.

E. The Site includes the immediate area of the Site, ingress and egress routes through Owner's property (District Limits). Proper care shall be taken to avoid debris, trash, soil, gravel, rock, liquid or other materials from being deposited on roads or common areas of the Owner's adjacent property. The Contractor is responsible for providing a method of cleaning and or removing such debris or spillage as part of its Site responsibilities. In the event the Owner provides the means to clean or remove such debris or spillage from ingress or egress routes, the Contractor will be responsible for reasonable reimbursement to the Owner.

3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Project Manager access to the Work in preparation and progress wherever located.

3.17 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Project Manager harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers are required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Project Manager.

3.18 INDEMNIFICATION

- A. **General Indemnification.** The Contractor shall indemnify, defend and hold harmless and at Owner's option, pay for an attorney selected by Owner, to defend the Owner and the Owner's Project Manager, Engineer, Attorneys and assigns and their officials, employees and agents (collectively referred to as "Indemnities") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this Contract which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of the Contractor or its employees, agents or subcontractors (collectively referred to as "Contractor"), regardless of whether it is, or is alleged to be, caused in whole or in part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnities, or any of them or (ii) the failure of the Contractor to comply with any of the paragraphs herein or the failure of the Contractor to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Contract.
- B. **Indemnification for Construction Contracts.** In the event that the performance of services under this Contract is deemed to be a "construction contract" pursuant to §725.06, Florida Statutes, as may be amended from time to time, the following indemnification shall apply in lieu of Paragraph A. above.

To the fullest extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor hereby agrees to indemnify and hold harmless the Owner, its officers and employees from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract Documents.

- C. The indemnification obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or persons employed or utilized by the Contractor, in the performance of the Contract Documents under any insurance required by the Contract Documents including, but not limited to, workers' compensation acts, disability benefit acts, or other employee benefit acts.
- D. The obligations of the Contractor under the Agreement shall not extend to the liability of the Project Manager, the Project Manager's Project Managers, and agents and employees or any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Project Manager, the Project Manager's Project Managers, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

3.19 RIGHT TO AUDIT PROVISIONS

- A. Contractor's records which shall include, but not be limited to, accounting records, written policies and procedures, computer records, disks and software, videos, photographs, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Contract shall be open to inspection and subject to audit and/or reproduction, during normal working hours by the Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Contractor or any of Contractor's payees pursuant to the execution of the Contract. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Contract.
- B. For the purpose of such audits, inspections, examinations and evaluations, the Owner's agent or authorized representatives shall have access to said records from the effective date of this Contract, for the duration of the Work and until 5 years after the date of final payment by Owner to Project Manager pursuant to this Contract.
- C. Contractor shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirement hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all related payees' costs from amounts payable to the Contractor pursuant to this contract.

If an audit inspection or examination in accordance with this article, discloses overcharges (of any nature) by the Contractor to the Owner in excess of 10% percent of the total contract billings, the actual cost of the Owner's audit shall be paid by the Contractor.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 PROJECT MANAGER

- A. Duties, responsibilities and limitation of authority of the Project Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner.
- B. In case of termination of employment of the Project Manager, the Owner shall appoint a Project Manager whose status under the Contract Documents shall be that of the former Project Manager.

4.2 PROJECT MANAGER'S ADMINISTRATION OF THE CONTRACT

- A. The District has contracted with Project Manager so that the Project Manager shall provide administration of the Contract as described in the Contract Documents, and shall be the Owner's representative (1) during work (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Project Manager will advise and consult with the Owner. The Project Manager shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.
- B. The Project Manager shall have access to the site to inspect progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, shall be in accordance with the Contract Documents. The Project Manager shall be required to make on-site inspections to check quality and/or quantity of the Work. On the basis of on-site inspections, the Project Manager shall keep the Owner informed of progress of the Work, and shall guard the Owner against defects and deficiencies in the Work.
- C. The Project Manager shall not have control over or charge of and shall not be responsible for means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Article 3. The Project Manager will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents except as otherwise provided herein. The Project Manager will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the work except as otherwise provided herein.
- D. Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Project Manager. Communications by and with the Project Manager's Project Managers shall be through the Project Manager. Communications by and with Subcontractors and material Suppliers shall be through the Contractor. Communications by and with separate Project Managers shall be through the Owner.
- E. Based on the Project Manager's inspection and evaluation of the Contractor's Applications for Payment, the Project Manager shall review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- F. District has granted to the Project Manager authority to reject Work that does not conform to the Contract Documents. Whenever the Project Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Project Manager shall have authority to require additional inspection or testing of the Work in accordance with Paragraphs 13.6. (B) and (C), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Project Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Project Manager to the Contractor, Subcontractors, material and equipment Suppliers, their agents or employees, or other persons performing portions of the Work.

