

EXHIBIT "B"

ADDITIONAL CONDITIONS

1.1 Terminology

- 1.1.1 The following *words* or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.
- 1.1.2 *Change Order*--A document recommended by Engineer, which is signed by Contractor and Owner, and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract.
- 1.1.3 *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is a "*Third Party Claim*".
- 1.1.4 *Contract*--The entire and integrated written Contract between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or Contracts, and bid documents whether written or oral.
- 1.1.5 *Contract Documents*--Those items so designated in the Contract whether attached or referenced.
- 1.1.6 *Contract Times*--The number of days or the dates stated in the Contract to achieve Substantial Completion.
- 1.1.7 *Contractor*-- and its Subcontractors including any lower tier subcontractor for the performance of a part of the Work at the Site and any consultant, agent or anyone employed by any of them, or anyone for whose acts any of them may be liable as well as Suppliers, to the extent applicable, *others under contract* or for whom Contractor is legally liable, as appropriate.
- 1.1.8 *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not *Drawings* as so defined.
- 1.1.9 *Effective Date of the Contract*--The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
- 1.1.10 *Engineer*--*Delta Engineering* including any lower tier engineer, consultant, subcontractor and anyone employed by any of them, or anyone for whose acts any of them may be liable.

- 1.1.11 *Intent of Certain Terms or Adjectives.* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.
- 1.1.12 *Day* means a calendar day of 24 hours measured from midnight to the next midnight.
- 1.1.13 *Defective.* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents.
- 1.1.14 *Furnish* when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
- 1.1.15 *Final Acceptance* when used in the Contract or Contract Documents and in this Addendum shall mean, when the Work and all punch-list items have been completed and accepted, in writing, by Owner Association and Engineer.
- 1.1.16 *Install* when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
- 1.1.17 *Perform* or *provide* when used in connection with services, materials, or equipment, shall mean to furnish and install said *services*, materials, or equipment complete and ready for intended use.
- 1.1.18 When *furnish*, *install*, *perform*, or *provide* is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, *provide* is implied.
- 1.1.19 *Substantial Completion or Substantially Completed* with regard to the completion of the Work which is the subject of the Contract, shall mean when all Work has been completed, leaving only punch-list items remaining, and the Engineer issues a written Certificate of Substantial Completion.
- 1.1.20 Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

2 ARTICLE 2 - PRELIMINARY MATTERS

2.1. *Contract Times and Preconstruction Conference*

- 2.1.1 *Commencement of Contract Times; Notice to Proceed.* The Contract Time shall be based on the actual start date and the finally adjusted Substantial Completion date on the agreed Progress Schedule.

2.1.2 *Preconstruction Conference.* Before any Work on the main scope of work at the Site is started, a conference attended by Owner's Representative, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.2 *Acceptance of Schedules*

2.2.1 Contractor's Schedule of Submittals will be acceptable to Engineer and Owner's Representative if it provides a workable arrangement for reviewing and processing the required submittals.

2.3 Ownership and Use of Engineer's Drawings, Specifications and Other Instruments of Service:

2.3.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Engineer and the Engineer's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one 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 Engineer or the Engineer's consultants, and unless otherwise indicated the Engineer and the Engineers consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Engineer, on request, upon completion of the Work.

2.3.2 The Drawings, Specifications and other documents prepared by the Engineer and the Engineer's consultants, 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, Engineer and the Engineer's consultants. The Contractor, Subcontractors, sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Engineer and the Engineer's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Engineer and the Engineer's consultants. 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 Engineer's or Engineer's consultants' copyrights or other reserved rights.

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

3.1 *Intent*

3.1.1 The Contract Documents are complementary; what is required by one is as binding as if required by all.

3.1.2 Any labor, documentation, services, materials, or equipment that may be inferred from the Contract Documents as incidental and necessary given Contractor's experience with this type of remedial project or with industry standards to meet the obligations of the contract will be provided whether or not specifically called for at no additional cost to Owner.

3.1.3 Written clarifications and interpretations of the Contract Documents shall be issued by Engineer.

3.2 *Reference Standards*

Standards, Specifications, Codes, Laws, and Regulations. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of the issuance of the Building Permit. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents or applicable law.

