



ADVERTISEMENT/INVITATION TO BID

The Wellington Council is accepting sealed bids for **ITB #077-12/ENR Annual Asphalt Milling & Resurfacing** for one (1) year with the option for two (2) additional one (1) year renewal period.

All Bids must be received, one (1) original and one (1) PDF Copy (CD) at the address below in the Clerk's Office, no later than **June 19, 2012 at 10:00 am. Local Time**, at which time all Bids will be publicly opened and read. Receipt of a response by any Wellington Office, Receptionist, or personnel other than the Clerk's Office does not constitute "receipt" as required by this solicitation. The Clerk's Office time stamp shall be conclusive as to the timeliness of receipt.

The Owner for the Project is Wellington, Florida, ("Owner").

Bid Documents may be downloaded from DemandStar starting on **May 21, 2012**.

Bids must be accompanied by a Bid Bond/Security in the amount of ten percent (10%) of the Bid and must accompany each Bid in accord with the Instructions to Bidders.

No bid may be withdrawn for a period of 120 days after the posting of the recommended award or as otherwise provided in Instructions to Bidders.

The successful Bidder, who is awarded the contract, may be required to furnish a 100% Construction Performance Bond and a 100% Construction Payment Bond meeting the requirements of Section 255.05 Florida Statutes.

All Bids shall be sealed when submitted and be delivered or mailed to:

**Wellington
Clerk's Office
12300 Forest Hill Boulevard
Wellington, FL 33414**

ENVELOPE MUST BE IDENTIFIED AS SEALED BID #077-12/ENR Annual Asphalt Milling & Resurfacing

The Owner reserves the right to accept or reject any or all Bids (in whole or in part) with or without cause, to waive technicalities, irregularities or informalities, or to accept bids which in its judgment best serve the Owner.

Any and all questions regarding this solicitation shall be directed to the Wellington Purchasing Division: **Attn: Ed De La Vega, 12300 Forest Hill Boulevard, Wellington, Florida 33414: Ph 561-791-4055 or email: edelavega@wellingtonfl.gov.**

Palm Beach Post Advertisement:

May 20, 2012

BID ACKNOWLEDGEMENT COVER PAGE

SUBMIT BIDS TO:
City of Wellington
Attn: Clerk's Office
12300 Forest Hill Blvd
Wellington, FL 33414

REFER ALL INQUIRIES TO PRIMARY CONTACT:
Purchasing Division
12300 Forest Hill Blvd
Wellington, FL 33414
Ph:(561) 791-4055/Fax: (561) 904-5809

City of Wellington INVITATION TO BID

BID TITLE:
Annual Asphalt Milling and Resurfacing

BID NO:
#077-12/ENR

NAME OF FIRM, ENTITY, or ORGANIZATION:

NAME OF CONTACT PERSON

VENDOR MAILING ADDRESS:

CITY:

ZIP:

STATE:

TITLE

VENDOR HEADQUARTERS ADDRESS (IF DIFFERENT):

CITY:

ZIP:

STATE:

PHONE NUMBER:

FEDERAL EMPLOYER IDENTIFICATION NUMBER (EIN):

EMAIL ADDRESS:

STATE OF FLORIDA BUSINESS LICENSE NUMBER (IF APPLICABLE)

FAX NUMBER:

ORGANIZATIONAL STRUCTURE (Please Check One):

Corporation ☐

Partnership ☐

PROPRIETORSHIP ☐

Joint Venture ☐

Other ☐

If Corporation, please provide the following:

(A) *Country of Incorporation:* _____ *Date of Incorporation:* _____ (B) *State or*
Month / Day / Year

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all terms and conditions of this bid and certify that I am authorized to sign this bid for the bidder and that the bidder is in compliance with all requirements of the Invitation to Bid, including but not limited to, certification requirements.

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AUTHORIZED SIGNATURE (MANUAL)

AUTHORIZED SIGNATURE (PRINT OR TYPED)

TITLE (PRINT OR TYPED)

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INSTRUCTIONS TO BIDDERS

INTENT: The intent of solicitation is to secure a pavement contractor(s) for Wellington's Annual Pavement Programs. The work generally consists of three (3) activities: 1) Section A – Asphalt Milling and Resurfacing and 2) Section B – Pathway Resurfacing and 3) Section C – Seal Coating. Contractor shall provide all labor, equipment, tools and materials to complete the work. Contractor shall be responsible for removal and disposal of existing pavement, supply and delivery of new materials, maintenance of traffic, and coordination of activities and miscellaneous activities required to provide a for a complete, turnkey finished product. The selected awardee(s) shall be bound by all terms, conditions, and requirements in these documents and is hereby placed on notice that acceptance of this bid by Wellington shall constitute a binding contract. Wellington intends to award a primary and secondary awardee for Sections A, B and C. Contractors may submit proposals for all Sections or only for one (1) Section.

ARTICLE 1. DEFINED TERMS.

- 1.1 Terms used in these Instructions to Bidders, which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- 1.2 Wellington objects to and shall not consider any additional terms or conditions submitted by a Bidder, including any appearing in documents attached as part of any response. In submitting its response, the Bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with the solicitation requirements, specifications, terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a bid or response.

ARTICLE 2. COPIES OF BIDDING DOCUMENTS.

Bidder shall submit one original and one PDF (CD) copy of the following bid to be considered.

- 2.1 Complete sets of the Bidding Documents in the number and for the cost, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Wellington Purchasing Division or downloaded from www.DemandStar.com.
- 2.2 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Public Works Roads Supervisor assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3 Owner and Public Works Roads Supervisor in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.
- 2.4 AutoCad files and/or raw data will not be provided for use in preparing Bids.

ARTICLE 3. QUALIFICATIONS OF BIDDERS.

3.1 To demonstrate Bidder's qualifications to perform the Work, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below:

- A. Contractors shall be a licensed certified general contractor for the section(s) in which the contractor is submitting a proposal and shall have a minimum of 10 years' experience with similar work for public agencies in Palm Beach County. Contractor shall not have received an unsatisfactory performance rating from the Village of Wellington in the past three (3) years.
- B. References from a minimum of five (5) other project owners for comparable projects within the past 5 years.
- C. The Owner reserves the right to request a Bidder under consideration for award to furnish a confidential certified financial statement, current within the past quarter, which must be a complete report of the financial resources and liabilities or as otherwise requested by the Owner. Regardless of the foregoing, such information will be subject to F.S. 119.01, *et seq.*

3.2 Competency Requirements. Bids will be considered only from firms which are regularly engaged in the business of providing the contracting services as described in this Invitation to Bid and who can produce evidence that they have established a satisfactory

record of performance for a reasonable period of time; have sufficient financial support, sufficient personnel, equipment and organization to insure that they can satisfactorily perform the construction of the project if awarded a Contract under the terms and conditions herein stated. The term "equipment and organization" as used herein shall be construed to mean a fully equipped and well-established company in line with the best business practices in the industry and as determined by the proper authorities of the Owner. Pre-award inspection of the Bidder's facility may be made prior to award of Contract.

ARTICLE 4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE.

4.1 Subsurface and Physical Conditions

- A. Reports and drawings, if any, will be attached to the Contract Documents. Such reports and drawings may include:
 - (1) Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site.
 - (2) Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. Copies of reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents. Unless otherwise set forth in the Supplementary Conditions, there is no "technical data" in any of the reports and drawings that may be relied upon by the Contractor. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.2 Underground Facilities

Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Public Works Roads Supervisor by owners of such Underground Facilities, including Owner or others.

4.3 Hazardous Environmental

- A. Reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site, if any, will be attached to the Contract Documents.
- B. Copies of reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents. Unless otherwise set forth in the Supplementary Conditions, there is no "technical data" in any of the reports and drawings that may be relied upon by the Contractor. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.4 Costs for such documents will be based on current rates for reproduction and will not be eligible for any refund.

4.5 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the site which was not shown or indicated in the Drawings or Specifications or identified in the Bidding Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.

4.6 On request in advance, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up, and restore the site to its former condition upon completion of such activities. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

4.7 It is the responsibility of each Bidder before submitting a Bid, to:

- A. Examine and carefully study the Bidding Documents thoroughly and other related data identified in the Bidding Documents;
- B. Visit the site to become familiar with and satisfy Bidder as to the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Work;
- C. Become familiar with and satisfy Bidder as to all federal, state and local Laws, rules, regulations, codes, ordinances, directives and guidelines that may affect cost, progress, performance or furnishing of the Work;
- D. Carefully study all identified reports, tests and drawings related to surface, subsurface and physical conditions and Hazardous Environmental Conditions, if any;
- E. Consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the site; the Bidding Documents; and the identified Site-related reports and drawings, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents;
- F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. Become aware of the general nature of the work to be performed by Owner and others, if any, at the Site that relates to the Work;
- H. Promptly give Public Works Roads Supervisor written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Public Works Roads Supervisor is acceptable to Bidder; and
- I. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.8 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, that Bidder has given Public Works Roads Supervisor written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Public Works Roads Supervisor are acceptable to Bidder, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 5. MANDATORY PREBID MEETING

5.1 Not Applicable

ARTICLE 6. SITE AND OTHER AREAS.

6.1 Identified Sites will be throughout City limits is identified in the Bidding Documents and pre-bid meeting. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7. INTERPRETATIONS AND ADDENDA.

7.1 All questions about the meaning or intent of the Contract Documents are to be directed, in writing, to the Owner attention to the Purchasing Department as provided in the advertisement/Invitation to Bid (unless another issuing office is designated in the advertisement/Invitation to Bid). Interpretations or clarifications considered necessary by the Public Works Roads Supervisor in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by issuing office as having received the Bidding Documents. **Questions received less than 10 days prior to the date set for the opening of bids may not be answered.**

Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. **The deadline to submit questions or request clarifications is June 11, 2012 6:00 pm. local time.**

7.2 Submission of a Bid constitutes acknowledgment by the Bidder of the receipt of Addenda. All Addenda are a part of the Bid documents and each Bidder will be bound by such Addenda, whether or not received by him. It is the responsibility of each Bidder to verify that he has received all Addenda issued before Bids are opened.

7.3 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or the Public Works Roads Supervisor.

ARTICLE 8. BID SECURITY.

8.1 Each Bid must be accompanied by Bid security made payable to Owner in an amount of ten percent of the Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond (on form attached, if a form is prescribed) issued by a surety meeting the requirements of Paragraph 5.01 of the General Conditions and section 287.0935, Florida Statutes and made payable to Wellington.

8.2 The Bid security of the Successful Bidder shall be retained until such Bidder has executed the Contract Documents and furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within fifteen days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award and the Bid security of the Bidder shall be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the **121st** day after the posting of the recommended award, whereupon Bid security furnished by such Bidders will be returned. Bid security of other Bidders whom Owner believes do not have a reasonable change of receiving the award, will be returned within seven days after the Bid opening.

ARTICLE 9. CONTRACT TIME.

9.1 This contract term is for the duration designated for this Project in the bid form. If Contract Times are left blank in the Bid Form, the time for Substantial Completion and Final Completion are to be set forth by Bidder in the Bid and will be included in the Agreement. The times will be taken into consideration by Owner during the evaluation of Bids, and it will be necessary for the Successful Bidder to satisfy Owner of Bidder's ability to achieve Substantial Completion and Final Completion within the times designated in the Bid.

ARTICLE 10. LIQUIDATED DAMAGES.

10.1 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11. MATERIALS; SUBSTITUTE OR "EQUIVALENT".

11.1 All materials supplied by the Contractor under the provisions of this Bid shall be new materials of the kind and character called for in the plans and Specifications. Defective equipment or material damages in the course of installation or tests shall be replaced or repaired in a manner satisfactory to the Owner. All materials and equipment to be furnished under this Bid shall be the standard product of a manufacturer regularly engaged in the production of such material and shall be the manufacturer's current standard design.

11.2 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Public Works Roads Supervisor, written application for such acceptance must be received by Public Works Roads Supervisor, application for such acceptance will not be considered by Public Works Roads Supervisor until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Public Works Roads Supervisor is set forth in Paragraphs 6.05 of the General Conditions and may be supplemented in Section 01000: General Requirements. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Public Works Roads Supervisor's decision of approval or disapproval of a proposed item will be final. If Public Works Roads Supervisor approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 12. SUBCONTRACTORS, SUPPLIERS AND OTHERS.

12.1 If the Bid Form or Specifications require (or if Owner requests after Bids are received) the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to Owner in advance of the specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within seven days after the Bid opening (or seven days after request by Owner) submit to Owner a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualifications for each Subcontractor, Supplier, person or organization if requested by Owner. Subcontractors shall be required to meet the Competency of Bidder and References requirements set forth in the General Information section of the Contract Documents. If Owner or Public Works Roads Supervisor after due investigation has reasonable objection to any proposed Subcontractor, Supplier, or other person or organization, either may, before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.

12.2 If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Public Works Roads Supervisor does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and the Public Works Roads Supervisor subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions. All subcontractors, suppliers and other persons and organizations proposed for those portions of the work shall be properly licensed to perform such work.

12.3 No Contractor shall be required to employ any Subcontractor, Supplier, other person, or organization against whom Contractor has reasonable objection.

ARTICLE 13. PREPARATION OF BID AND BID FORM.

13.1 The Bid Form is included with the Bidding Documents; additional copies may be obtained from the Owner (or the issuing office). Bid submittals must be made on the blank forms provided herein. All blank spaces in the Bid form must be filled in, regardless of whether quantities are shown, and no change shall be made either in the phraseology of or in the items mentioned in the Bid form.

13.2 All blanks on the Bid Form must be completed in ink or by typewriter.

13.3 Each bid form shall specify a unit price written in figures for each of the separate items as called for, except when the Bid calls for a lump sum. Lump sum Bids shall be shown in figures.

13.4 Any Bid submittal which does not contain prices set opposite each of the items for which there is a blank space will be cause for rejection. Any items not bid upon shall be indicated "NO BID" in place of the price. Any Bid which in any manner fails to conform to the conditions of the published notice will be cause for rejection.

13.5 In the event of an extension error, the unit price will prevail and the Bidder's total offer will be corrected accordingly. In the event of addition errors, the extended totals will prevail and the Bidder's total offer will be corrected accordingly. If there is a conflict, words take precedence over figures. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

13.6 Bids by corporations or such entities such as, but not limited to a Limited Liability Company must be executed in the corporate name by the president, vice-president or manager (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary, if applicable. The corporate address and state of incorporation must be shown below the signature.