- G. District has granted to the Project Manager authority to review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Project Manager's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Project Manager's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Project Manager's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 3. The Project Manager's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Project Manager, of any construction means, methods, techniques, sequences or procedures. The Project Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- H. District has granted to the Project Manager authority to prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.
- I. If the Owner and Project Manager agree, the Project Manager shall provide one or more project representatives to assist in carrying out the Project Manager's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.
- J. District has granted to the Project Manager authority to interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor, The Project Manager's response to such requests shall be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Project Manager shall be furnished in compliance with the Paragraph 4.2, then delay shall not be recognized on account of failure by the Project Manager to furnish such interpretations until 15 days after written request is made for them.
- K. Interpretations and decisions of the Project Manager shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Project Manager shall endeavor to secure faithful performance by the Contractor.

4.3 CLAIMS AND DISPUTES

- A. The responsibility to substantiate Claims shall rest with the party making the Claim. All Claims must be made in writing and addressed to the Owner and/or the Owner's Representative.

- B. Process for Resolving a Claim.** Any and all Claims made by the Contractor shall be submitted to the Project Manager. The Project Manager shall review the Claim and make a recommendation to the Owner. The Owner shall render a final decision on regarding the Claim. A decision by the Owner shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed.
- C. Time Limits on Claims.** Claims by the Contractor must be made within 30 days after occurrence of the event giving rise to such Claim or within 30 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims by the Project Manager, Contractor or their subcontractors must be made by written notice to the Owner. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.
- D. Continuing Contract Performance.** Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- G. Claims for Concealed or Unknown Conditions.** If conditions are encountered at the Project site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Project Manager shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the work, shall recommend to the Contractor, with the Owner's approval, an equitable adjustment in the Contract Sum or Contract Time, or both. If the Project Manager determines that the conditions at the Project site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Project Manager shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Project Manager has given notice of the decision. If the Project Manager and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Owner for final determination.
- F. Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceedings to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Project Manager (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Project Manager, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, Claim shall be filed in accordance with the procedure established herein.

G. **Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance of the injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 4.3. (F) or (G).

4.4 RESOLUTION OF CLAIMS AND DISPUTES

- A. The Project Manager shall review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Project Manager expects to take action, (3) suggest a compromise. The Project Manager may, at the Owner's direction, notify the surety, if any, of the nature and amount of the Claim. The Project Manager shall notify the Owner or the Claimant. The Owner shall make the final determination of whether to pay or dispute the Contractor's Claim.
- B. If a Claim has been resolved, the Project Manager shall prepare or obtain appropriate documentation.
- C. If a Claim has not been resolved, the party making the Claim shall, within ten days after the Project Manager's preliminary response, take one or more of the following actions; (1) submit additional supporting data requested by the Project Manager (2) modify the initial Claim or (3) notify the Project Manager that the initial Claim stands.
- D. The Project Manager shall notify the parties in writing of the Owner's decision within seven days of receipt of (1) additional supporting data or, (2) a request to modify the initial Claim or (3) that the initial Claim stands and the Owner's decision shall be final and binding on the parties but subject to review by a court of competent jurisdiction. The Project Manager shall prepare or obtain appropriate documentation regarding the Claim. If there is a surety and there appears to be a possibility of a Contractor's default, the Project Manager may, at the Owner's direction, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE 5 **SUBCONTRACTORS**

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- A. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Project Manager shall within 30 days reply to the Contractor in writing stating whether or not the Owner or the Project Manager, after due investigation, objects to any such proposed person or entity.

- C. The Contractor shall not contract with a proposed person or entity which the Owner or Project Manager has made an objection. The Contractor shall not be required to contract with anyone with whom the Contractor has an objection.
- C. If the Owner or Project Manager has objection to a person or entity proposed by the Contractor, the Contractor shall propose another with whom the Owner or Project Manager has no objection.
- D. The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Project Manager makes objection to such change.
- E. The Contractor shall be responsible and liable to the Owner for all work performed by the Subcontractors or their employees, agents or contractors, pursuant to this Agreement.