3.3 *Reporting Discrepancies*

- 3.3.1 *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Owner's Representative and Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby. If an interpretation has an adverse impact on Contractor, Contractor shall request a Change Order with appropriate equitable adjustment.
- 3.3.2 *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Owner's Representative and Engineer in writing. Contractor shall not proceed with the Work affected thereby, except in an emergency, until an amendment or supplement to the Contract Documents, and change order when appropriate, has been issued by one of the methods indicated in the Contract.

3.4 *Resolving Discrepancies*

- 3.4.1 The list of Contract Documents and the order of precedence among them is the Contract. Additionally, the following are the lowest order of precedence below the list in the Contract:
- 3.4.1.1.1 The provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or**
- 3.4.1.1.2 The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).**

3.5 *Amending and Supplementing Contract Documents*

- 3.5.1 The parties may amend the Contract Documents to provide for additions, deletions, and revisions in the Work by either a Change Order or a Work Change Directive.
- 3.5.2 The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized only by a written document from Engineer, by one or more of the following ways:
 - 3.5.2.1 A Field Order;
 - 3.5.2.2 Engineer's approval of a Shop Drawing or Sample;
 - 3.5.2.3 Engineer's written interpretation or clarification.
 - 3.5.2.4 Amendments, interpretations, clarifications and supplements issued under this Section will not be cause for an increase in the Cost of the Work Contract Sum if such amendments and supplements do not adversely impact performance of the Work.

3.6 *Electronic Data*

- 3.6.1 Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 3.6.2 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. The transferring party will correct any errors detected within the 60-day acceptance period.
- 3.6.3 When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.1 *Subsurface and Interior Conditions*

- 4.1.1 A Contractor is familiar with explorations and tests of subsurface conditions at the Site that Engineer has used in preparing the Contract Documents.
- 4.1.2 Contractor shall be responsible for any and all property damage and/or bodily injury that it causes to known interior and/or exterior underground/overhead/surface mounted/embedded utilities or structures.
- 4.1.3 Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by third parties not engaged by either for such purposes; and

- 4.1.4 The cost of all of the following will be included in the Contract Sum, and Contractor shall have full responsibility for:
- 4.1.4.1 reviewing and checking all such information and data;
 - 4.1.4.2 locating all Underground Facilities shown or indicated in the Contract Documents;
 - 4.1.4.3 coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - 4.1.4.4 the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- 4.1.5 If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any affected Work give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the temporary safety and protection of an Underground Facility it exposed.
- 4.1.6 If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Sum, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Sum Owner or Contractor may make a Claim.

5 ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

5.1 *Services, Materials, and Equipment*

- 5.1.1 Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- 5.1.2 All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Owner's Representative or Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment not specified in the Contract Documents. Contractor agrees that it will comply with all application and other requirements of each producer or supplier of materials, and will ensure that all inspections or other requirements for the warranty of the materials take place.
- 5.1.3 All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

5.2 *Progress Schedule*

- 5.2.1 Contractor shall adhere to the Progress Schedule as it may be adjusted from time to time as provided below.
- 5.2.2 Contractor shall submit to Engineer and Owner's Representative for acceptance proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
- 5.2.3 Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted as a request for Change Order.
- 5.2.4 Owner's Representative shall convene project meetings at the site weekly to review the progress of the Work. Present at the meeting will be the Contractor and Engineer.

5.3 *Substitutes and "Or Equals"*

- 5.3.1 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
- 5.3.2 "Or Equal" Items: If in Engineer's reasonable discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's reasonable discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. A proposed item of material or equipment will be considered functionally equal to an item so named if in the exercise of reasonable judgment Engineer determines that:
 - 5.3.2.1 it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 5.3.2.2 it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 5.3.2.3 it has a proven record of performance and availability of responsive service; and
- 5.3.2.4 Contractor certifies that, if approved and incorporated into the Work, there will be no increase in cost to the Owner or increase in Contract Times; and it will conform substantially to the detailed requirements of the item named in the Contract Documents
- 5.3.3 If in Engineer's reasonable discretion an item of material or equipment proposed by Contractor does not qualify as an "or equal" item, it will be considered a proposed substitute item. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.