13.7 Bids by partnerships must be executed in the partnership name and signed by a general partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature. Bids by Limited Liability Companies must be executed in accordance with their corporate documents. Bids by an individual must be signed by the individual and include the primary mailing address of the individual.

13.8 All names must be typed or printed below the signature. Bids must be signed in ink by the Bidder with the signature in full.

13.9 The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

13.10 The address and telephone number for communications regarding the Bid must be shown.

13.11 Bids that contain any omission, erasure, alteration, addition, or item not called for, or that show irregularities of any kind, will be considered as informal or irregular. This will be cause for the rejection of a Bid.

13.12 If a Bidder wishes to change unit prices prior to Bid submission, they shall strike the unit price and add the changes in the appropriate space. Changes shall be initialed by the person submitting the Bid. Any changes or alteration of unit prices in the Bid shall be initialed. Failure to initial these changes or illegible entries of corrections or unit prices may be cause for the rejection of the Bid as informal or irregular.

ARTICLE 14. VARIANCES.

14.1 The Bidder shall be responsible for reading very carefully, and understanding completely, the requirements and the Specifications for the Contract being bid. For purposes of Bid evaluation, Bidder must indicate any variances to the Contract Documents, including but not limited to, Specifications, terms and conditions, no matter how slight. If variations are not stated in the Bid, it shall be construed that the Bid fully complies with the Bidding Documents, including but not limited to, Specifications, terms and conditions as given herein.

ARTICLE 15. VENDOR SERVICE REPRESENTATIVE.

15.1 The Bidder must submit with its Bid the name, address and phone number of the person(s) to be contacted for the placement of an order and coordination of service. A contact for regular work-hours and after-hours, weekends, and holidays must be submitted with the Bid.

ARTICLE 16. SUBMISSION OF BIDS.

16.1 Bids shall be submitted no later than at the date and time prescribed and at the place indicated in the Advertisement /Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Bid Number (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of the Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation **ITB #77-12/ENR enclosed for Annual Asphalt Milling & Resurfacing to be opened at 10:00 am, local time, on June 14, 2012** on the face of it.

16.2 It is the sole responsibility of the Bidder to ensure that the Bid reaches the Clerk's Office on or before the closing date and time. The Owner shall in no way be responsible for delays caused by any occurrence or excuse. Offers by telephone, telegram or facsimile will not be accepted. The Bid time shall be scrupulously observed. Under no circumstances shall Bids delivered after the date and time specified be considered. Such Bids will be returned unopened to the Bidder.

16.3 All Bids must be submitted with one (1) original and one PDF (CD) copy.

16.4 The submission of a Bid shall constitute an incontrovertible representation by the Bidder that the Contract Documents are sufficient in scope and detail to indicate and convey a clear understanding of all terms and conditions for performance.

16.5 Failure to provide the required documentation and information with the Bid submitted shall make the Bidder nonresponsive unless the Owner, in its sole discretion and in the best interests of the Owner, determines the acceptability of the materials and value Public Works Roads Supervisor offered through documentation and information available within Wellington as of the date and time of the Bid opening.

ARTICLE 17. MODIFICATION AND WITHDRAWAL OF BIDS.

17.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to date and time set for the opening of Bids. Any Bid not so withdrawn shall, upon opening, constitute an irrevocable offer until one or more of the Bids have been duly accepted by the Owner.

17.2 If, within twenty-four hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

17.3 A Bidder shall not be allowed to modify its Bid after the opening date and time except as otherwise set forth herein.

ARTICLE 18. OPENING OF BIDS.

18.1 Bids will be opened publicly as indicated in the Advertisement or Invitation to Bid.

18.2 When Bids are opened publicly they will be read aloud, and the amounts of the base Bids and major alternates (if any) will be made available after the opening of Bids.

18.3 Bid files may be examined during normal working hours, after Bid opening, by appointment and pursuant to Florida Statutes.

ARTICLE 19. BIDS TO REMAIN SUBJECT TO ACCEPTANCE.

All Bids will remain subject to acceptance for 120 days after the posting of the intended recommended award, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

ARTICLE 20. ADDITIONAL TERMS AND CONDITIONS.

20.1 No additional terms and conditions included with the Bid response shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this Bid, whether submitted either purposely through intent or design or inadvertently appearing separately in transmittal letters, Specifications, literature, price lists or warranties. It is understood and agreed that these Instructions, the General and Supplementary Conditions and the Specifications in this Bid solicitation are the only conditions applicable to this Bid and the Bidder's authorized signature affixed to the Bid form attest to this.

ARTICLE 21. RESPONSIVE AND RESPONSIBLE BIDDER.

21.1 Only those Bidders considered both responsive and responsible shall be considered for award of a Contract by the Owner. A responsive Bidder shall be a person, firm, partnership, or corporation or other entity who has submitted a Bid, which conforms in all material respects to the Contract Documents and the requirements of the Bidding Document. A responsible Bidder shall be a person, firm, partnership, corporation or other such entity who has the capability in all respects to perform fully the Contract Document requirements and has the integrity and reliability which will assure the good and faithful performance of the Contract.

ARTICLE 22. EVALUATION OF BIDS AND AWARD OF CONTRACT.

22.1 Owner reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Also, Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to the Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet the Competency of Bidder and Reference requirements set forth herein or fails to meet any other pertinent standard or criteria established by Owner.

22.2 In evaluating Bids, Owner will consider the qualifications, competency and references of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

22.3 Owner may consider the qualifications, competency, and experience of Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in Supplementary Conditions (or as requested by Owner after the Bids are received). Owner also may consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

22.4 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

22.5 If the Contract is to be awarded, it will be awarded to the lowest, responsive and responsible Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project and subject to Owner's Local Preference Policy (Resolution R2009-91) The Owner may consider any substitutions or alternates in the determination of the lowest Bidder. 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 provide and construct the project to the satisfaction of the Owner. No Bid shall be accepted from, nor will any Contract be awarded to any Bidder who is in arrears to the Owner upon any debt or Contract or who is a defaulter as surety or otherwise upon any obligation to the Owner or who has failed to perform faithfully any previous Contract with the Owner or other party as determined by the Owner.

22.6 If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 120 days after the posting of the recommended award.

22.7 When Bidder is permitted to designate the Contract Time, Bid prices will be compared after adjusting for differences in the time designated in the Bid for Substantial Completion.

22.8 The successful Bidder, who is awarded the contract, shall be required to furnish a 100% Construction Performance Bond and a 100% Construction Payment Bond meeting the requirements of Section 255.05 Florida Statutes.

ARTICLE 23. BID TABULATIONS

23.1 Bid tabulations with recommended awards will be posted for review at the offices of the Clerk, 12300 W. Forest Hill Boulevard, Wellington, Florida and DemandStar, and will remain posted for a period of 72 hours. Bid tabulations will be furnished upon written request with an enclosed, self-addressed, stamped envelope. Bid tabulations will not be provided by telephone. The Purchasing Department is the only Wellington department authorized to give information about or make Bid awards.

23.2 Tie Bids may be awarded to one of the qualified Bidders based on the criteria, in the following order:

- a) Local Preference Policies (Resolution R2009-91)
- b) If Local Preference Policies are not applicable, then:
 - i) Availability or completion period
 - ii) Previous Contractor Record
 - iii) Drug Free Workplace
- c) If all conditions are equal, the award shall be determined by drawing lots or flip of a coin, as determined by Wellington's Purchasing Department.

ARTICLE 24. DISQUALIFICATION OF BIDDER

24.1 Bidder may be disqualified and its Bid rejected for any of the following:

- a) Bidder does not meet the Competency of Bidder and Reference requirements set forth herein.
- b) Reason to believe that collusion exists among or between Bidders
- c) Unbalanced Bid; that is, Bid in which the prices bid for some items are out of all proportion to those Bids of others.
- d) Bidder's uncompleted workload, which in the judgment of the Owner, may cause detrimental impact or impair the prompt completion of this Contract.
- e) Lack of responsibility on the part of Bidder, (for example, no Bidder would be considered responsible who had failed to carry out any Contract in which the Owner had been directly or indirectly concerned), or to which Bidder failed to perform on other projects.
- f) A determination by Owner of the Contractor's lack of experience or lack of competency as may be revealed by qualification statements, financial statements, experience records, references, or other questionnaires.
- g) Substantial evidence of bad character or dishonesty.
- h) Bidder is involved in any current litigation with Owner.
- i) Bidder has defaulted on any contract or is in arrears on any contract.
- j) Unsatisfactory performance evaluation from Wellington in the past three (3) years.

24.2 **RESERVATIONS: Wellington expressly reserves the right to:**

- a) Specify approximate quantities in the bid
- b) Extend the bid opening date and time
- c) Consider and accept alternate bids, if specified in the bid documents, when most advantageous to Wellington
- d) Add additional terms or modify existing terms in the bid;
- e) Reject or cancel any or all bids;
- f) Reissue a bid; and/or
- g) Procure any item by other means

ARTICLE 25. CONTRACT SECURITY.

25.1 Article 5 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to performance and payment Bonds. When the successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required performance and payment Bonds. Performance and Payment bonds are required for this Project.

ARTICLE 26. SIGNING OF AGREEMENT.

26.1 When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within 15 days thereafter, the Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds. In the event the successful Bidder fails to execute the Contract and return same to the Owner within the stipulated fifteen (15) days, the Owner may disqualify the Bid, and said Bidder shall not be permitted to contest to the contrary and does waive such right upon submitting a Bid.

ARTICLE 27. DISPUTES

27.1 Any actual or prospective Bidder, Proposer, or Contractor who is aggrieved in connection with a solicitation or award of a Bid or contract may avail themselves of the procedures contained in Section 2-335 of the Wellington Code of Ordinances as amended for time to time and the Owner's Purchasing and Procurement Manual in order to resolve disputed matters or complaints.

27.2 The Owner shall post a tabulation of the Bid results with intended award recommendations. Posting shall be in the Clerk's Office and shall be on display for public viewing. All Bidders, Proposer, Offeror or Contractors affected by the proposed award of contract will also be notified by the Owner at the time of posting, via telefax or other means, of the intended award.

27.3 Any actual or prospective Bidder, Proposer, Offeror, or Contractor who is aggrieved in connection with the solicitation or award of contract may file a written protest to the Clerk's Office between the hours of 7:00 a.m. and 6:00 p.m. (Monday – Thursday) Protests shall contain the name, address, and phone number of the petitioner, name of petitioner's representative (if applicable), the name and bid number of the solicitation. The protest shall specifically describe the subject matter, facts giving rise to the protest and also the action requested from the Owner.

27.4 The written protests must be received no later than 72 consecutive hours (excluding Fridays, Saturdays, Sundays and legal holidays) from the time of initial posting. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the vendor of all rights of protest under this Bid/Proposal Protest Procedure.

27.5 In the event of a timely protest, the Owner shall not proceed further with the solicitation or with the award of the bid/contract until all administrative remedies have been exhausted or until the Owner determines that the award of the bid/contract without delay is necessary to protect the public health, welfare or safety.

ARTICLE 28. LICENSES, PERMITS, AND CERTIFICATION.

28.1 It shall be the responsibility of the Contractor to obtain at no additional cost to the Owner any and all licenses and permits required to complete this Contractual service.

28.2 When applicable, vendor must hold a Certificate of Competency issued by the State of Florida or the Palm Beach County Construction Industry Licensing.

28.3 An Occupational License obtained from Wellington shall be required of any person maintaining a permanent business location or branch office within Wellington. Applications and fee schedules may be obtained from Wellington, Planning, Zoning, Building & Code Compliance Departments, 12300 Forest Hill Boulevard, Wellington, Florida 33414. Call the PZB Office at 561-753-2430 for assistance and additional information.

28.4 A copy of any licenses and permits shall be submitted with the Bid and must be in the name of the vendor shown on the Bid submittal.

ARTICLE 29. PREPARATION EXPENSE.

29.1 Neither the Owner nor its representatives will be liable for any expenses incurred in connection with the preparation of any Bid.

ARTICLE 30. QUANTITIES.

30.1 In the case of unit price items, the quantities of materials to be furnished under this Contract, as given in the Bid, are to be considered as approximate only and are to be used solely for the comparison of Bids received. The Owner nor its representatives does not expressly or by implication represent that the actual quantities involved will correspond exactly therewith; nor shall the Bidder place misunderstanding or deception because of such estimate or quantities. Payment to the Contractor will be made only for the actual quantities of material furnished in accordance with the Contract Documents, and it is understood that the quantities may be increased or diminished as provided in the General Conditions without in any way invalidating any of the unit prices Bids.

ARTICLE 31. NON-COLLUSION.

31.1 Bidder certifies that this Bid is made without prior understanding, agreement, or connection with any individual, firm, partnership, corporation or other entity submitting a Bid for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud. No premiums, rebates, or gratuities are permitted with, prior to, or after any delivery of material or provisions of services. Any violation of this provision may result in Contract cancellation, return of materials or discontinuation of services, and the possible removal of Bidder from the vendor Bid list(s).

ARTICLE 32. CODE OF ETHICS.

32.1 If any Bidder violates or is a party to a violation of the Code of Ethics of the Owner and/or of the State of Florida with respect to this Bid, such Bidder may be disqualified from performing the work described in this Bid or from furnishing the goods or services for which this Bid is submitted and may be further disqualified from bidding on any future Bids for work or for goods or services for the Owner. A copy of Wellington's and the State of Florida's ethics codes are available at the Clerk's Office, 12300 Forest Hill Boulevard, Wellington, Florida, 33414.

ARTICLE 33. CONFLICT OF INTEREST.

33.1 The award is subject to any and all applicable conflict of interest provisions found in the policies or Code of Ordinances of Wellington and found in the Florida Statutes. All Bidders must disclose with their Bid the name of any officer, director, or agent who is also an employee of Wellington. Further, all Bidders must disclose the name of any Wellington employee who owns, directly or indirectly an interest of 5% or more in the Bidder's legal entity or any of its affiliates, subsidiaries or branches in accordance with Florida Statutes.

ARTICLE 34. DRUG FREE WORKPLACE PROGRAMS.

34.1 Preference may be given to businesses with Drug-Free Work Place Programs. Whenever two or more Bids which are equal with respect to price, quality, and service are received by the Owner for the procurement of commodities or contractual services, a Bid received from a business that completes the attached DFW form certifying that it is a DFW may be given preference in the award process.

ARTICLE 35. EEO STATEMENT.

35.1 The Owner is committed to assuring equal opportunity in the award of contracts and, therefore, complies with all laws prohibiting discrimination on the basis of race, color, religion, national origin, age, and sex.

ARTICLE 36. LEGAL REQUIREMENTS.