5.2 SUBCONTRACTUAL RELATIONS

By appropriate written agreement the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Project Manager. Each subcontract agreement shall preserve and protect the rights of the Owner and Project Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof shall not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor shall be bound, and upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- A. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:
 - 1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Sub-contractor in writing; and
 - 2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

- A. The Owner reserves the right to perform work or operations related to the Project with the Owner's Own Forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor may make such Claim as provided in this Agreement.
- B. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- C. The Owner shall provide for coordination of the activities of the Owner's Own Forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their schedules when directed to do so. The Contractor shall make any revisions to the schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.2 MUTUAL RESPONSIBILITY

- A. The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- B. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner and Project Manager apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report apparent discrepancies shall constitute an acknowledgement that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.
- C. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.
- D. The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Paragraph 10.2. (E).

- E. Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.19, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7 **CHANGES IN THE WORK**

7.1 CHANGES

- A. Changes in the Work may be accomplished after execution of the Contract only by written Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- B. A Change Order shall be based upon agreement among the Owner, Contractor and Project Manager; a Construction Change Directive requires agreement by the Owner and Project Manager and may or may not be agreed to by the Contractor; the Project Manager alone may issue an order for a minor change in the Work.
- C. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.2 CHANGE ORDERS

- A. A Change Order is a written instrument prepared by the Project Manager and signed by the Owner, Contractor and Project Manager, stating their agreement upon all of the following:
 - 1. a change in the Work;
 - 2. the amount of the adjustment in the Contract Sum, if any
 - 3. the extent of the adjustment in the Contract Time, if any.

B. Overhead and Profit

1. Job Site Overhead

a) **Subcontractor:** Including supervision and the furnishings, use and maintenance of small tools and ordinary equipment incidental to and required for the work of subcontractors (whether performed by them or others) shall be considered to be just and fully compensated for by adding an amount equal to five percent (5%) of the sum of material costs and rentals. There shall be no compensation for any non job site overhead, expenses or costs.

b) **General Contractor:** Including general supervision and the furnishings, use and maintenance of small equipment incidental to and required for the Work of the General Contractor (including that of Contractor's subcontractors) shall be considered to be just and fully compensated for by adding an amount equal to ten percent (10%) of the sum of material costs and labor costs and rentals. There shall be no compensation for any non job site overhead, expenses or costs.

2. Profit

a) **Subcontractor** may then be added by the subcontractor to the above material costs and labor costs, including the job site overhead allowance, at the rate of 10 percent (10%) of the sum of those costs.

b) **General Contractor** may then be added by the Contractor to the above material costs and labor costs, including the job site overhead allowance, at the rate of five percent (5%) of the sum of those costs.

C. Methods used in determining adjustments to the Contract Sum may include those listed in Paragraph 7.3. (C).

D. Should the Contractor and Owner fail to agree as to the necessity of a Change Order, the matter will be referred to the Project Manager for determination. Pending final determination of such a dispute, the Contractor shall proceed with the performance of the Contract.

7.3CHANGE DIRECTIVES

A. The Owner may by Change Directive, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

B. A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

C. A Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods;

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

2. unit prices stated in the Contract Documents or subsequently agreed upon;
 3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 4. as provided in Paragraph 7.3.(F).
- D. Upon receipt of a Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Project Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- E. A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- F. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Paragraph 7.3. (C), the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Paragraph shall be limited to the following:
1. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
 2. costs of materials, supplies and equipment including cost of transportation, whether incorporated or consumed;
 3. rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
 4. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
 5. additional costs of supervision and field officer personnel directly attributable to the change.
- G. Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Project Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to the change.

- H. If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Project Manager for determination.
- I. When the Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

The Project Manager will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. The Contractor shall carry out such written orders promptly.

7.5 CLAIMS SUBMITTAL PROCEDURES

Written notice stating the general nature of each claim shall be delivered by the party making the claim to the Project Manager and all of the parties to the Contract promptly, but in no event later than 30 calendar days after the start of the event giving rise to the claim. The party making the claim shall have the responsibility to substantiate the claim. Notice of the amount of the claim or extent of the claim, with sufficient supporting data shall be delivered to the Project Manager and all of the parties to the Contract within 60 calendar days after the start of the event, unless Project Manager or the other party allows additional time for claimant to submit additional or more accurate data in support of such claim. Should Contractor fail to comply with the time limits described in this Section, Owner shall have the right to deny payment for the Change Order.