- 5.3.4 Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall include the following information:
- 5.3.4.1 It will perform adequately the functions and achieve the results called for by the general design;
 - 5.3.4.2 It will be similar in substance to that specified; and be suited to the same use as that specified;
 - 5.3.4.3 It 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;
 - 5.3.4.4 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 other work on the Project) to adapt the design to the proposed substitute item; and
 - 5.3.4.5 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;
 - 5.3.4.6 will identify all variations of the proposed substitute item from that specified , and
 - 5.3.4.7 available engineering, sales, maintenance, repair, and replacement services;
 - 5.3.4.8 and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- 5.3.5 *Engineer's Evaluation:* Engineer and Contractor shall agree on submittal and evaluation times within the constraints of the Progress Schedule. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- 5.3.6 *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or equal" at Contractor's expense.

5.4 *Concerning Subcontractors, Suppliers, and Others*

- 5.4.1 Contractor shall not employ any Subcontractor, Supplier, or other individual, whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier to furnish or perform any of the Work against whom Contractor has reasonable objection.

- 5.4.2 Contractor shall provide Owner with a list of its known Subcontractors and Suppliers within 15 days of the execution of this Contract and timely update the list as additional subcontractors and suppliers are identified. Owner, on the basis of reasonable objection after due investigation, may require Contractor during the Project to terminate a Subcontractor or Supplier for convenience and engage an acceptable party. The parties shall work together on the transition to ensure that there is no adverse impact to the Project. No acceptance by Owner of any such Subcontractor, Supplier, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work. The list shall include the full name, address, telephone number and contact person for each listed entity. Owner agrees barring emergency circumstances or with the permission of Contractor that it will not communicate with such listed parties unless Contractor is included.
- 5.4.3 Contractor shall within 15 days of the execution of this Contract supply Owner with a copy of its Subcontracts and proof of insurance for each. As subcontractors are added, subcontracts and proof of insurance for each shall be provided within 15 days prior such subcontractor mobilizing.
- 5.4.4 Contractor shall be responsible to Owner for all acts and omissions of the Subcontractors, and Suppliers (including agents and consultants). Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, nor shall anything in the Contract Documents create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier except as may otherwise be required by Laws and Regulations.
- 5.4.5 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, and Suppliers performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- 5.4.6 Contractor shall require all Subcontractors, and Suppliers to communicate with Engineer through Contractor.
- 5.4.7 All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate subcontract between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents. Whenever any such subcontract is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in §5.5, the subcontract between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner and Contractor to the extent Owner and Contractor waive rights against them as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.
- 5.5 *Permits.* Contractor shall obtain all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and directly pay for permit fees.
- 5.6 *Laws and Regulations*

- 5.6.1 Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to Contractor in performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations. Similarly, Owner and Engineer shall comply with all Laws and Regulations to which they are subject regarding their work or obligations related to the Work and the specification. Contractor shall not be responsible for monitoring compliance or discovering non-compliance.
- 5.6.2 If Contractor performs any Work knowing that it is contrary to Laws or Regulations, Contractor shall bear that portion of all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs). However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations.
- 5.7 *Taxes.* Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
- 5.8 *Use of Site and Other Areas.* Limitation on Use of Site and Other Areas:
- 5.8.1 Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. With the exception of Owner's building, Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 5.8.2 Should any claim be made by any such owner or occupant because of Contractor's performance of the Work, Contractor shall promptly at no cost to Owner settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- 5.9 *Safety and Protection.* Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
- 5.9.1 all persons on the Site or who may be affected by the Work;
- 5.9.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- 5.9.3 other property at the Site or adjacent thereto, including business establishments and other structures, trees, shrubs, lawns, walks, pavements, roadways, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- 5.9.4 Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- 5.9.5 All damage, injury, or loss to any property to the extent caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or anyone for whose acts any of them may be liable, shall be remedied by Contractor.
- 5.9.6 Contractor's duties and responsibilities for safety and for protection of the Work shall continue until Substantial Completion and for punch list work prior to Final Acceptance.
- 5.10 *Safety Representative.* Contractor shall designate a full-time qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- 5.11 *Hazard Communication Programs.* Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- 5.12 *Emergencies.* In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, which includes approaching hurricanes or tropical storms, Contractor is obligated to act to prevent threatened damage, injury, or loss to the Project including but not limited to the costs for ground protection, de-mobilization and re-mobilization required to remove and replace contractor equipment and materials. Contractor shall be responsible to correct, at its expense, any aspect of the Work damaged as a result of Contractor's negligence in preparation for the storm.
- 5.13 *Shop Drawings and Samples.* Contractor shall submit Shop Drawings and Samples to Engineer and Owner's Representative for review and approval in accordance with the Section 6.17 below.
- 5.14 *Shop Drawings*
- 5.14.1 Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required.
- 5.14.2 *Samples:* Contractor shall also submit, if requested by Engineer, samples to Engineer for review and approval.
- 5.14.3 Clearly identify each sample as to material, supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require enabling Engineer to review the submittal for the limited purposes required.
- 5.14.4 Where a Shop Drawing or Sample is required by Engineer or the Contract Documents, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- 5.15 *Submittal Procedures.* Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:
- 5.15.1 all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar applicable information;
- 5.15.2 the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the Work;
- 5.15.3 all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions;
- 5.15.4 coordination of each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