36.1 Federal, State, County and Owner laws, ordinances, rules, codes, guidelines, directives and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the Bidder shall in no way be a cause for relief from responsibility.

ARTICLE 37. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT.

37.1 The Bidder certifies that all equipment and materials contained in this Bid shall meet all O.S.H.A. requirements. Bidder further certifies that, if it is the successful Bidder and the equipment and/or materials delivered are subsequently found to be deficient in any O.S.H.A. requirements in effect on the date of delivery, all costs necessary to bring the equipment and/or materials into compliance with the aforementioned requirements shall be borne by the Bidder.

ARTICLE 38. NON-APPROPRIATIONS.

38.1 The obligations of the Owner to make a Bid award and sign an agreement under the terms of this "Invitation to Bid" are contingent upon funds lawfully appropriated for this purpose. Should funds not be appropriated for this purpose, the Owner, at its sole discretion, shall have the right to reject all Bids.

ARTICLE 39. FLORIDA PUBLIC RECORDS ACT AND CONTRACT CONTENT OWNERSHIP.

39.1 All material submitted regarding this Bid becomes the property of the Owner. Bids may be reviewed by any person thirty (30) days after the public opening or after Notice of Intent is issued, whichever is first. Bidder should take special note of this as it relates to any proprietary information that might be included in their offer. Any resulting contract may be reviewed by any person after the contract has been executed by the Owner. The Owner has the right to use any or all information/material submitted in response to this bid and/or any resulting contract from the same. Disqualification of a Bidder does not eliminate this right.

ARTICLE 40. HOURS OF OPERATION FOR RECEIPT OF BIDS.

40.1 All bids must be received in the Wellington Clerk's Office, 12300 Forest Hill Boulevard, Wellington, Florida 33414. The Clerk's Office shall be open and available for the receipt of bids according to the following schedule. **Bids may be submitted Monday through Thursday from 7:00 a.m. to 6:00 p.m. The Clerk's Office is closed and unavailable for the receipt of bids on Fridays, Saturdays, Sundays, and legal holidays.**

ARTICLE 41. HOURS OF OPERATION FOR PURCHASING DEPARTMENT.

41.1 Wellington's Purchasing Department is available to provide bid clarifications and interpretations, answer questions and inquiries, and fulfill requests for information, during regular hours of operation. Those regular hours of operation are Monday through Thursday from 7:00 a.m. to 6:00 p.m. The Purchasing Department is closed on Fridays, Saturdays, Sundays, and legal holidays.

ARTICLE 42. CONE OF SILENCE.

42.1 From the time of advertising until an award of the bid, any Bidder or any of their representatives or agents are prohibited from any communication with the Wellington Manager and Wellington Council members. All communication shall be restricted to the Purchasing Department. This does not apply to oral presentations before Selection Committees, contract negotiations, or public presentations made to the Wellington Council during any duly noticed public meeting. Violation of these provisions shall cause any Bid proposal to be rejected or any Bid award voidable.

ARTICLE 43. PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL

43.1 In accordance with Palm Beach County ordinance number 2011-009, the offeror understands that any Contract that results from this RFP may be subject to investigation and/or audit by the Palm Beach County Inspector General. The offeror has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

END OF SECTION

TRAFFIC CONTROL & MAINTENANCE

1. The Maintenance of Traffic Plan and all traffic warning and control devices shall conform to the applicable provisions of the latest editions of the national “Manual On Uniform Traffic Control Devices” (MUTCD), and the 600 series of the Florida Department of Transportation’s “Roadway and Traffic Design Standards,” the Florida Department of Transportation Standard Specifications for Road and Bridge Construction,” the Florida Department of Transportation “Plans Preparation Manual,” and the “Manual of Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways.” The MOT Plan shall be prepared by a Florida MOT Certified Technician if FDOT standard details are used. If FDOT standard details are not used, a Professional Public Works Roads Supervisor licensed in Florida shall prepare the MOT Plan. MOT Plans shall be submitted to appropriate agencies for approval.
2. There will be no separate payment for the fee for Engineering Services, if required.
3. The CONTRACTOR, at all times, shall conduct the work in such a manner as to insure the least obstruction to traffic as is practical. The safety and convenience of the general public and of the businesses adjacent to the work shall be provided for in a satisfactory manner, as determined by the PUBLIC WORKS ROADS SUPERVISOR, and/or Wellington.
4. Streets shall not be closed, except in accordance with the approved MOT plan, and whenever the street is not closed, the work must be conducted with the provision for a safe passageway for vehicular and pedestrian traffic at all times. The CONTRACTOR shall make all necessary arrangements with Wellington and PUBLIC WORKS ROADS SUPERVISOR concerning maintenance of traffic and selection of detours required.
5. As applicable, The CONTRACTOR shall submit to PUBLIC WORKS ROADS SUPERVISOR for submittal to Wellington, for review and approval, a Conceptual Traffic Control Plan at the Prewrite Conference, identifying the phases of construction that the CONTRACTOR plans to proceed with and identifying traffic flows during each phase. When the conceptual Traffic Control Plan has been approved, the CONTRACTOR shall prepare and submit for review to PUBLIC WORKS ROADS SUPERVISOR for submittal to Wellington, a detailed Traffic Control Plan for each phase of the work, indicating the proposed location of construction signs, channelizing devices, temporary pavement markings and symbols, lighting devices, barrier walls, modifications to traffic signals and all other required devices as applicable. The detailed plan shall be reviewed by Wellington and other governmental agencies having jurisdiction with all comments forwarded to the CONTRACTOR. No work within the public right-of-way shall commence until the detailed M.O.T. plan has been approved in writing by all governmental agencies having jurisdiction. Upon the start of construction, the CONTRACTOR shall comply with all provisions of the detailed Maintenance of Traffic Plan. In the event of non-compliance by the CONTRACTOR, Wellington will have the authority to order the CONTRACTOR to cease construction operations without compensation of time or money until the violations have been corrected.
6. Barricades, Lights and Cones - All barricades shall utilize high intensity sheeting. When cones are used they shall be a minimum thirty-six (36) inches high with a six (6) inch wide white band placed a minimum of three (3) inches but not more than four (4) inches from the top of the cone. An additional four (4) inch band should be placed a minimum of two (2) inches below the six (6) inch band. Barricades and lights shall be maintained daily. All Type III barricades shall have two (2) Type “A” flashing lights on each barricade. When extremely hazardous conditions exist, two (2) Type “B” flashing lights shall be used. Extremely hazardous conditions shall be determined by Wellington Public Works Department.
7. Flag Person and Vests – The flagmen shall be trained in the proper manner as set forth in the MUTCD and certified as per Section 102 F.D.O.T. Specifications for Road and Bridge Construction. Each flagger shall have a certification card on them when flagging. Certification cards shall have the flagger’s name, date of certification and expiration date. All construction personnel shall wear a high visibility orange vest when working within the right-of-way (Class 2 or 3 per MUTCD). Ensure that these vest/garments be worn whenever workers are within the right-of-way. Workers operating machinery or equipment in which loose clothing could become entangled during operation are exempt from this requirement. Such exempt workers

will be required to wear orange shirts or jackets. Require Contractor personnel to wear retro-reflective orange vest/garment during nighttime operations. Replace faded vest/garments.

8. Flashing Arrow Boards – Flashing arrow boards shall be used on any four (4) lane or larger roadway where traffic is being channelized or diverted, or as directed by the Wellington Public Works Department. Flashing arrow boards shall conform to Section 6F-56 M.U.T.C.D. Type “B” or “C” only. Solar arrow boards may be requested by the public works department at any time.
9. Contractor shall keep sufficient cold patch asphalt on the job site to fill pot-holes and to perform other minor pavement maintenance as needed. All highway equipment shall have a Slow Moving Vehicle sign with either a flasher or a beacon operating when the equipment is operating. During peak hours 7:00 A.M. to 9:00 A.M. and 3:00 P.M. to 6:00 P.M. left turn and through lanes shall not be blocked without permission from the Public Works, Roads Supervisor. Any manholes/valves in the travel way shall have 3’ of asphalt out from the edge for every 1” inch height.
10. When pedestrian movement through or around a worksite is necessary, the Contractor shall provide a separate, safe footpath without abrupt changes in grade or terrain. If one (1) or two (2) pedestrian ways are provided (exist) prior to the start of a project, only one (1) has to be maintained. If no pedestrian ways exist prior to the start of a project, one (1) pedestrian way shall be constructed within the initial thirty (30) calendar days of the project and shall be maintained for the duration of the project. Places where pedestrians are judged especially vulnerable to impact by vehicles, all foot traffic should be separated and protected by longitudinal positive barrier systems.
11. Temporary Traffic Control Plan. (T.T.C.P.) – The Temporary Traffic Control Plan (T.T.C.P.) for traffic control around or through work sites should be developed with safety receiving a high priority. The T.T.C.P. should include protection at work sites when work is in progress and when operations have been halted (such as during the night) or from the time work is completed until the final. Provisions for the protection of work crews, traffic control personnel, pedestrians, and motorists shall be included. The Temporary Traffic Control Plan shall include the following:
 - T.T.C.P. to be prepared and signed by the Work Site Traffic Supervisor as certified by the American Traffic Safety Services Association (A.T.S.S.A.)
 - A copy of the signer’s certification, contractor’s name, and 24 hour phone number of the work site traffic supervisor
 - North arrow; drawn by; lane usage; type and location of all signs, lights, barricades, striping, barriers, traffic signals; all side-streets; change-overs; sidewalks; R.P.M.’s; pavement markings; school zones; and crosswalks
 - Plans may be drawn to scale, however dimensions shall be shown
 - Variable Message Sign (V.M.S.) and the messages
 - Location and geometry for transitions, detours, and diversions
 - No change-overs are allowed on Friday, the day before a holiday or during A.M. or P.M. peak traffic, and are discouraged at signalized intersections
 - All plans shall be submitted through the Public Works Division
12. The T.T.C. Plan approval is as follows:
 - A. 1 to 7 days for most plans
 - B. 7 days when a signal or flasher is involved
 - C. 10 days for a traffic switch or for road closuresTime may vary based on the complexity of the T.T.C.P. Consideration should be given to these time frames when scheduling the work. Public Works Division will handle all news releases, notifying police, fire, etc. The T.T.C. Plan is good for 60 days. If the T.T.C.P. has not been implemented by then, a new approval will be required. T.T.C.P. must have dates and times of operation requested.
13. In no case may the contractor begin work until the T.T.C.P. has been approved in writing by Wellington Public Works Division. Field modifications shall be made with the approval of a representative of the Wellington Public Works Division.
14. Crossings and Intersections – Provide and maintain adequate accommodations for intersecting and crossing traffic. Do not block or unduly restrict any road or street crossing the project unless approved by the Public Works Roads Supervisor. Maintain all existing actuated or traffic responsive mode signal operations for main and side street movements for the duration of the Contract.
15. Flagger – Provide trained flaggers in accordance with FDOT and MUTCD requirements.

16. Construction – Plan, construct, and maintain detours for the safe passage of traffic in all conditions of weather. Provide the detour, to the Department, with all facilities necessary to meet this requirement.
17. Traffic Control Officer (Non-Mot) – Provide uniformed law enforcement officers, including marked law enforcement vehicles, to assist in controlling and directing traffic through the work zone, when authorized and/or directed by the Public Works Roads Supervisor, and for purposes not covered under the requirements of the Temporary Traffic Control Plans.
18. (Non-Mot) Portable Changeable (Variable) Message Sign (PCMS): Furnish changeable (variable) message sign in accordance with 102-9.9, when authorized and/or directed by the Public Works Roads Supervisor, and for purposes not covered under the requirements of the Temporary Traffic Control Plans.
19. Temporary Pavement Markings:
- All temporary pavement markings shall be done in a professional manner without weaves and/or bows. No over-painting shall be allowed.
 - Temporary R.P.M.'s shall be installed at an 1 inch offset to lane lines, skips, gore or crosshatched area within the work zone. The spacing shall be 40 feet on tangent section and 20 feet on transitions and curves (including edge lines). Damaged or missing R.P.M.'s shall be replaced on a daily basis. The R.P.M.'s shall have a maximum width of 5 inches and a maximum height of 0.75 inch. The minimum area of each reflective face shall be 3.50 square inches. R.P.M.'s shall be bonded to the pavement or concrete with epoxy or alkyd thermoplastic, no bituminous adhesive shall be used.
 - Temporary pavement markings shall be applied to the intermediate asphalt course, and shall consist of foil-backed tape, paper tape or paint meeting both State and County specifications.
 - Temporary pavement markings shall also be applied to the final asphalt course unless otherwise directed by the Public Works Department. All final course pavement markings shall consist of foil-backed tape. The temporary pavement markings shall be installed in accordance with the typicals in the General Provisions.
 - All temporary tape skip-line pavement markings shall be at least four (4) feet in length with a maximum gap of thirty-six (36) feet. A two (2) foot stripe with a maximum gap of eighteen (18) feet may be used for roadways with severe curvature, or as directed by the Wellington Public Works Department.
 - All painted lines shall conform to size and color requirements of the M.U.T.C.D., Part III. The thickness shall not be less than fifteen (15) mils with six (6) to six and one quarter (6¼) pounds of beads per gallon of paint. Both shall be applied uniformly. All painted lines shall be refurbished if at any time the reflectivity falls below 150 mini-candles. A normal width line is 6" paint or tape.
 - Black-out shall not be used to obliterate pavement markings. Existing pavement markings that conflict with temporary work zone delineation shall be removed by any method approved by the Public Works Roads Supervisor.
 - If a school zone exists, it must be maintained including crosswalks, school messages and signs.
 - It shall be the contractor's responsibility to adjust existing signing, add new signing, and remove or add pavement marking on approaches to the project.
20. Work Zone Raised Pavement Markers (WZRPM's) – Apply all markers in accordance with Palm Beach County Typical T-01-006, or as otherwise revised.