ARTICLE 8 **TIME**

8.1 PROGRESS AND COMPLETION

- A. Time limits stated in the Contract Documents are essential to the Contract. By executing the Agreement the Contractor confirms that the Contract time is a reasonable period for performing the Work.
- B. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.
- C. The Contractor shall proceed expeditiously with adequate forces and shall continue working throughout the Contract Time.

8.2 DELAYS AND EXTENSIONS OF TIME

- A. If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Project Manager, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending litigation, or by other causes which the Project Manager and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner and Project Manager may determine.
- B. Claims relating to time shall be made in accordance with applicable provisions of Paragraphs 4.3 and 7.5.
- C. Delays and extensions of time do not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 **PAYMENTS**

9.1 SCHEDULE OF VALUES

Before the first Application for Payment, the Contractor shall submit to the Project Manager a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner and Project Manager may require. This schedule, once approved by the Owner, shall be used as a base line schedule of values for all of the reviewing of the Contractor's Applications for Payment.

9.2 MOBILIZATION PAYMENT

- A. Basis of Payment. When the Bid includes a separate item of payment for this work, the work and incidental costs specified as being covered under this Section will be paid for at the Contract lump sum price for the item of Mobilization.
- B. Partial Payments. When the Bid includes a separate pay item for Mobilization, partial payments will be made hereto in accordance with the following:

Percent of Original Contract Amount Earned	Allowable Percent of the Lump Sum Price for the Item*
5	25
10	50
25	75
50	100

* Partial payments for any project will be limited to the applicable retainage amount for that project. Any remaining amount will be paid upon completion of all work on the project.

The standard retainage, as specified in the Contract Documents will be applied to these allowances. Partial payments made on this item will in no way act to preclude or limit any of the provisions for partial payments otherwise provided for by the Contract. When more than one project or job is included in the Contract, the above percentages shall apply separately to each job which has a separate pay item for Mobilization. As an exception to partial payments being made based on Percent of Original Contract Amount Earned, the Owner will pay the Contractor the invoice price of the Contract Bond when the Engineer has been furnished with a certified copy of the invoice from the Bonding Company. No other work will be required to receive payment for the Contract Bond included in the bid price for Mobilization.

When No Separate Item is Included in the Bid. When the Bid does not include a separate item for Mobilization, all work and incidental costs specified as being covered under this Section will be included for payment under the several scheduled items of the overall Contract, and no separate payment will be made.

9.3 APPLICATIONS FOR PAYMENT

- A. At least ten days before the date established for each progress payment, the Contractor shall submit to the Project Manager an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, such as copies of requisitions from Subcontractors and material Suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.
- B. With each Application for Payment, Contractor shall provide the Project Manager with a sworn statement or receipt from each and every Supplier, Subcontractor and Sub-subcontractors that the Contractor has paid for any and all materials, equipment and Work itemized in the prior application as being supplied and/or performed by the Supplier, Subcontractor and sub-subcontractors.
- C. Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material Supplier because of a dispute or other reason.
- D. The Owner shall only pay for materials satisfactorily incorporated into the Work and shall not pay for materials stored at the Project site or elsewhere.
- F. Once any material is satisfactorily incorporated into the Work and paid for by the Owner, it shall not be removed from the Work, except upon written approval by the Owner. It shall be the Contractor's sole responsibility to properly secure, cover and prevent the materials from being damaged, destroyed or stolen. If such materials should become damaged, destroyed or stolen, it shall be the Contractor's sole responsibility to replace such materials. No Applications for Payment shall be submitted nor payments made based on the value of materials stored.

- F. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of claims, security interests or encumbrances in favor of the Contractor, Subcontractor's material Suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

- I. Contractor shall maintain in a safe place at the Project site one record copy of all Drawings, Specifications, addenda, written amendments, Change Orders, Work, change directives, field orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to the Owner and Project Manager for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to the Project Manager for the Owner.

9.4 CERTIFICATIONS OF PAYMENT

- A. After receipt of the Contractor's Application for Payment, Project Manager shall either issue to the Owner a Certification of Payment, with a copy to the Contractor, for such amount as the Project Manager determines is properly due, or within twenty (20) business days after receipt of the Contractor's Application for Payment, notify the Contractor and Owner in writing of the Project Manager's reasons for withholding certification in whole or in part. If Certification of Payment has been issued by the Project Manager, payment is due within twenty-five (25) business days after the date on which the payment request or invoice is stamped as received by the Project Manager, in accordance with Part VII of Chapter 218, Florida Statutes, as may be amended from time to time, entitled the "Local Government Prompt Payment Act."