- 5.15.5 Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
- 5.15.6 With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.
- 5.15.7 Engineer will provide timely review of Shop Drawings and Samples. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- 5.15.8 Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. In the case of Shoring only, Contractor shall include the Engineer in all material aspects, so that Engineer can ensure that the Shoring plan and execution meets the County's approval.
- 5.15.9 Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements.
- 5.15.10 Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- 5.15.11 Contractor shall carry on the Work and adhere to the Progress Schedule during disputes or Contracts with Owner. No Work shall be delayed or postponed pending resolution of any disputes or Contracts, except as permitted by other provisions of the Contract Documents, Laws and Regulations or as Owner and Contractor may otherwise agree in writing.

5.16 *Contractor's General Warranty*

- 5.16.1 Contractor warrants that if Owner discovers a defect in material or workmanship or failure of the Work to substantially conform to the Contract Documents during the warranty period, Contractor shall repair or replace as provided below.
- 5.16.2 Contractor's warranty covers defects and non-conformities for a period of five (5) years from Substantial Completion (the "Warranty Period"). If within the Warranty Period and subject to FL Statute §558, Owner gives Contractor timely written notice detailing a defect or nonconformance, Contractor shall commence to cure, within a reasonable amount of time, each such Defect, scheduled as weather permits.
- 5.16.3 Contractor's warranty hereunder excludes defects or damage caused by:
 - 5.16.3.1 abuse, modification, or improper maintenance or operation by persons other than Contractor or expressly authorized by Contractor or wear and tear under normal usage.

5.16.3.2 Contractor shall provide all available standard manufacturers' warranties either at Substantial Completion of the Work if Owner or Engineer will enforce those warranties, or at the end of Contractor's warranty period if Contractor is to enforce them.

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

the Work in accordance with the Contract Documents:

- 5.16.4.1 observations or recommendation by Engineer;
- 5.16.4.2 payment by Owner of any progress or final payment;
- 5.16.4.3 the issuance of a certificate of Substantial Completion by Engineer with the exception that it determines the start of the warranty period;
- 5.16.4.4 use or occupancy of the Work or any part thereof by Owner;
- 5.16.4.5 any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
- 5.16.4.6 any inspection, test, or approval by others.
- 5.16.4.7 any correction of defective Work by Owner.

6 ARTICLE 7 - ENGINEER'S STATUS DURING CONSTRUCTION

6.1 *Visits to Site*

- 6.1.1 Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Engineer at an initial meeting at the site will provide Contractor with a schedule of stages of the Work at which mandatory inspection must be called for by Contractor. Contractor shall provide Engineer and Owner's Representative of at least 48 hours notice of when a stage of the Work requiring mandatory inspection is to take place. Based on information obtained during such visits and inspections, Engineer, for the benefit of Owner, will determine if the Work is proceeding in accordance with the Contract Documents.

6.2 *Rejecting Defective Work*

- 6.2.1 Engineer will have authority to reject Work which Engineer determines in its professional judgment is defective or will not produce Work that conforms to the Contract Documents or where Contractor's design will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed. To the extent Engineer's rejection is based on errors, omissions, etc. in the Contract Documents, and not Contractor's defective workmanship or unspecified materials, the Owner shall be liable for the rejection and remediation.

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

- 6.3.1 Engineer will be the initial interpreter of the requirements of the Contract Documents and initial judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to final acceptance is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 7 days of the event giving rise to the question.

6.3.2 Engineer will, with reasonable promptness, render a written decision on the issue referred.

7 ARTICLE 8 - CHANGES IN THE WORK; CLAIMS

7.1 *Execution of Change Orders*

7.1.1 Owner and Contractor shall execute appropriate Change Orders recommended by Engineer for:

7.1.1.1 changes in the Work which are: (i) ordered by Owner, (ii) required because of acceptance of defective Work or Owner's correction of defective Work, (iii) agreed to by the parties; or (iv) required by any provision of this Contract.