BID PROPOSAL CHECKLIST

Please submit your proposal in this order

- YES___ NO___ 1. Bid submittal – one (1) original and one (1) PDF (CD) Copy
- YES___ NO___ 2. Bid Form signed by authorized representative
- YES___ NO___ 3. Acknowledgment of addendums
- YES___ NO___ 4. Bid Bond/Security or Cashier's Check
- YES___ NO___ 5. Schedule of Value
- YES___ NO___ 6. Schedule of Subcontractor/Supplies
- YES___ NO___ 7. Schedule of Equipment and Materials
- YES___ NO___ 8. Sworn Statement under Section 287.133(3) (a)
- YES___ NO___ 9. Drug Free Workplace
- YES___ NO___ 10. Trench Safety Affidavit
- YES___ NO___ 11. Questionnaire
- YES___ NO___ 12. References
- YES___ NO___ 13. Insurance Certificates
- YES___ NO___ 14. Copy of Appropriate Licenses
- YES___ NO___ 15. Proof of Workers Compensation Insurance/Workers Compensation Exemption Affidavit
- YES___ NO___ 16. Local Vendor/Contractor Affidavit

BID BOND/SECURITY

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

KNOW ALL MEN BY THESE PRESENTS, that we _____

as Principal, hereinafter called the Principal, and _____

a corporation duly organized under the laws of the State of _____ as Surety, hereinafter called the Surety, are held and firmly bound unto Wellington, Purchasing Dept., 12300 Forest Hill Boulevard, Wellington, FL 33414

as Obligee, hereinafter called the Obligee, in the sum of Ten Percent (10%) of amount bid for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has submitted a bid for ITB #077-12/ENR Annual Asphalt Milling & Resurfacing

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed _____

Witnesses:

Seal

By: _____

Seal

By: _____

BID FORM

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

PROJECT: ITB #077-12/ENR Annual Asphalt Milling & Resurfacing Date: _____

BIDDER: _____

THIS BID IS SUBMITTED TO:

Wellington
Clerk's Office
12300 Forest Hill Boulevard
Wellington, FL 33414

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 120 days after the posting of the recommended award. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within 15 days after the date of OWNER'S Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

(a) BIDDER has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged):

Date _____	Addenda Number _____
Date _____	Addenda Number _____
Date _____	Addenda Number _____

(b) BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality, and all local conditions, Laws, and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

(c) BIDDER has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which, if any, are attached to the Contract Documents, as provided in Paragraph 4.02 of the General Conditions, and accepts the determination as set forth in the Bidding Documents of the extent of the technical data contained in such reports and drawings upon which BIDDER is entitled to rely.

(d) BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as BIDDER considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by BIDDER for such purposes.

(e) BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by BIDDER in order to perform and furnish the Work at the

Contract price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.04 of the General Conditions.

(f) BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.

(g) BIDDER has given OWNER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by PUBLIC WORKS ROADS SUPERVISOR is acceptable to BIDDER.

(h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

4. BIDDER agrees to perform all the Work described in Contract Documents, subject to adjustments as provided therein, for the Prices BIDDER provides on the Schedule of Values.
5. BIDDER declares it understands that the unit quantities shown on the Bid Form Unit Price Schedule are approximate only and not guaranteed and are subject to either increase or decrease; and that should the quantities of any of the items of Work be increased, the BIDDER agrees to do the additional Work at the unit prices set out herein, and should the quantities be decreased, BIDDER also understands that final payment shall be made on actual quantities completed at the unit prices, and shall make no claims for anticipated profits for any decrease in the quantities.
6. The BIDDER further declares its understands the OWNER may elect to construct only a portion of the Work covered by these Documents and BIDDER agrees to perform that portion of the Work for which BIDDER is awarded a Contract at the unit prices quoted herein.
7. BIDDER agrees that the Work:

After receiving notice to commence with the work for a particular project the Contractor shall commence promptly within seventy-two (72) hours and shall efficiently prosecute the work with adequate personnel and equipment until completion, within 30 calendar days, or as designated by the Public Works Road Supervisor or his duly appointed representative. Work hours will be at the discretion of the Public Works Department.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

8. The following documents are attached to and made a condition of this Bid:

- (a) Required Bid security in the form of Bid Bond.
- (b) Schedule of Values.
- (c) List other documents as pertinent.

9. Communications concerning this Bid shall be telephoned or addressed to:

Name: _____
Address: _____
Phone No.: _____ Fax: _____

10. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.
11. BIDDER'S Florida Contractor's License No. _____
12. BIDDER covenants that it is qualified to do business in the State of Florida and has attached evidence of BIDDER'S qualification to do business in the State of Florida, or if not attached, BIDDER covenants to obtain such evidence within five days of request by OWNER to provide evidence.

If BIDDER is

An Individual

Name _____ (SEAL)

Signature: _____

Doing business as _____

Business Address: _____

Phone Number: _____ Fax Number _____

A Partnership

Firm's Name _____ (SEAL)

General Partner Signature: _____

Business Address: _____

Phone Number: _____ Fax Number _____

A Corporation

Corporation's Name _____ (SEAL)

State of Incorporation _____

Authorized Person: _____

Title: _____

Signature: _____

Attest: _____ (Secretary)

Signature: _____

Business Address: _____

Phone Number: _____ Fax Number _____

This form shall be utilized for price proposals by the contractor submitting a bid for the section(s) in which the contractor intends to submit a price proposal. Failure to utilize this form for price proposals may result in the bid being declared non-responsive.

Bid Pricing Form

SCHEDULE OF VALUES – Section A

Section A					
	ITEM	QTY	UNITS	UNIT PRICE	TOTAL
1	MILL EXIT. ASPH.. PAVEMENT (1")	50,000	SY		
2	MILL EXIT. ASPH.. PAVEMENT (1 1/2")	80,000	SY		
3	MILL EXISTING PAVEMENT (2")	40,000	SY		
4	MILL EXISTING PAVEMENT (3")	40,000	SY		
5	MILL EXISTING PAVING ("< than or up to 7 ft. Mill") Minimum of 8 hrs. per day	5	Days		
6	MILL EXISTING PAVING ("> 7 ft. Mill") Minimum of 8 hrs. per day	5	Days		
7	SP 12.5 (< 200 TON ORDERS) Includes tack coat	300	TN		
8	SP 12.5 (>200 TON ORDERS) Includes tack coat	10,000	TN		
9	FC 12.5 (<200 TON ORDERS)	300	TN		
10	FC 12.5 (>200 TON ORDERS)	10,000	TN		
11	SP 9.5 (< 200 TON ORDERS) Includes tack coat	300	TN		
12	SP 9.5 (> 200 TON ORDERS) Includes tack coat	10,000	TN		
13	ACSC TYPE S-1 (< 200 TON ORDERS) Includes tack coat	300	TN		
14	ACSC TYPE S-1 (> 200 TON ORDERS) Includes tack coat	10,000	TN		
15	ACSC TYPE S-III (< 200 TON ORDERS) Includes tack coat	300	TN		
16	ACSC TYPE S-III (> 200 TON ORDERS) Includes tack coat	10,000	TN		
17	PORTABLE MILLING MACHINE	100	HR		
18	ASPHALT OVERBUILD/FULL DEPTH (2" lifts)	3,000	TN		
19	F & I PAVEMENT WATERPROOFING FABRIC	10,000	SY		
20	PAVEMENT WATERPROOFING FABRIC (Install Owner Supplied Fabric)	10,000	SY		
21	BROOM TRACTOR	100	HR		
22	EXCAVATION (Subgrade 8" - 12" deep)	2,000	CY		
23	8" BASE ROCK (F & I) and finish grade with prime	4,000	SY		
24	12" BASE ROCK (F & I) and finish grade with prime	4,000	SY		
25	MANHOLE ADJUSTMENT (F&I ADAPTER RINGS) (See Exhibit A)	100	EA		

26	ADJUST VALVE BOXES & MISC STRUCTURES	150	EA		
27	BOX OUT SHOUDLER (Exhibit B)	100	SY		
28	F & I PRIME/MIXTURE FOR EXISTING BASE ROCK	5,000	SY		
29	TRAFFIC CONTROL OFFICERS	4	HR		
				Total	\$

SCHEDULE OF VALUES – Section B

Section B					
	ITEM	QTY	UNITS	UNIT PRICE	TOTAL
1	ASPHALT MULTI PURPOSE PATHWAYS (6' x 1 1/4" OVERLAY INCLUDING TACK)	2,000	SY		
2	ASPHALT MULTI PURPOSE PATHWAYS (8' x 1 1/4" OVERLAY INCLUDING TACK)	2,000	SY		
3	ASPHALT PATCHING < 50 TONS	200	TN		
4	ASPHALT PATCHING > 50 TONS	200	TN		
5	F & I INSTALL TACTILE SURFACE (FDOT APPROVED)	200	SF		
6	F & I STANDARD ROOT BARRIER (36" deep)	1,000	LF		
7	MOWING STRIP (F & I) for guardrail prior to installation	1,000	LF		
8	MILL EXSIT. PATHWAY (6' x 1" deep)	1,000	LF		
9	MILL EXSIT. PATHWAY (8' x 1" deep)	1,000	LF		
				Total	\$

SCHEDULE OF VALUES – Section C

Section C					
	ITEM	QTY	UNITS	UNIT PRICE	TOTAL
1	ASPHALT SEAL COATING (< 3,000 SY)	3,000	SY		
2	ASPHALT SEAL COATING (> 3,000 SY)	3,000	SY		
				Total	\$

BIDDER/CONTRACTOR understands and agrees that this is Unit Price Contract and that contractor will be paid based upon items and quantities actually performed and accepted by Owner. The Contractor is advised that the contract is a unit price contract. As such, the intent of the contract is to include all labor, materials, transportation, equipment, fuel, and all other items necessary to complete the item of work, in the unit price for the item. All items incidental to or necessary for the completion of the bid item shall be included in the unit price for the item. The Schedule of Values is provided for the purpose of Bid Evaluation and when initiated by Wellington, the pricing of change orders. Contractor's price will not be adjusted to reflect any deviation from the Schedule of Values, except to the extent that Wellington changes the scope of Project after the Contract Date.

Quantities listed on the Schedule of Values are estimates only and are not to be construed as guaranteed work quantities. Bids will be evaluated based upon the total contract price. Balance of pricing shall be considered by OWNER in determining lowest, responsive, responsible bidder. CONTRACTORS/BIDDERS shall submit balanced bids. Each Section shall be awarded to the lowest, responsive, responsible bidder for that Section.

STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION

It is the intent of these specifications that the Florida Department of Transportation Standard Specifications for Road & Bridge Construction dated 2010 be used as the basis for the work, except as noted herein, and that where such wording which refers to the State of Florida and its Department of Transportation and Personnel, that such wording is intended to be replaced with that wording which would provide proper terminology; thereby, making such Standard Specifications and General Provisions as though they were those Standard Specifications and General Provisions of Wellington.

In addition to these Standard Specifications and General Provisions, there will be those General Provisions included which would pertain to the pertinent items of construction.

SP & FC SERIES ASPHALTIC CONCRETE: FDOT STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION – 2010 SHALL APPLY, EXCEPT FOR:

- 1) Lot sizes shall not exceed 2,000 tons or the tonnage placed in a single day, whichever is less.
- 2) Density testing shall be performed in turn lane areas and other miscellaneous areas selected by the owner in addition to through lanes.

S SERIES ASPHALTIC CONCRETE: FDOT STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION – 2000

- 1) Passing densities shall be required for turn lanes and other miscellaneous areas required by the Owner, in addition to through lanes.

Section A – Specifications:

1. All costs for Maintenance of Traffic (MOT) shall be considered incidental to, and shall be included in, unit prices for the pay items.
2. Items 1 and 2, MILL EXIST. ASPH. PAVEMENT (1”) and (1 ½”), per square yard, are based on a 1” or 1 ½” depth of milling. In the event that other milling depths are required, the contract price for Mill Exist. Asph. Pavement will be adjusted in (½”) increments. FDOT
3. Item 9, PORTABLE MILLING MACHINE, per hour, includes portable milling machine, all labor for actual milling and clean-up and satisfactory disposal of milled material. Payment shall be based upon actual hours for milling and clean-up. Disposal of milled material shall be considered incidental to per hour rate for Portable Milling Machine.
4. Item 11, PAVEMENT WATERPROOFING FABRIC, per square yard, includes fabric and installation and shall conform to Section 518 of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, 2000 Edition; except that the asphalt binder material shall be included in the square yard price for Pavement Waterproofing Fabric, at a target rate of 0.36 gallons per square yard with a tolerance of plus or minus 0.03 gallons per square yard.
5. Item 12, BROOM TRACTOR, per hour, is for use of a broom tractor, as required independently of milling operations and shall include all costs for equipment, operator and transportation of equipment to and from the work site. Required use of a broom tractor for milling clean-up and preparation is incidental to the cost for milling and installation of pavement water proofing fabric.
6. Item 13, EXCAVATION (Prep for base rock) – Includes excavating 8-12” deep and disposal of material off site.
7. Item 15, MANHOLE ADJUSTMENT, each may be accomplished using precast rings or other methods acceptable to the OWNER.
 - Manhole Adjusting Rings – (Max. 4” on existing structures only) (See Exhibit A)

Section B – Specifications:

1. Item 3 & 4, Consists of saw cutting, removal/disposal of existing asphalt, tack coat, and installation of new asphalt prior to installing surface course.
2. Item 8 & 9, Mowing strip 36” wide x 2” thick S-I

Section C – Specifications:

1. New asphalt should be allowed to cure at least 3-6 months prior to sealcoat applications.
2. Surfaces must be edged and have any grass removed and swept clean of all loose materials, dirt and dust.
3. All repairs such as holes/broken edges shall be repaired prior to sealing. Cracks ½ inch or greater will be thoroughly cleaned and filled with an appropriate Hot or Cold crack filler.
4. All grease, oil or gas stains will be treated with an approved oil spot primer and allowed to dry before the sealer application.
5. Pavement sealer shall follow the following mix design, (based on 100 gallons for ease of calculation):
 - Sealer 100 Gallons
 - Water 30-40 gallons (30% to 40%)
 - Silica Sand 300-500 #lbs (3-5 lbs per gallon)
 - Polymer Latex added @ 2% (2 gallons)
 - A) Two coats of sealer will be applied by Squeegee or Brush Method. (No spray application will be accepted) allowing a minimum of 2 hours of drying time between coats.
 - B) *Temperatures must be 50 degrees and rising. Do not apply when rain is imminent or forecast.
 - C) *Contractor shall supply a 4-5 gallon sample of Mixed Sealer Emulsion to the Owner/Wellington upon our request for testing at any time during the sealcoating operation.

General Specifications:

1. MATERIALS

Shellrock or recycled, crushed concrete material shall meet the following requirements:

Gradation - 100 percent (by weight) of the material shall pass a 3 inch sieve, with 40% to 70% passing the number 10 sieve. Not more than 20 percent, by dry weight, of the material shall pass the 200 sieve by washing. All crushing or breaking up which might be necessary in order to meet such size requirements shall be done before the material is placed on the road.