- C. The issuance of a Certification of Payment will constitute a representation by the Owner, based on the Project Manager's inspection/observations at the Project site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Project Manager's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Project Manager. The issuance of a Certification of Payment entitles the Contractor to payment in the amount certified.

9.5 DECISION TO WITHHOLD CERTIFICATION

- A. The Project Manager may decide not to certify payment and may withhold a Certification of Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Project Manager's opinion the representations to the Owner required by Paragraph 9.4 cannot be made. If the Project Manager is unable to certify payment in the amount of the Application, the Project Manager will notify the Contractor and Owner as provided in Paragraph 9.4 (B). If the Contractor and Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Certificate for Payment for the amount for which the Project Manager is able to make such representations to the Owner. The Project Manager may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or part of a Certification of Payment previously issued, to such extent as may be necessary in the Project Manager's opinion to protect the Owner from loss because of:
1. defective Work not remedied;
 2. third party claims filed or reasonable evidence indicating probable filing of such claims;
 3. failure of the Contractor to make payments properly to Suppliers, Subcontractors, Sub-subcontractors for labor, materials or equipment;
 4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 5. damage to the Owner or another contractor;
 6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 7. persistent failure to carry out the Work in accordance with the Contract Documents.
- B. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- C. If a Contractor's Application for Payment is rejected as described herein, and the Contractor submits a corrected Application for Payment which corrects the deficiency specified in writing by the Project Manager, the corrected Application for Payment must be paid or rejected on the later of, 10 business days after the corrected Application for Payment is received, or if the Owner is required by ordinance, charter or law to approve or reject the corrected Application for Payment, the first business day after the next regularly scheduled District Commission meeting held after the corrected Application for Payment is received.

- D. If a dispute between the Owner and the Contractor concerning an Application for Payment, cannot be resolved by the procedure set forth above, the dispute shall be resolved in accordance with the following dispute resolution policy: Proceedings to resolve the dispute shall be commenced no later than 45 days after the date on which the Application for Payment was received and shall be concluded by final decision of the Owner not later than 60 days after the date on which the Application for Payment was received. If the dispute is resolved in favor of the Owner, interest charges shall begin to accrue 15 days after the Owner's final decision. If the dispute is resolved in favor of the Contractor, interest shall begin to accrue as of the original date the payment became due.

9.6 PROGRESS PAYMENTS

- A. In accordance with Part VII of Chapter 218, Florida Statutes, as may be amended from time to time, entitled the "Local Government Prompt Payment Act," the Contractor shall promptly pay each Supplier, Subcontractor, and Sub-subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such portion of the Work, the amount to which said Supplier, Subcontractor, and Sub-subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall require each Subcontractor to make payments to Sub-subcontractors in similar manner.
- B. The Project Manager will, on request, furnish to a Subcontractor and/or Sub-subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Project Manager and Owner on account of portions of the Work done by such Subcontractor or Sub-subcontractor.
- C. Neither the Owner nor Project Manager shall have an obligation to pay the Subcontractor except as may otherwise be required by law.
- D. A Certification of Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.8 PARTIAL OCCUPANCY OR USE

- A. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete,

- provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Project Manager. Consent to the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the work shall be determined by written agreement between the Owner and Contractor, or if no agreement is reached, by decision of the Project Manager.
- B. Immediately prior to such partial occupancy or use, the Owner, Contractor and Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
 - C. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

- A. The Contractor shall be responsible for initiating, maintaining and supervision all safety precautions and programs in connection with the performance of the Contract.
- B. In the event the Contractor encounters on the Project site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) that has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Project Manager in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.
- C. The Contractor shall not be required to Work in an area on the Project site that contains asbestos or polychlorinated biphenyl (PCB).

10.2 SAFETY OF PERSONS AND PROPERTY

- A. The Contractor shall take responsible precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - 1. employees at the Project site and other persons who may be affected thereby;
 - 2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - 2. other property at the Project site or adjacent thereto, such as trees, shrubs, lawns, walks, relocation or replacement in the course of construction.