7.1.1.2 changes in the Contract Sum which are agreed to by the parties; and

7.1.1.3 changes in the Contract Sum resulting from any written decision rendered by Engineer.

7.2 *Notification to Surety.* If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. Contractor shall in a timely fashion supply Owner with a copy of any such notice. The amount of each applicable bond will be adjusted to reflect the effect of any such change and Owner shall reimburse Contractor for any additional premium charged by the surety.

7.3 *Claims*

7.3.1 Claims shall be handled as set forth in section 19 of the Contract

8 ARTICLE 9 - CHANGE OF CONTRACT SUM; CHANGE OF CONTRACT TIMES

8.1 *Change of Contract Price or Contract Times*

8.1.1 Only a Change Order or Claim may change the Contract Sum or Contract Time.

8.1.2 The parties will agree on the cost of Work covered by a Change Order.

9 ARTICLE 10 – VALUE ENGINEERING

9.1 *Value Engineering Incentive.* If Contractor presents a Value Engineering Change Proposal (VECP), which is in a change proposal that results in reducing the Contract Sum without impairing essential functions or characteristics of the work, that is acceptable to Owner, Owner agrees to share the savings to the Project on a 50/50 basis as detailed below.

9.2 Contractor may give written notice of its intent to develop a VECP that includes: a) brief description of the proposed change and b) estimated cost saving of the proposed change. Owner shall respond in writing within ten (10) days of submittal, indicating whether or not it wants Contractor to proceed with and submit the fully documented VECP.

9.3 Contractor shall identify a VECP at such as the time of submittal and shall include the following:

9.3.1 Description of the difference between the existing contract requirement and that proposed, including the comparative advantages and disadvantages of each.

- 9.3.2 A justification when an item's function or characteristics are being altered and the effect of the change on the end item's performance.
 - 9.3.3 A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
 - 9.3.4 A separate, detailed cost estimate for the affected portions of the existing contract requirement and the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts.
 - 9.3.5 A description and estimate of costs the Owner may incur in implementing the VECP, such as test and evaluation and operating and support costs.
 - 9.3.6 A prediction of any effects the proposed change will have on Collateral Costs to the Owner.
 - 9.3.7 A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
- 9.4 Owner shall be the sole judge of the acceptability of a VECP. If the parties agree the VECP needs further development, the parties will agree on the tasks and costs of additional development in writing.
- 9.5 Cost Definitions
- 9.5.1 "Collateral costs," as used in the clause, means the Owner's costs of operation, maintenance, logistic support, or the Owners' property.
 - 9.5.2 "Collateral savings" as used in the clause, means those measurable net reductions resulting from a VECP in the Owner's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.
 - 9.5.3 "Contractor's development and implementation costs," as used in the clause, means those costs the Contractor incurs on a VECP, specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by the Owner's acceptance.
 - 9.5.4 "Owner costs," as used in this clause, means those costs incurred by the Owner that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.
 - 9.5.5 "Contract Savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractor's development and implementation costs.
- 9.6 Savings Sharing.
- 9.6.1 The Owner's share of savings is determined by subtracting Owner's costs from Contracts Savings and multiplying times 50 percent.

9.6.2 Owner shall authorize use of the VECP by a Change Order accepting the VECP; reducing the estimated cost of the Work and the Contract Sum by the amount of Contract Savings; and allocating Contractor's share of savings by adding the amount calculated to the estimated cost of the Work and the Contract Sum.

9.7 Subcontracts.

9.7.1 Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP excluding value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided that these payments shall not reduce the Owners share of the savings resulting from the VECP.

9.7.2 If the Contractor engages an architect, engineer or other consultant to provide professional services pertaining to the development and/or implementation of a VECP, the Contractor's subcontract with any such provider of professional services must name the Owner as a third-party beneficiary to such subcontract.

9.8 Data.

10 ARTICLE 11 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

10.1 *Notice of Defects.* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor in writing specifying the defect under the Contract Documents. All defective Work may be rejected, corrected, or accepted as provided in this Article.

10.2 *Access to Work.* Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

10.3 *Tests and Inspections.* Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

10.4 Owner shall employ and pay for the services of an independent testing laboratory to perform all first inspections, tests, or approvals required by the Contract Documents otherwise specifically provided in the Contract Documents.