Composition

A. The minimum percentage of carbonates of calcium and magnesium in the material shall be 40.

B. All foreign material such as metal fragments, organic matter, etc., shall be removed from the material before delivery to the job site.

2. COMPACTING AND FINISHING BASE

Density Requirements - As soon as proper conditions of moisture are attained, the material shall be compacted to a density of not less than 98 percent of maximum density as determined by AASHTO T 180.

Density Tests - At least three density determinations shall be made on each day's final compaction operations on each course, and the density determinations shall be made at more frequent intervals if deemed necessary by the Public Works Roads Supervisor.

Surface Testing - The finished surface of the base course shall be checked with a templet cut to the required crown and with a 15 foot straightedge laid parallel to the center line of the road. All irregularities greater than 1/4 inch shall be corrected by scarifying and removing or adding base course material as required, after which the entire area shall be recompacted.

3. PRIMING AND MAINTAINING

Priming - The prime coat shall be applied only when the base meets the specified density requirements and the moisture content in the top half of the base does not exceed 90 percent of the optimum moisture of the base material. At the time of priming, the base shall be firm, unyielding and in such condition that no undue distortion will occur.

Maintaining - The Contractor will be responsible for assuring that the true crown and templet are maintained with no rutting or other distortion, and that the base meets all the requirements, at the time the surface course is applied.

4. THICKNESS DETERMINATIONS

General - Thickness of the base shall be measured at various points on the cross section, through holes not less than three inches in diameter, with each hole representing a section not exceeding 200 feet in length.

Correction of Deficient Areas - Wherever the compacted base is deficient by more than 2 inch from the thickness called for in the plans, the Contractor shall correct such areas by scarifying and adding base course material. The base shall be scarified and base course material added for a distance of 100 feet from each edge of the deficient area. The effected area shall then be brought to the required state of compaction and to the required thickness and cross section. Deficient Areas Left in Place - As an exception to the requirement for correcting areas of base which show a thickness deficiency exceeding the allowable 2 inch, if so approved in writing by the Public Works Roads Supervisor, any of such areas in which the extent of the excess deficiency might be considered as not sufficient to seriously impair the required strength of the base, may be left in place. No payment, however, will be made for areas left in place and not corrected.

ROOT PRUNE & ROOT BARRIER (BIOBARRIERS)

DESCRIPTION:

Excavate a trench that is at least wide enough to completely cut all roots in the trench. Care should be taken not to dislodge roots on the tree side of the trench. The depth of the trench shall be no deeper than the width of biobarrier. The width of the biobarrier shall be as specified. Care shall be taken in the backfilling of the trench not to disturb the root barrier. No roots, stones, rocks or broken concrete shall be in the backfill material.

MATERIALS:

Typar Biobarrier Root Control System as manufactured by Reemay, Inc., 70 Old Hickory Boulevard, PO Box 511, Old Hickory, TN 37138, or approved equal to be used.

All safety precautions prescribed by the manufacturer shall be adhered to.

METHOD OF MEASUREMENT:

The quantity to be measured for this item will be the number of lineal feet of biobarrier installed.

BASIS OF PAYMENT:

The unit price bid per foot for this item shall include the cost of furnishing all labor, material and equipment to complete the work, including disposal of roots.

SCHEDULE OF SUBCONTRACTORS

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

<u>Discipline</u>	<u>Subcontractor</u>	<u>Address City, ST, Zip</u>	<u>License Number</u>

*Address of Subcontractor may be considered in accordance with Wellington's Local Preference Policy
Resolution No. R2009-91*

SCHEDULE OF EQUIPMENT AND MATERIALS

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

Item	Manufacturer	Description

**SALES TAX RECOVERY PROGRAM SPECIAL CONDITIONS
FOR OWNER FURNISHED MATERIALS AND EQUIPMENT**

During the course of this Project, Wellington (hereinafter referred to as “Owner”) may issue a Change Order or Change Orders to delete from the contract certain items that the Owner desires to purchase directly and furnish to Contractor for use in the Project. Contractor agrees that if Owner desires to issue such Change Order(s), Contractor will assist the Owner in identifying appropriate materials and equipment to be included in the Change Order(s), will execute such Change Order(s) and will participate in this tax savings program at no additional cost to the Owner. Furthermore, Contractor agrees to abide by and comply with the following Special Conditions.

1. Sales and Use Taxes. The Owner is exempt from paying sales and use taxes on materials and equipment purchased for, and incorporated into the **Annual Asphalt Milling & Resurfacing, Bid No. 077-12/ENR**, , (hereinafter the “Project”). The Owner shall make direct purchases of all materials and equipment purchased for, or to be incorporated into the Project, as agreed to by the Contractor and agreed upon by the Owner in the form of a Change Order. All direct purchases of materials and equipment shall be made by the Owner with funds specifically allocated for the construction of the Project. Material suppliers shall be competitively bid by the Contractor and its subcontractors. The Contractor shall include the price for all construction materials in its bid. The Contractor shall provide the Owner a list of all intended suppliers, vendors, etc. for consideration as Owner Purchased Materials. This list shall be submitted at the same time as the preliminary schedule of values in accordance with 2.05 of the General Conditions. The Contractor shall submit price quotes from the vendors, as well as a description of the materials to be supplied, estimated quantities and prices and as provided below. The Contractor shall notify the Owner no later than **10 calendar days** after request by Owner of the requested materials and equipment to be purchased by the Owner for the Project. The standard Owner Terms and Conditions applicable to this program are included as Attachment A to this section. Each equipment supplier of equipment to be provided under the Sales Tax Recovery Program shall be obligated to meet the requirements of the Owner of Wellington Terms and Conditions and the Project Technical Specifications.
 - 1.1 The Contractor shall: (a) compile Contractor’s and any Subcontractors’ itemized requirement for materials and equipment, including quantities, unit costs, manufacturers’ or vendors’ catalogue or order numbers, delivery instructions, and other specific terms and information that are required to order the specific materials and equipment, and terms and conditions to be imposed on suppliers regarding delivery and submittal time requirements, and quantities thereof required by Contractor or Subcontractors in accordance with the applicable requirements of the Construction Contract, from time to time, during the construction of the Project, as materials and equipment need to be ordered for the Project, and submit such compilation to the Owner: (b) prepare a requisition for such materials and equipment on the Owner’s form of requisition: and (c) deliver any such requisition to the Owner no less than thirty (30) days prior to the date the manufacturer or vendor of the materials or equipment, as the case may be, requires orders for such materials or equipment to be placed to assure delivery of such materials or equipment to the Site in accordance with the Project Schedule (the “Order Date”). The requisition shall identify the Order Date. . The Owner shall issue a Purchase Order directly to the vendor of the materials or equipment, prior to the Order Date (a Purchase Order). The Owner shall include with any such Purchase Order, a copy of the Owner’s sales and use tax exemption certificate and a copy of the Owner’s Certificate of Entitlement required under F.A.C. Rule 12A-1.094(4)(c). The Owner shall make direct payment to the vendor from the Owner’s account.
 - 1.2 The Contractor, upon the delivery of any such materials or equipment, shall verify the conformity of such materials or equipment with the terms of the Purchase Order and the Contract Documents. If the Contractor determines that the materials and equipment are conforming, the Owner shall take title and possession of such material and equipment before such materials and equipment are incorporated into the Project. If the Contractor determines that the materials and equipment are non-conforming, the Contractor shall immediately notify the Owner in writing and the Owner shall reject such material and equipment.
 - 1.3 The Owner shall assume all risk of loss on all materials and equipment purchased pursuant to its sales and use tax exemption, subject to the provisions of section 1.10 below. The Owner shall maintain Builder’s Risk Insurance for the full insurable value for all materials and equipment purchased as a result of the Owner Sales Tax Recovery Program herein. This coverage shall be in addition to all other coverage required in Section 1.11 below or as otherwise provided in these Contract Documents.

- 1.4 To the extent that materials and equipment are purchased pursuant to the Owner's sales and use tax exemption, the Contractor shall reduce the Contract Amount and the penal sum of its public construction bond by 1.06 times the cost of the materials and equipment purchased directly by the Owner.
- 1.5 The Contractor shall be fully responsible for all matters relating to the receipt of materials and equipment furnished by the Owner in accordance with this Special Condition, including, but not limited to, the responsibility for verifying correct quantities, verifying documents or orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the materials and equipment at the time of delivery, and loss or damage to materials and equipment following acceptance of items due to the negligence of such Contractor or any Subcontractors or other party. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by such Contractor for the particular materials and equipment furnished. The Contractor shall provide or arrange for all services required for the unloading, handling and storage of such materials and equipment through installation.
- 1.6 The Contractor shall visually inspect all shipments from material and equipment vendors purchased directly by the Owner in accordance with this Special Condition (the "Owner Furnished Materials") and approve the vendors' invoices for materials or equipment delivered, as Owner Furnished Materials are furnished to the Site in accordance with this Special Condition. The Contractor shall assure that each delivery of the Owner Furnished Materials is accomplished by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the vendor conforming to the Purchase Order, together with such additional information as the Owner may require. The Contractor shall deliver to the Owner all invoices for materials and equipment upon verification by such Contractor that the materials and equipment conform exactly to the Contract Documents and the Purchase Order. Upon receipt of any invoice for Owner Furnished Materials, the Owner shall accept such materials and deliver such invoice to the Owner for payment directly to the vendor.
- 1.7 The Contractor shall inspect all Owner Furnished Materials to determine that such Owner Furnished Materials conform to the Contract Documents, including the Drawings and Specifications, and to determine prior to incorporation into the Work whether any such Owner Furnished Materials are patently defective, and whether such Owner Furnished Materials are identical to the materials ordered and match the description of the bill of lading and the Purchase Order. If Contractor discovers defective or non-conforming Owner Furnished Materials upon such visual inspection, Contractor shall: (1) not recommend acceptance of such non-conforming materials and equipment, (b) not utilize such non-conforming or defective materials in the Work; (c) not allow Subcontractor to utilize such non-conforming or defective materials in the Work; and (d) promptly notify the Owner, in writing, of the defective or non-conforming condition so that repair or replacement of those Owner Furnished Materials can occur without any undue delay or interruption to the Project. In the event that such Contractor fails to perform such inspection or otherwise incorporates into the Work such defective or non-conforming Owner Furnished Materials, the Contractor shall be responsible for the repair and replacement of defective or non-conforming materials, at its sole cost and expense.
- 1.8 The Contractor shall maintain written and detailed records of all Owner Furnished Materials incorporated into the Work from the stock of Owner Furnished Materials. The Contractor shall account monthly to the Owner for any Owner Furnished Materials delivered to the Site, indicating which Owner Furnished Materials have been incorporated into the Work.
- 1.9 The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all Owner Furnished Materials. All repair, maintenance or damage-repair calls shall be forwarded by the Owner to the Contractor for resolution with the appropriate vendor, supplier or Subcontractor. The Contractor warrants represents and covenants that it shall be responsible for all warranties and guarantees of the Owner Furnished Materials.
- 1.10 After the Owner takes possession of the Owner Furnished Materials at the Site, possession of the Owner's Furnished Material shall immediately and automatically transfer to the Contractor without notice. The transfer of possession of Owner Furnished Materials from the Owner to the Contractor shall constitute a bailment for the mutual benefit of the Owner and such Contractor. The Owner shall be considered the bailor and such Contractor the bailee of the Owner Furnished Materials. Owner Furnished Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the

Project and they are accepted in writing by the Owner upon final completion and acceptance of the Project by the Owner.

- 1.11 The Contractor shall purchase and maintain Builder's Risk Insurance sufficient to protect against loss of or damage to Owner Furnished Materials. Such insurance shall cover the full value of any Owner Furnished Materials between the time the Owner and or Contractor or its agents first takes title to and possession of any of such Owner Furnished Materials until final completion of the Work. The Contractor shall also maintain any other insurance with such deductible amounts that the Owner deems necessary as it relates to the Owner Furnished Materials.
- 1.12 The Owner shall not be liable for any interruption or delay damages in the Project by virtue of ordering the Owner Furnished Materials, for any defects or other problems with the Project by virtue of ordering the Owner Furnished Materials, or for any extra costs resulting from any delay in the delivery of, or defects in, the Owner Furnished Materials.
- 1.13 The Contractor, on a monthly basis, shall review invoices submitted by all vendors of Owner Furnished Materials delivered to the Site during the prior month and either concur or object to the Owner's issuance of payment to the vendors, based upon such Contractor's records of materials delivered to the Site and whether any of the Owner Furnished Materials for which payment has not been made were either non-conforming or defective.
- 1.14 In order to arrange for the prompt payment to the vendor, the Contractor shall provide to the Owner a list of the acceptance of the goods or materials within fifteen (15) days of receipt of said goods or materials. Accompanying the list shall be a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation, the Owner shall prepare a check payable to the vendor based upon the receipt of data provided. This check will be released, delivered and remitted directly to the vendor. The Contractor shall assist the Owner to immediately obtain partial or final release of waivers as appropriate. The Owner shall not make any payment without the appropriate Contractor's concurrence and approval, which shall be delivered to the Owner. There shall be no retention on Owner Furnished Materials against either the vendor, the Contractor(s) or the Subcontractor(s).
- 1.15 The Contractor and or/the Owner may, in its or their reasonable discretion, require certain material and equipment vendors to provide a supply bond in the amount of one-hundred percent (100%) of the Purchase Order price. The supply bond, if required, shall be issued by a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner. If the supply bond is required, the costs thereof will be added to the amount of the Purchase Order. The Contractor shall verify that a vendor can furnish a supply bond. All bonds will name the Owner and the Contractor as additional obligees.

Terms and Conditions (Attachment A).

The following Terms and Conditions are applicable to this order entered into by and between the Village of Wellington (referred to hereafter as Buyer) and Vendor (referred to as Seller).

- 2.1 Seller's acceptance of this order will be presumed unless Seller acknowledges exception, in writing, to Buyer within ten (10) calendar days after date of order.
- 2.2 Sellers doing business with the Buyer are prohibited from discriminating against any employee, applicant, or client because of race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation with regard to but not limited to the following employment practices, rates of pay or other compensation methods, and training selection.
- 2.3 Any assignment of this order, performance of work hereunder, in whole or in part, or monies due or to become due hereunder, shall be void unless consented to by Buyer in writing and Buyer shall have no obligations to any assignee of Seller under any assignment not consented to in writing by Buyer.
- 2.4 In the event of default by the Seller, Buyer may procure the articles or services covered by this order from other sources and hold the seller responsible for any excess costs occasioned thereby.
- 2.5 Deliveries are to be made during hours 8:00 a.m. to 5:00 p.m., Monday through Thursday, excluding holidays, unless otherwise stipulated. Seller shall notify the Buyer of deliveries that require special handling and/or assistance for off-

loading. Failure to notify the Buyer concerning this type of delivery will result in the billing to Seller of any add-on re-delivery, storage, or handling charges.