- B. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property for their protection from damage, injury or loss.
- C. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- D. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- E. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in this Section caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 10.2 (A) except damage or loss attributable to acts or omissions of the Owner or Project Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Article 3.
- F. The Contractor shall designate a responsible member of the Contractor's organization at the Project site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner and Project Manager.
- G. The Contractor shall not load or permit any part of the construction or Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 3.5 and Article 7.

ARTICLE 11 **INSURANCE AND BONDS**

11.1 INSURANCE

Contractor shall provide all insurance as specified in the Bid documents.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

- A. If a portion of the Work is covered contrary to the Project Manager's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Project Manager, be uncovered for the Project Manager's inspection and be replaced at the Contractor's expense without change in the Contract Time.
- B. If a portion of the Work has been covered and the Project Manager has not specifically requested to observe the Work prior to its being covered, the Project Manager may request to see such Work the Contractor shall uncover it. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

- A. The Contractor shall promptly, in a technically appropriate time period, correct Work rejected by the Project Manager or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected work, including additional testing and inspections and compensation for the Project Manager's services and expenses made necessary thereby.
- B. The Contractor shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- C. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with the Owner's Right to Carry Out the Work provision of this contract. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Project Manager, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Project Manager's services and expenses made necessary thereby. If such proceeds of sale do not cover costs, which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

- D. The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
- E. Nothing contained in this provision shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. The one-year period in this provision, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

- 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 Project Manager for review under the circumstances described below.
 - 1. **"Or-Equal" Items:** If the Project Manager determines that 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 Project Manager as a "or-equal" item, in which case review and approval of the proposed item may, with the Owner's approval, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. Project Manager determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;
 - b. Contractor certifies that: (i) there is no increase in cost to the Owner; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.
 - 2. **Substitute Items:**
 - a. If the Project Manager determines that the material or equipment proposed by Contractor does not qualify as an "or-equal" item under paragraph 12.3 (A)(1), it will be considered a proposed substitute item.

- b. Contractor shall submit sufficient information as provided below to allow Project Manager to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. Project Manager will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - c. The procedure for review by Project Manager will be set forth in this paragraph 12.3 (A)(2)(d), and as the Owner or Project Manager may decide is appropriate under the circumstances.
 - d. Contractor shall first make a written application to Project Manager for review of a proposed substitute item of material or equipment that the Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by Project Manager in evaluating the proposed substitute item. The Owner or Project Manager may require Contractor to furnish additional data about the proposed substitute item.
- B. Substitute Methods or Procedures:** If a specific means, method, technique, sequence, or procedure is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Project Manager. Contractor shall submit sufficient information to allow Project Manager to determine that the substitute proposed is equivalent to the expressly called for by the Contract Documents. The procedure for review by Project Manager will be similar to that provided in subparagraph 12.3 (A)(2).
- C. Project Manager's Evaluation:** Project Manager will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 12.3 (A) and (B). No "or-equal" or substitute will be ordered, installed or utilized until Project Manager's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or-equal." Owner retains the right to accept or reject any proposed "or-equal" or substitution, regardless of the Project Manager's determination. The Project Manager will advise Contractor in writing of any negative determination.

- D. **Project Manager's Cost Reimbursement:** Project Manager will record time required by Project Manager and the Project Manager's Project Managers in evaluating substitute proposed or submitted by Contractor pursuant to paragraphs 12.3 (A)(2) and (B) and in making changes in the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) occasioned thereby. Whether or not Owner or Project Manager approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Project Manager and Project Manager's Project Managers for evaluating each such proposed substitute.
- E. **Contractor's Expense:** Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW; CONSENT TO JURISDICTION

The law of the State of Florida shall govern the Contract. This contract is not subject to arbitration. Contractor is not entitled to Attorney fees should any portion of this contract be subject to litigation. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to this Agreement. Venue of any action to enforce this Agreement shall be in Broward County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term.

13.2 ATTORNEY'S FEES

Each party shall bear its own attorney's fees for any litigation related to this Contract.

13.3 SUCCESSORS AND ASSIGNS

The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or portion thereof without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.4 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, if delivered at or sent by registered or certified mail to the last business address known to the party giving notice or by facsimile transmission with proof of receipt.