10.5 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

10.6 Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

10.7 If any Work (or the work of others, if specified in the Contract Documents) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

10.8 Uncovering Work shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

10.9 *Uncovering Work*

10.9.1 If any Work is covered contrary to the Contract Documents, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

10.9.2 If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

10.9.3 If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Sum, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim.

10.10 *Owner May Stop the Work.* Owner's right to stop work shall be limited to those portions of the Work where continuation would present a safety or environmental hazard or when Contractor does not have the apparent ability or willingness to correct defects and such defective work is likely to continue. For other breaches of contract, Owner shall exercise other rights in the Contract. The right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier.

10.11 *Correction or Removal of Defective Work.* Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the Work, remove it from the Project and replace it with Work that is not defective at its expense.

10.12 *Acceptance of Defective Work.* During the Project, if, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Engineer shall issue a Change Order incorporating the necessary revisions in the Contract Documents with respect to the Work with an appropriate decrease in the Contract Sum, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim.

10.13 *Owner May Correct Defective Work.* If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required, Owner may remove that portion of the Work from Contractor's scope and issue a change order for scope change with equitable adjustments to Contract Sum.

11 ARTICLE 12 - PAYMENTS TO CONTRACTOR AND COMPLETION

11.1 Owner may refuse to make payment of the full amount recommended by Engineer because:

12.1.1 Liens have been filed in connection with the payments previously made by Owner for Work, except where Contractor has delivered a specific bond required by law to secure the satisfaction and discharge of such Liens;

11.1.2 reasonable back-charges against Contractor for which Contractor received prior notice and the opportunity to correct; or

11.1.3 un-remedied defective Work until corrected.

11.2 *Warranty of Title.* Contractor warrants that title to Work will pass to Owner at Final Payment.

12 ARTICLE 13 - DISPUTE RESOLUTION

12.1 *Methods and Procedures*

12.1.1 B. The parties shall attempt to settle any claim or controversy between them which concerns, relates to or arises from this Contract through consultation, negotiation in good faith, and a spirit of mutual cooperation.

12.1.2 If either party concludes that settlement discussions have reached an impasse, the parties shall submit their dispute to mediation prior to any legal action being initiated, except in the case of a bona fide emergency. The Parties shall mutually agree upon the selection of a mediator and the date for mediation. The mediation shall be held in Sarasota County, Florida no later than thirty days after the date that the parties reached an impasse in communication, upon notice of request for mediation by either party and upon providing the opposing party with a choice of five mediators located within the State of Florida from which to choose, unless an agreed extension occurs due to the schedule of the chosen mediator. **Owner and Contractor shall participate in the mediation process in good faith with the goal of completing the process within 30 days of filing of the request.**

12.1.3 In the event that the Parties cannot resolve their dispute at mediation, or if the parties are unable to schedule mediation in good-faith within the time permitted above, either party may proceed with

legal action against the other in a court of competent jurisdiction.

- 12.1.4 If either party files suit to enforce to enforce their rights under this Contract or in pursuit of any other cause of action arising from the Work, the prevailing party in such a suit shall be entitled to an award of reasonable attorney's fees and costs, including fees and costs incurred on appeal. The sole and exclusive venue for any action filed under this Paragraph shall be the Circuit Court for Sarasota County, Florida.

13 ARTICLE 15 - MISCELLANEOUS

- 13.1 *Giving Notice.* Whenever any provision of the Contract Documents requires the giving of notice, it will be written and deemed to have been validly given if:
- 13.1.1 delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
- 13.1.2 delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.
- 13.2 *Computation of Times.* When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.
- 13.3 *Cumulative Remedies.* The duties and obligations imposed by the Contract and the rights and remedies of the parties are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, or by other provisions of the Contract Documents, unless otherwise expressly provided. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.
- 13.4 *Survival of Obligations.* All provisions that by their nature are intended to extend beyond final payment shall remain in effect as applicable.
- 13.5 *Controlling Law.* This Contract is to be governed by the law of the State of Florida.
- 13.6 *Headings.* Article and paragraph headings are inserted for convenience only and do not constitute parts of the Contract.
- 13.7 *Board Change.* Any and all decisions made by the Owner shall be binding and cannot be subsequently changed or superseded by reason of a change in Owner board members.
- 13.8 ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

13.8.1