- 2.6 The Buyer may grant additional time for any delay or failure to perform hereunder if the delay will not adversely impact the best interest of the Buyer and is due to causes beyond the control of the Seller. Such grant must be in writing and made part of the order.
- 2.7 In those cases where prices stated are not F.O.B. Destination, Seller is required to prepay charges and list on invoices.
- 2.8 To the extent authorized by law, Seller shall indemnify, save and hold harmless the Buyer, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by the Seller, or its employees, agents, subcontractors of assignees pursuant to the terms of this order.
- 2.9 All Commodities delivered on this order are subject to inspection upon receipt by a representative of the Buyer. All rejected commodities shall remain the property of the Seller and will be returned at the Seller's expense.
- 2.10 Seller must render original invoice to the Buyer, Attention "Project Manager, 12300 Forest Hill Blvd., Wellington, FL 33414"
- 2.11 By accepting this order, Seller understands and agrees that the items covered herein, or services to be rendered, shall be manufactured, sold or performed in compliance with applicable Federal, State, County and Local laws, ordinances, rules, codes and regulations. Lack of knowledge by the Seller shall in no way be a cause for relief from responsibility.
- 2.12 Seller shall save and hold harmless the Buyer, its employees and agents from liability for infringement of any United States patent, trademark or copyright trademark or copyright for or on account of the use of any product sold to Buyer or used in the performance of this order.
- 2.13 No modifications of this order shall be binding upon Buyer unless approved by an authorized representative of Buyer's Purchasing Office.
- 2.14 Seller compliance required under Chapter 442, Florida Statutes, that any toxic substance delivered as a part of this order must be accompanied by a Material Safety Data Sheet (MSDS).
- 2.15 Order Number must appear on all invoices, packing slips, shipping notices, freight bills, and correspondence concerning this order.
- 2.16 Payments will be made only to the company and address as set forth on order unless the Seller has requested a change thereto on official company letterhead, signed by an authorized officer of the company.
- 2.17 No endorsement by the Buyer of the product and/or service will be used by Seller in any way, manner or form in product literature or advertising.
- 2.18 Quantities specified in the order cannot be changed without Buyer's prior written approval. Goods shipped in excess of quantity designated may be returned at Seller's expense.
- 2.19 All parties to this order agree that the representatives named herein are, in fact, bona fide and possess full and complete authority to bind said parties.
- 2.20 Responsibility will not be accepted for any goods delivered or services performed unless covered by a duly authorized Buyer Purchase Order.
- 2.21 The Buyer of Wellington is exempt from Federal and State taxes for tangible personal property. Sellers doing business with the Buyer shall not be exempt from paying sales tax to their suppliers for materials to fulfill contractual obligations with the Buyer, nor shall any Seller be authorized to use the Buyer's Tax Exemption Number in securing such materials.
- 2.22 Buyer reserves the right to terminate this order in whole or in part for default (a) if Seller fails to perform in accordance with any of the requirements of this order or (b) if Seller becomes insolvent or suspends any of its

operations or if any petition is filed of proceeding commenced by or against Seller under any State or Federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Any such termination will be without liability to Buyer except for completed items delivered and accepted by the Buyer. Seller will be liable for excess cost of re-procurement.

- 2.23 By accepting this order, the Seller agrees that payment terms shall be in accord with the Florida Prompt Payment Act, Florida Statute 218.70, *et seq.*
- 2.24 No provision of Seller's agreement to supply the ordered goods, equipment, or materials shall in any way limit Seller's liability for damages caused by defects in the materials incorporated in, nor the design or manufacture of, Seller's equipment, goods, or materials. Seller's agreement shall not include any provision requiring the Buyer to pay Seller's attorney's fees in any dispute or claim arising out of this Purchase Order.
- 2.25 The Uniform Commercial Code (Florida Statutes, Chapter 672) shall prevail as the basis for contractual obligations between the Seller and Buyer for any terms and conditions not specifically stated in this order.
- 2.26 Any and all legal actions arising from or necessary to enforce this contract will be held in Palm Beach County, Florida and the service of process and interpretation of contractual obligation shall be in accordance with the laws of the State of Florida.
- 2.27 Seller acknowledges that the materials being ordered are for incorporation into the Project for Buyer pursuant to a contract with a contractor. Seller agrees that it shall warrant its goods, equipment, or materials being ordered herein in compliance with Seller's normal warranties, or in compliance with the warranty provisions of the construction contract, the terms of which are incorporated herein, whichever warranty provides the Buyer with the greatest protection. Regardless of the forgoing all warranties shall be in accordance with the contract documents to which Contractor is bound with the buyer.

END OF SECTION

CERTIFICATE OF ENTITLEMENT – **SAMPLE**

I, the undersigned authorized representative of _____ (hereinafter "Governmental Entity"), Florida Consumer's Certificate of Exemption Number _____, certify that the tangible personal property purchased on or after _____ (date) will be incorporated into or become a part of a public facility as part of a public works contract pursuant to contract # _____ with _____ (Name of Contractor) for the building of _____.

I certify that the purchase of the materials contained in the attached Purchase Order meets the following exemption requirements contained in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.:

You must initial each of the following requirements.

_____ 1. The attached Purchase Order is issued directly to the vendor supplying the materials the contractor will use in the identified public works.

_____ 2. The vendor's invoice is issued directly to Governmental Entity.

_____ 3. Payment of the vendor's invoice is made directly by Governmental Entity to the vendor from public funds.

_____ 4. Governmental Entity will take title to the tangible personal property from the vendor at the time of purchase or delivery by the vendor.

_____ 5. Governmental Entity assumes the risk of damage or loss at the time of purchase.

I understand that if the tangible personal property identified in the attached Purchase Order does not qualify for the exemption provided in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C., Governmental Entity will be subject to the tax, interest, and penalties due on the materials purchased. If the Department of Revenue determines that the materials purchased tax-exempt by issuing this Certificate do not qualify for the exemption, Governmental Entity will be liable for any tax, penalty, and interest determined to be due.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement and the facts stated in it are true.

Signature of Authorized Representative

Title

Purchaser's Name (Print or Type)

Date

Federal Employer Identification:

Telephone Number:

You must attach the Purchase Order and the Florida Consumer's Certificate of Exemption issued to Governmental Entity.

Do not send to the Department of Revenue. This Certificate of Entitlement must be retained in the vendor's and the contractor's books and records.

(d)(c) If the contractor does not have a Certificate of Entitlement, sales to the contractor are subject to tax, unless the contractor can demonstrate to the satisfaction of the Executive Director or designee that such sales are, in substance, tax-exempt direct sales to a governmental entity.

(e) The governmental entity may not transfer liability for such tax, penalty, and interest to another party by contract or agreement.

(f) In the case of contracts with any agency or branch of the United States government in which the federal governmental agency or branch is not required to produce a Certificate of Entitlement, the purchase must comply with the five criteria provided in paragraph (4)(b), for the purchase of supplies and materials to be exempt from sales and use tax. If the criteria in paragraph (4)(b) are not met, the contractor is the ultimate consumer of such supplies or materials and is liable for sales or use tax on such purchases and manufacturing costs.

(5) Contractors, including subcontractors, that manufacture or fabricate their own materials for incorporation into public works cannot be included in a governmental entity's direct purchase program and may not accept a Certificate of Entitlement. The contractor and subcontractors, not the governmental entity, are deemed to be the ultimate consumers of the articles of tangible personal property they manufacture or fabricate to perform their contracts and are liable for tax in the manner provided in subsection (10) of Rule 12A-1.051, F.A.C.

(6) through (8) No change.

Rulemaking Authority 212.08(6), 212.17(6), 212.18(2), 212.183, 213.06(1) FS. Law Implemented 212.02(4), (14), (15), (16), (19), (20), (21), 212.06(1), (2), (14), 212.07(1), 212.08(6), (7)(bbb), 212.085, 212.18(2), 212.183 FS., s. 8, Ch. 2010-138, L.O.F. History—New 6-3-80, Amended 11-15-82, Formerly 12A-1.94, Amended 1-2-89, 8-10-92, 6-28-04, .

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

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

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 to _____
by _____ [print name of the public entity]
by _____ [print individual's name and title]
for _____
[print name of entity submitting sworn statement]

whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____

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

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(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 of the United States, including, but not limited to, any bid or contract for goods or services or any contract for the construction or repair of a public building or public work, to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1)(c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. [Please indicate which statement applies.]

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

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

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. [attach a copy of the final order]

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[signature]

[date]

STATE OF _____

COUNTY OF _____

Subscribed and Sworn to (or affirmed) before me on _____ by _____
[date]

_____. He/she is personally known to me or has presented
[name]

_____ as identification.
[type of identification]

[Notary's Signature and Seal]
Form PUR 7068 (Rev. 04/10/91)
M/R 03/06/92

Print Notary Name and Commission No.

DRUG FREE WORKPLACE

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

Preference may be given to businesses with drug-free workplace programs. Whenever two or more Bids which are equal with respect to price, quality, and service are received by the Owner for the procurement of commodities or contractual services, a Bid received from a business that certifies that it has implemented a drug-free workplace program may be given preference in the award process. Established procedures for processing tie Bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business must attest to the following:

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

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

Contractor's Signature

TRENCH SAFETY AFFIDAVIT

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

_____ (NAME OF FIRM) hereby provides written assurance that compliance with applicable Trench Safety Standards identified in the Occupational Safety and Health Administration's Excavation Safety Standards, (OSHA) 29 C.F.R.S. 1926.650 Subpart P will be adhered to during trench excavation in accordance with Florida Statutes 553.60 through 533.64 inclusive (1990), "Trench Safety Act".

The undersigned acknowledges that included in the various items of the proposal and in the Total Proposal Price are costs for complying with the Florida "Trench Safety Act" as summarized below: (Attach additional sheets as necessary).

Schedule Item	Trench Safety Measure (Slope, Trench Shield, etc.)	Cost
	Total	

(Signature)

(Date)

STATE OF _____

COUNTY OF _____

Subscribed and Sworn to (or affirmed) before me on _____
by _____

_____. He/she is personally known to me or has presented

_____(type of i.d.) as identification.

Notary Public Signature and Seal

Print Notary Name and Commission No.

QUESTIONNAIRE

The following Questionnaire shall be completed and submitted in Envelope with the Bid. By submission of this Bid, Bidder guarantees the truth and accuracy of all statements and answers herein contained.

1. How many years has your organization been in business? _____

2. What is the last project of this nature that you have completed?

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

4. Name three individuals or corporations for which you have performed work and to which you refer:

Name	Address	Phone	Fax
------	---------	-------	-----

Name	Address	Phone	Fax
------	---------	-------	-----

Name	Address	Phone	Fax
------	---------	-------	-----

5. List the following information concerning all contracts OR projects in progress and past as of the date of submission of this bid. (List any Federal, State, City or local municipalities/government contracts or project information if any relevant in scope with this solicitation).

Information provided in (section 5) is for reference purposes and may be contacted for verification.

Name of Term Contract OR Project	Owner	Contact (Person) Name & Title	Contact Email Address & Phone Number	Contact Business Address

6. Has the bidder or his or her representative inspected the proposed project and does the Bidder have a complete plan for its performance?

7. Will you subcontract any part of this work? If so, give details including a list of each subcontractor(s) that will perform work in excess of the percent (10%) of the contract amount and the work that will be performed by each subcontractor(s).

Subcontractor	Work to be Performed

8. What equipment do you own that is available for the work? _____
9. What equipment will you purchase for the proposed work? _____
10. What equipment will you rent for the proposed work? _____
11. State the name of your proposed project manager and give details of his or her qualifications and experience in managing similar jobs.

12. State the true, exact, correct and complete name of the partnership, corporation, or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do businesses under the trade name.
13. The correct name of the Bidder is _____
14. The partnership is a ☐ Sole Proprietorship, ☐ Partnership, or ☐ Corporation or ☐ Other Type of Entity _____ (Fill In).
15. The address of principal place of business is _____

16. The names of the Corporate Officers, or Partners, or Individuals doing business under a trade name, are as follows:

17. List all organizations which were predecessors to Bidder or in which the principals or officers of the Bidder were principals or officers.

18. List and describe all bankruptcy petitions (Voluntary or Involuntary) which have been filed by or against the Bidder, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description the disposition of each such petition.

-
19. List and describe all successful Performance or Payment Bond claims made to your surety(ies) during the last five (5) years. The list and descriptions should include claims against the bond of the Bidder and its predecessor organization(s).
-
20. List all claims, arbitrations, administrative hearings and lawsuits brought by or against the Bidder or its predecessor organization(s) during the last five (5) years. The list shall include all case names; case, arbitration, or hearing identification numbers; the name of the project over which the dispute arose; and a description of the subject matter of the dispute.
-
21. List and describe all criminal proceedings or hearings concerning business related offenses in which the Bidder, its principals or officers or predecessor organization (s) were defendants.
-
22. Has the Bidder, its principals, officers, or predecessor organization(s) been debarred or suspended from bidding by any government during the last five (5) years? If yes, provide details.
-
23. List and disclose any and all business relations with any members of Wellington Council.
-
-

LIST OF DRAWINGS

DRAWING TITLE	SHEET NUMBER
Exhibit A – Manhole Adjusting Rings	Attachment A
Exhibit B – Box Out Shoulder	Attachment B

See separate attachments for designs.

AGREEMENT

THIS AGREEMENT is dated and will be effective on the _____ day of _____ in the year _____, by and between the Village of Wellington, (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ITB #077-12/ENR Annual Asphalt Milling & Resurfacing

ARTICLE 2 – PUBLIC WORKS DEPARTMENT

The Project has been designed by WELLINGTON who is hereinafter called PUBLIC WORKS ROADS SUPERVISOR who is to act as OWNER's representative, shall assume all duties and responsibilities and have the rights and authority assigned to PUBLIC WORKS ROADS SUPERVISOR in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES

3.1 After receiving notice to commence with the work for a particular project the Contractor shall commence promptly within seventy-two (72) hours and shall efficiently prosecute the work with adequate personnel and equipment until completion, within 30 calendar days, or as designated by the or his duly appointed representative. The initial term of the contract will be for one (1) year with the option for two (2) additional one (1) year renewals.