13.5 RIGHTS AND REMEDIES

- A. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

- B. No action or failure to act by the Owner, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.6 TESTS AND INSPECTONS

- A. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so the Project Manager may observe such procedures. The Owner shall bear costs of tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded.
- B. If the Project Manager, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, the Project Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Project Manager of when and where tests and inspections are to be made so the Project Manager may observe such procedures. The Owner shall bear such costs except as otherwise provided.
- C. If such procedures for testing, inspection or approval reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Project Manager's services and expenses, and testing expenses.
- D. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly, in a technically appropriate time period, delivered to the Project Manager.
- E. If the Project Manager is to observe tests, inspections or approvals required by the Contract Documents, the Project Manager will do so promptly and, where practicable, at the normal place of testing.
- F. Tests or inspections made pursuant to Contract Documents shall be made promptly, in a technically appropriate time period, to avoid unreasonable delay in Work.
- G. The Project Manager's first inspection shall be at no charge to the Contractor; however, the actual costs incurred by the District for any subsequent inspections shall be deducted from the final payment to the Contractor.

13.7 INTEREST

Payments due and unpaid under the Contract Documents shall bear **NO** interest from the date payment is due and are not subject to prejudgment interest, if any matter related to payment becomes an issue litigated between the parties.

13.8 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

A. As between the Owner and Contractor:

1. **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
2. **Between Substantial Completion and Final Certification of Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certification of Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certification of Payment; and
3. **After Final Certification of Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.8, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

- A. The Contractor may terminate the Contract if the Work is stopped for a period of 90 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under Contract with the Contractor, for any of the following reasons:
1. issuance of an order of a court or other public authority having jurisdiction;
 2. an act of government, such as a declaration of national emergency, making material unavailable;
 3. because the Project Manager has not issued a Certification of Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
 3. if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or

- B. If one of the above reasons exists, the Contractor may, upon 30 additional days written notice to the Owner and Project Manager, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including overhead, profit and damages.
- C. If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon 30 additional days written notice to the Owner and the Project Manager, terminate the Contract and recover from the Owner as provided in Paragraph 14.1.(A).

14.2 TERMINATION BY THE OWNER

A. TERMINATION BY THE OWNER FOR CAUSE

1. The Owner may terminate the Contract if the Contractor:
 - a. persistently or repeatedly refuses or fails, to supply enough properly skilled workers and/or proper equipment and/or materials, or failure to adhere to the construction schedule established as adjusted from time to time pursuant to the terms of this Agreement.
 - b. fails to make payment to Suppliers and/or Subcontractors for equipment, materials or labor in accordance with the respective agreements between the Contractor and the Suppliers and/or Subcontractors;
 - c. disregards laws, ordinance, or rules, regulations or orders of a public authority having jurisdiction; or
 - d. otherwise is guilty of substantial breach of a provision of the Contract Documents.
2. When any of the above reasons exist, the Owner, upon certification by the Project Manager that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
 - a. take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - b. accept assignment of subcontracts; and
 - c. finish the Work by whatever reasonable method the Owner may deem expedient.

Prior to the Contractor leaving the Project site, the Contractor shall secure the site and leave it in a safe condition.

3. When the Owner terminates the Contract, the Contractor shall not be entitled to receive any further payment until the Work is finished.
4. All damages, costs and charges incurred by Owner, including compensation for the Project Manager's Services, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Owner shall exceed the unpaid balance, then Contractor shall be liable and shall pay to Owner the amount of said excess. The amount to be paid to the Owner shall be certified by the Project Manager, upon application, and this obligation for payment shall survive termination of this Contract.
5. If after notice of termination of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of Owner and Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth below.

B. TERMINATION BY THE OWNER FOR CONVENIENCE

This Contract may be terminated for convenience by Owner upon ten (10) days written notice to Contractor, and the Contractor's surety, if any (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, Contractor shall be paid for all acceptable work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by Contractor relating to commitments which had become firm prior to the termination. No payment shall be made for work/services or profit for such work/services, which have not been performed.

C. RECEIPT OF NOTICE OF TERMINATION

Upon receipt of Notice of Termination pursuant to Sections 14.2 A or B above, Contractor shall deliver or otherwise make available to Owner all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract whether completed or in process.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

- A. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
- B. An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent;
 1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
 2. that an equitable adjustment is made or denied under another provision of this Contract.

C. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

END OF GENERAL CONDITIONS

Document 00800

SUPPLEMENTAL CONDITIONS

END OF SUPPLEMENTAL CONDITIONS

DOCUMENT 00900

ADDENDUM

END OF ADDENDUM