3.2 LIQUIDATED DAMAGES. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR and/or CONTRACTOR'S Surety shall pay OWNER **Two Thousand and 00/100 dollars (\$2,000.00)** for each day that expires after the time specified in paragraph 3.1 for final completion and readiness for final payment until the Work is completed and ready for final payment.

3.3 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded by the Owner.

ARTICLE 4 - CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, subject to adjustment as provided therein, in current funds as follows:

The amount of _____ (\$_____), which is based on the price(s) in the Schedule of Values.

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by PUBLIC WORKS ROADS SUPERVISOR as provided in the General Conditions.

5.1. PROGRESS PAYMENTS. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by PUBLIC WORKS ROADS SUPERVISOR, on or about the 10th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in Paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

5.1.1. Prior to successful completion of 50% of the work, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as PUBLIC WORKS ROADS SUPERVISOR shall determine, or OWNER may withhold, in accordance with Paragraph 14.02 of the General Conditions.

90% of Work completed.

0% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in Paragraph 14.02.A of the General Conditions).

5.1.2. Upon successful completion of 50% of the work, progress payments will be made in an amount equal to 95% of work completed, but, in each case, less the aggregate of payments previously made and less such amounts as PUBLIC WORKS ROADS SUPERVISOR shall determine, or OWNER may withhold, in accordance with Paragraph 14.02 of the General Conditions.

5.2. FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, and settlement of all claims, OWNER shall pay the remainder of the Contract Price as recommended by PUBLIC WORKS ROADS SUPERVISOR as provided in said paragraph 14.07 of the General Conditions.

ARTICLE 6

(This Article left blank intentionally).

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

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

7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions, Laws, and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

7.2. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2. above) which pertain to the subsurface of physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies which pertain to the physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4. CONTRACTOR has given OWNER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable to CONTRACTOR.

7.5 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

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

- 8.1 This Agreement consisting of 4 pages.
- 8.2 Performance Bond and Payment Bond consisting of 4 pages (plus Power of Attorney Forms as applicable).
- 8.3 Notice of Award
- 8.4 General Conditions consisting of 48 pages
- 8.5 Supplementary Conditions consisting of 3 pages.
- 8.6 Sales Tax Recovery Program Special Conditions For Owner Furnished Materials and Equipment consisting of 5 pages.
- 8.7 General Requirements Section 1000 consisting of 4 pages
- 8.8 Drawings not attached hereto but are listed in the List of Drawings
- 8.9 Addenda numbers ____ to ____, inclusive
- 8.10 CONTRACTOR'S Bid
- 8.11 The following which may be delivered or issued after the Effective Date of the Agreement may not be attached hereto: Notice to Proceed, all written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.04 and 3.05 of the General Conditions.
- 8.12 The documents listed under Article 8 above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

- 9.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions, will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained on the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 10 - INDEMNIFICATION

- 10.1 This space left blank intentionally.
 - 10.2 CONTRACTOR shall indemnify and hold harmless OWNER and PUBLIC WORKS ROADS SUPERVISOR and their respective officers, and employees, for liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the construction contract.
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Regardless of the foregoing, the indemnification herein shall be the greater of the CONTRACTOR'S insurance coverage for such claim or Five Million Dollars. Nothing in the Contract Documents shall be construed or interpreted as consent by the OWNER to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

ARTICLE 11 – SALES TAX INFORMATION

11.1 The Owner Sales Tax Recovery Program Special Conditions are incorporated herein by reference.

ARTICLE 12 - PROJECT SIGNAGE

CONTRACTOR shall furnish and erect 0 Owner standard signs at the Project site as directed by the OWNER. CONTRACTOR may install signage at the site subject to approval by the OWNER.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement. One counterpart each has been delivered to OWNER, CONTRACTOR, and the PUBLIC WORKS ROADS SUPERVISOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by the PUBLIC WORKS ROADS SUPERVISOR on their behalf.

OWNER: Village of Wellington CONTRACTOR _____

By _____
Bob Margolis, Mayor

By _____

Attest: _____
Awilda Rodriguez, Wellington's Clerk
(SEAL)

Attest: _____

(CORPORATE SEAL)

Address for giving notices
12300 Forest Hill Boulevard
Wellington, Florida 33414

Address for giving notices

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

License No. _____

Agent for service of process:

Jeffrey S. Kurtz, Attorney for Wellington

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

OPINION OF ATTORNEY

This is to certify that I have examined the attached Contract Documents for ITB #077-12/ENR Annual Asphalt Milling & Resurfacing and that after such examination I am of the opinion that the execution of the Agreement, the Performance Bond and Payment Bond to be provided are in due and proper form.

Wellington Attorney

This _____ day of _____

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

Wellington
12300 Forest Hill Boulevard
Wellington, FL 33414

CONTRACT

Date:

Amount:

Description (Name and Location)

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this

Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)
Seal)

SURETY

Company: (Corp.

Signature: _____
Name and Title:

Signature: _____
Name and Title:
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)
Seal)

SURETY

Company: (Corp.

Signature: _____
Name and Title:

Signature: _____
Name and Title:

EJCDC No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Public Works Roads Supervisors Joint Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

This Bond is executed pursuant to Florida Statutes Section 255.05 or Section 713.23, whichever is applicable and is subject to the notice and time limitation provisions.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.

2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:

3.1 The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the owner, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and

3.2 The owner has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and

3.3 The owner has agreed to pay the Balance of the Contract Price to;

3.3.1. The Surety in accordance with the terms of the Contract;

3.3.2. Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. When the owner has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or

4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;

4.4.1. After investigations, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefor to the OWNER; or

4.4.2. Deny liability in whole or in part and notify the OWNER citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied pliability, in whole or in part, without

further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;

6.2 Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.

7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

12. DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under this Contract.

12.2 Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.3 CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4 OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(For Information Only – Name, Address and Telephone)

Agent or Broker:

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place
of Business):

OWNER (Name and Address):

Wellington
12300 W. Forest Hill Boulevard
Wellington, FL 33414

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC No. 1910-28-B (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Public Works Roads Supervisors Joint Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

This Bond is executed pursuant to Florida Statutes Section 255.05 or Section 713.23, whichever is applicable and is subject to the notice and time limitation provision.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the CONTRACTOR:

- 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
- 2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payments, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

- 4.1 Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
- 4.2 Claimants who do not have a direct contract with the CONTRACTOR:
 1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

- 6.1 Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
- 6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and Public Works Roads Supervising services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

15.3 OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

Note 1: As an additional requirement any claimant, except a laborer, who is not in privity with the Contractor shall, within 45 days after beginning to furnish labor, materials or supplies, furnish the Contractor with a Notice that he intends to look to the bond.

For Information Only – Name, Address and Telephone)
Agent or Broker:

NOTICE OF COMPLIANCE WITH CHAPTER 556, FLORIDA STATUTES

The undersigned Contractor does hereby confirm to the Owner and Public Works Roads Supervisor that the Contractor has reviewed the provisions of Chapter 556, Florida Statutes, and has provided to “Sunshine State One-Call of Florida, Inc.” the information required under F.S. 556.105 before the commencement of any excavation or demolition required for the Work.

Executed this _____ day of _____ 20_____.

(name of Contractor)

(signature)

(print name)

(title)

END OF SECTION

**CONTRACTOR'S AFFIDAVIT TO OWNER
AND FINAL RELEASE OF LIENS**

STATE OF FLORIDA

COUNTY OF _____

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared _____, who, being by me first duly sworn, on oath depose(s) and say(s):

(1) He/she is/they are a (Corporation, Partnership, or Individual) of _____ (State), doing business as _____, hereinafter called "Contractor".

(2) Contractor heretofore entered into a Contract with Wellington, hereinafter called "Owner" to do Work (furnish material, labor and services) for ITB #077-12/ENR Annual Asphalt Milling & Resurfacing, located at Palm Beach County, Florida.

(3) Contractor has fully completed construction in accordance with the terms of the Contract, and all lienors have been paid in full, except:

<u>NAME OF LIENOR</u>	<u>AMOUNT DUE AND UNPAID</u>
_____	_____
_____	_____

(4) All Workmen's Compensation claims have been settled and no liability claims are pending, in connection with, arising out of or resulting from the Contractor.

(5) Receipt by the Contractor of the final payment, under the aforementioned Contract, shall constitute a full release and discharge by the Contractor to the Owner of any and all claims of the Contractor against the Owner, arising out of, connected with, or resulting from performance of the obligations of the Contractor pursuant to the Contract Documents.

(6) The term "lienor" as used in this affidavit means any person having a lien or a prospective lien, under the Mechanics Lien Law of Florida, on the land and property of the Owner referred to in paragraph (2) of this affidavit. Further, Contractor represents, warrants and covenants that all subcontractors, material men and suppliers have been paid in full. The contractor further provides under penalty of perjury that there are no claims of lien on the project.

(7) This affidavit is given pursuant to the provisions of Florida Statutes Section 713.06 or Section 255.05, whichever is applicable.

Signed and sealed in the presence of:

_____	_____ (Entity)
_____	By: _____ (Seal)

Subscribed and Sworn to (or affirmed) before me on this _____ day of _____ by _____ He/she is personally known to me or has presented _____ as identification.

Notary Public Signature and Seal

Print Notary Name and Commission No.

APPLICATION FOR PAYMENT NO. _____

Project: #077-12/ENR Annual Asphalt Milling & Resurfacing

Start Date: _____

Completion Date: _____

Application is made for payment, as hereinafter shown, in connection with this Contract:

Total Work to Date – see attached schedule	\$ _____
Total Material Suitably Stored – see attached schedule	\$ _____
Gross Amount Due	\$ _____
Less _____% Retainage	\$ _____
Amount Due to Date	\$ _____
Less Previous Applications	\$ _____
Amount Due This Application	\$ _____

Original Contract Price	\$ _____
Net Change Orders -Credit	\$ _____
Subtotal	\$ _____
Net Change Orders - Debit	\$ _____
Current Contract Price	\$ _____
Value of Work Remaining to be Done	
(Current Contract Amount – Gross Amount Due)	\$ _____

Contractor's Certification:

The undersigned Contractor certifies that (1) all previous progress payments received from Owner on account of Work done under the Agreement referred to above have been applied to discharge in full all obligations of Contractor incurred in connection with Work covered by prior Applications for Payment numbered 1 through _____, inclusive; and (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to Owner).

Dated: _____, _____

Contractor: _____

Mailing Address: _____

By _____
(Name and Title)

State of _____)
County of _____)ss

Subscribed and Sworn to (or affirmed) before me on this _____ day of _____ by _____ He/She is personally known to me or has presented _____ as identification. Who being so duly sworn, did depose and say that he/she is _____ of the Contractor above mentioned; that he/she executed the above Application for Payment and statement on behalf of said Contractor; and that all of the statements contained therein are true, correct, and complete.

Notary Public Signature and Seal

Print Notary Name and Commission No.

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

WELLINGTON DESIGNEE

Date: _____

By: _____
(Name) (Title)

BILL OF SALE, ABSOLUTE

KNOWN ALL MEN BY THESE PRESENTS, that
_____, a corporation of _____ County, Florida, party of
the first part, for an in consideration of the sum of Ten and No/100 (\$10.00) lawful money of the United States, to it
paid by WELLINGTON, a municipal corporation of the State of Florida, 12300 W. Forest Hill Boulevard,
Wellington, Palm Beach County, Florida 33414, party of the second part, the receipt whereof is hereby
acknowledged has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell,
transfer and deliver unto the said party of the second party, its executors, administrators and assigns, the following
goods and chattels:

Project Name #077-12/ENR Annual Asphalt Milling & Resurfacing consisting of the components set forth
in the final schedule of values as described in Exhibit "A", attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same unto the said party of the second part, its executors, administrators
and assigns forever.

AND, it does, for itself and its successors and assigns covenant to and with the said party of the second
part, its successors and assigns, that it is the lawful owner of the said goods and chattels; that they are free
from all encumbrances; that it has good right to sell the same aforesaid, and that it will warrant and defend
the sale of the said property, goods and chattels hereby made, unto the said party of the second part its
successors and assigns against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, it has hereunto set its hand and seal this _____ day of _____,
20____.

Signed, sealed and delivered
in the presence of:

WITNESSES:

Signature

Name:

Title:

Print Name

Signature

[Corporate Seal]

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____, as _____ of _____, a _____
(state) corporation. He/She is ☐ personally known to me or ☐ has produced _____ as
identification.

(stamp)

Print Notary Name:_____

FORM OF FINAL RECEIPT

FINAL RECEIPT FOR CONTRACT NO. 077-12/ENR

Received this _____ day of _____, _____, from Wellington, the sum of _____ (_____) as full and final payment to CONTRACTOR for all work and materials for the Project described as:

#077-12/ENR Annual Asphalt Milling & Resurfacing

This sum includes full and final payment for all extra work and material and all incidentals.

CONTRACTOR hereby indemnifies and releases Wellington from all liens and claims whatsoever arising out of the Contract and Project.

CONTRACTOR hereby certifies that all persons doing work upon or furnishing materials or supplies for the Project have been paid in full. In lieu of this certification regarding payment for work, materials, and supplies, CONTRACTOR may submit a consent of surety to final payment in a form satisfactory to OWNER.

CONTRACTOR further certifies that all taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged.

(If incorporated, sign below.)

ATTEST:

Secretary

(CORPORATE SEAL)

Name

By: _____
Title

Date: _____

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT
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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Public Works Roads Supervisor which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Public Works Roads Supervisor which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
 13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
 14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Public Works Roads Supervisor's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Public Works Roads Supervisor which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Public Works Roads Supervisor*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Public Works Roads Supervisor which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Public Works Roads Supervisor who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Public Works Roads Supervisor, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Public Works Roads Supervisor ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Public Works Roads Supervisor. 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 Public Works Roads Supervisor as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Public Works Roads Supervisor any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Public Works Roads Supervisor’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

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

2.02 Copies of Documents

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

2.03 Commencement of Contract Times; Notice to Proceed

- A. The Contract Time will commence to run no later than 120 days after the posting of the recommended award or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier (unless otherwise agreed by Owner and Contractor in writing).

2.04 Starting the Work

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

2.05 Before Starting Construction

- A. *Construction Schedule:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Public Works Roads Supervisor for timely review:
 1. a Construction Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. a Schedule of Submittals; and
 3. a Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in

sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 Preconstruction Conference; Designation of Authorized Representatives

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

2.07 Initial Acceptance of Schedules

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

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

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

3.02 Reference Standards

- A. Standards, Specifications, Codes, Laws, and Regulations
 - 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall

mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Public Works Roads Supervisor, 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, Public Works Roads Supervisor, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies:*

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

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Public Works Roads Supervisor's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 - 3. Public Works Roads Supervisor's written interpretation or clarification.

3.05 Reuse of Documents

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

3.06 Electronic Data

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

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

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times,

or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

- A. *Reports and Drawings:* Reports and Drawings, if any, will be attached to the Contract Documents. Such Reports and Drawings may include:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Unless otherwise set forth in the Supplementary Conditions, Contractor may not rely upon the accuracy of the "technical data" contained in such reports and drawings. Such reports and drawings are not Contract Documents. Contractor shall have full responsibility with respect to subsurface and physical conditions at or contiguous to the Site. Except for such reliance on such "technical data" as set forth in the Supplementary Conditions, if any, Contractor may not rely upon or make any claim against Owner or Public Works Roads Supervisor, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
 - 1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
 - 2. is of such a nature as to require a change in the Contract Documents; or
 - 3. differs materially from that shown or indicated in the Contract Documents; or
 - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Public Works Roads Supervisor in writing about such

condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Public Works Roads Supervisor's Review:* After receipt of written notice as required by Paragraph 4.03.A, Public Works Roads Supervisor will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Public Works Roads Supervisor's findings and conclusions.
- C. *Possible Price and Times Adjustments:*
1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Public Works Roads Supervisor, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Public Works Roads Supervisor by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Public Works Roads Supervisor shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;

- b. locating all Underground Facilities shown or indicated in the Contract Documents;
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

- 1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Public Works Roads Supervisor. Public Works Roads Supervisor will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- 2. If Public Works Roads Supervisor concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

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

4.06 Hazardous Environmental Condition at Site

- A. *Reports and Drawings:* Reports and Drawings, if any, will be attached to the Contract Documents. Such reports and drawings will include those known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Unless otherwise set forth in the Supplementary Conditions, the Contractor may not rely upon the accuracy of the "technical data" contained in such reports and drawings. Such reports and drawings are not Contract Documents. Except for such reliance on such "technical data" as set forth in the Supplementary Conditions, if any, Contractor may not rely upon or make any claim against Owner or Public Works Roads Supervisor, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of

construction to be employed by Contractor and safety precautions and programs incident thereto;
or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Public Works Roads Supervisor (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Public Works Roads Supervisor concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Public Works Roads Supervisor, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence. Nothing herein shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Public Works Roads Supervisor, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors,

architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Public Works Roads Supervisor and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

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

5.03 Certificates of Insurance

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

- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor's Insurance

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
 - 1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Public Works Roads Supervisor, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 - 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 - 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 - 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to

whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 [Paragraph intentionally left blank]

5.06 [Paragraph intentionally left blank]

5.07 [Paragraph intentionally left blank]

5.08 [Paragraph intentionally left blank]

5.09 Acceptance of Bonds and Insurance; Option to Replace

- A. Owner shall review the coverage afforded by or other provisions of the insurance required to be purchased or maintained by Contractor after delivery of insurance certificates to Owner in accordance with Paragraph 2.01B of the General Conditions. Contractor shall furnish to the Owner such additional information in respect to insurance provided by contractor as the Owner may reasonably request. Review of Insurance Policies or Insurance Certificates by the Owner shall not relieve or decrease the liability of the Contractor hereunder. In case of a breach by Contractor of any insurance provision stated in the Contract Documents, the Owner at its option may take out and maintain, at the expense of the Contractor, such insurance as the Owner may deem proper and Owner may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Contract. All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by Contractor shall contain the name of the Project.

5.10 Partial Utilization, Acknowledgment of Property Insurer

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

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Public Works Roads Supervisor in the design or specification of a specific means,

method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Public Works Roads Supervisor except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have the authority to act on behalf of the Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed at the discretion of the Public Works Department, excluding holidays, and shall comply with the Wellington Noise Ordinance. Contractor will not permit overtime work or the performance of Work on a Sunday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Public Works Roads Supervisor.

6.03 Services, Materials, and Equipment

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

6.04 Progress Schedule

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

6.05 Substitutes and "Or-Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Public Works Roads Supervisor for review under the circumstances described below.
1. *“Or-Equal” Items:* If in Public Works Roads Supervisor’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Public Works Roads Supervisor as an “or-equal” item, in which case review and approval of the proposed item may, in Public Works Roads Supervisor’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Public Works Roads Supervisor determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
 2. *Substitute Items:*
 - a. If in Public Works Roads Supervisor’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
 - b. Contractor shall submit sufficient information as provided below to allow Public Works Roads Supervisor to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Public Works Roads Supervisor from anyone other than Contractor.
 - c. The requirements for review by Public Works Roads Supervisor will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Public Works Roads Supervisor may decide is appropriate under the circumstances.
 - d. Contractor shall make written application to Public Works Roads Supervisor for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:

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

Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Public Works Roads Supervisor to reject defective Work.

If the Bid Form or Specifications require (or if requested by Owner prior to the Notice of Award), the apparent successful Bidder and any other Bidder so requested, shall submit a list of all Subcontractors, Suppliers, and other persons or organizations (including those who are to furnish the principal items of material and equipment) in accordance with requirements of the Instructions to Bidders and this Article 6.06B of the General Conditions.

- C. Contractor shall be fully responsible to Owner and Public Works Roads Supervisor for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Public Works Roads Supervisor and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Public Works Roads Supervisor to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

Owner or Public Works Roads Supervisor may furnish to any such Subcontractor, Supplier, or other individual or entity, to the extent practicable, evidence of amounts paid to Contractor in accordance with Contractor's Application for Payment.

- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Public Works Roads Supervisor through Contractor.

- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Public Works Roads Supervisor. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Public Works Roads Supervisor, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Public Works Roads Supervisor, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. [Paragraph intentionally left blank.]
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Public Works Roads Supervisor, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents. Nothing herein shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver and limits provided in §768.28, Florida Statutes.

6.08 Permits

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

6.09 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Public Works Roads Supervisor shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. Sales Tax shall be paid in accordance with the Sales Tax Recovery Program Special Conditions when applicable, as determined by the Owner and/or Public Works Roads Supervisor.

6.11 Use of Site and Other Areas

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 - 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 - 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Public Works Roads Supervisor, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Public Works Roads Supervisor, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work. Nothing herein shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 Record Documents

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

6.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Public Works Roads Supervisor of the specific requirements of Contractor's safety program with which Owner's and Public Works Roads Supervisor's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Public Works Roads Supervisor or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them) at no additional cost to the Owner or Public Works Roads Supervisor.
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Public Works Roads Supervisor has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

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

6.15 Hazard Communication Programs

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

6.16 Emergencies

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

6.17 Shop Drawings and Samples

- A. Contractor shall submit Shop Drawings and Samples to Public Works Roads Supervisor for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Public Works Roads Supervisor may require.
 - 1. *Shop Drawings:*
 - a. Submit number of copies specified in the General Requirements.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Public Works Roads Supervisor the services, materials, and equipment Contractor proposes to provide and to enable Public Works Roads Supervisor to review the information for the limited purposes required by Paragraph 6.17.D.
 - 2. *Samples:*
 - a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Public Works Roads Supervisor may require to enable Public Works Roads Supervisor to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Public Works Roads Supervisor's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Submittal Procedures:*
 - 1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

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

D. *Public Works Roads Supervisor's Review:*

- 1. Public Works Roads Supervisor will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Public Works Roads Supervisor. Public Works Roads Supervisor's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- 2. Public Works Roads Supervisor's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- 3. Public Works Roads Supervisor's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Public Works Roads Supervisor has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Public Works Roads Supervisor's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

- 1. Contractor shall make corrections required by Public Works Roads Supervisor 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 Public Works Roads Supervisor on previous submittals.

6.18 Continuing the Work

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or

disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Public Works Roads Supervisor and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Public Works Roads Supervisor;
 - 2. recommendation by Public Works Roads Supervisor or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Public Works Roads Supervisor or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any acceptance by Owner or any failure to do so;
 - 6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Public Works Roads Supervisor;
 - 7. any inspection, test, or approval by others; or
 - 8. any correction of defective Work by Owner.

6.20 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Public Works Roads Supervisor, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission, recklessness or intentional wrongful misconduct of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable. Nothing herein shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

- B. In any and all claims against Owner or Public Works Roads Supervisor or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Public Works Roads Supervisor and Public Works Roads Supervisor's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 Delegation of Professional Design Services

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

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Public Works Roads Supervisor and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Public Works Roads Supervisor in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

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

7.03 Legal Relationships

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

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

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

8.02 Replacement of Public Works Roads Supervisor

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

8.03 Furnish Data

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

8.04 Pay When Due

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

8.05 Lands and Easements; Reports and Tests

- A. Owner's duties with respect to providing lands and easements and providing Public Works Roads Supervisor surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 Insurance

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

8.07 Change Orders

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

8.08 Inspections, Tests, and Approvals

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

8.09 Limitations on Owner's Responsibilities

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

8.10 Undisclosed Hazardous Environmental Condition

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

8.11 Evidence of Financial Arrangements

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

8.12 Compliance with Safety Program

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

ARTICLE 9 – PUBLIC WORKS ROADS SUPERVISOR'S STATUS DURING CONSTRUCTION

9.01 Owner's Representative

- A. Public Works Roads Supervisor will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Public Works Roads Supervisor as Owner's representative during construction are set forth in the Contract Documents.

9.02 Visits to Site

- A. Public Works Roads Supervisor will make visits to the Site at intervals appropriate to the various stages of construction as Public Works Roads Supervisor deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Public Works Roads Supervisor, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Public Works Roads Supervisor will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Public Works Roads Supervisor's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Public Works Roads Supervisor will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Public Works Roads Supervisor's visits and observations are subject to all the limitations on Public Works Roads Supervisor's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Public Works Roads Supervisor's visits or observations of Contractor's Work, Public Works Roads Supervisor will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

- A. If Owner and Public Works Roads Supervisor agree, Public Works Roads Supervisor will furnish a Resident Project Representative to assist Public Works Roads Supervisor in providing more extensive observation of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE (the "Listing"), as included in the Project Manual, and as provided in Paragraph 9.09. If any conflicts exist between the Listing and Paragraph 9.09, the terms and conditions of the Listing shall govern. If Owner designates another representative or agent to represent Owner at the Site who is not Public Works Roads Supervisor's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as presented at the Pre-Construction Meeting.

9.04 Authorized Variations in Work

- A. Public Works Roads Supervisor may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to

agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

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

9.06 Shop Drawings, Change Orders and Payments

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

9.07 Determinations for Unit Price Work

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

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Public Works Roads Supervisor will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Public Works Roads Supervisor in writing within 30 days of the event giving rise to the question.
- B. Public Works Roads Supervisor will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Public Works Roads Supervisor's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Public Works Roads Supervisor's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Public Works Roads Supervisor will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 Limitations on Public Works Roads Supervisor's Authority and Responsibilities

- A. Neither Public Works Roads Supervisor's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Public Works Roads Supervisor in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Public Works Roads Supervisor shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Public Works Roads Supervisor to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Public Works Roads Supervisor will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Public Works Roads Supervisor will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Public Works Roads Supervisor will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Public Works Roads Supervisor's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 Compliance with Safety Program

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 Unauthorized Changes in the Work

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

10.03 Execution of Change Orders

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

10.04 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 Claims

- A. *Public Works Roads Supervisor's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Public Works Roads Supervisor for decision. A decision by Public Works Roads Supervisor shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Public Works Roads Supervisor and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Public Works Roads Supervisor and the other party to the Contract within 60 days after the start of such event (unless Public Works Roads Supervisor allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Public Works Roads Supervisor and the claimant within 30 days after receipt of the claimant's last submittal (unless Public Works Roads Supervisor allows additional time).
- C. *Public Works Roads Supervisor's Action:* Public Works Roads Supervisor will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Public Works Roads Supervisor is unable to resolve the Claim if, in the Public Works Roads Supervisor's sole discretion, it would be inappropriate for the Public Works

Roads Supervisor to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

- D. In the event that Public Works Roads Supervisor does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Public Works Roads Supervisor's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 - 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Public Works Roads Supervisor, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
 - 4. Costs of special consultants (including but not limited to Public Works Roads Supervisors, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
 - 5. Supplemental costs including the following:

- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
- c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Public Works Roads Supervisor, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, Public Works Roads Supervisors, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Public Works Roads Supervisor an itemized cost breakdown together with supporting data.

11.02 Allowances

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

11.03 Unit Price Work

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

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Contractor may not make a claim for additional expenses incurred as a result of a difference between final quantity of any item(s) of Unit Price Work and the estimated quantity of such item(s) in the Contract Documents, unless specifically allowed in the Bid Form. Any adjustments specifically allowed shall be made in accordance with directions in the Bid Form. Owner may make a claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if the Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of such decrease.

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

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Public Works Roads Supervisor and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

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

12.03 Delays

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Public Works Roads Supervisor, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Public Works Roads Supervisor, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Public Works Roads Supervisor has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

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

13.03 Tests and Inspections

- A. Contractor shall give twenty-four hours notice to Design Criteria Professional for all required inspections, tests, or approvals, except as otherwise provided, and shall cooperate with inspection and testing personnel to facilitate required inspections, tests or approvals.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Public Works Roads Supervisor the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Public Works Roads Supervisor'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 Public Works Roads Supervisor.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Public Works Roads Supervisor, Contractor shall, if requested by Public Works Roads Supervisor, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Public Works Roads Supervisor timely notice of Contractor's intention to cover the same and Public Works Roads Supervisor has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

- A. If any Work is covered contrary to the written request of Public Works Roads Supervisor, it must, if requested by Public Works Roads Supervisor, be uncovered for Public Works Roads Supervisor's observation and replaced at Contractor's expense.
- B. If Public Works Roads Supervisor considers it necessary or advisable that covered Work be observed by Public Works Roads Supervisor or inspected or tested by others, Contractor, at Public Works Roads

Supervisor's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Public Works Roads Supervisor may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

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

13.06 Correction or Removal of Defective Work

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

13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

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

13.08 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Public Works Roads Supervisor's recommendation of final payment, Public Works Roads Supervisor) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Public Works Roads Supervisor as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Public Works Roads Supervisor's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Public Works Roads Supervisor to correct defective Work, or to remove and replace rejected Work as required by Public Works Roads Supervisor in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Public Works Roads Supervisor and Public Works Roads

Supervisor's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

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

14.02 Progress Payments

A. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Public Works Roads Supervisor for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Public Works Roads Supervisor will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Public Works Roads Supervisor's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Public Works Roads Supervisor's recommendation of any payment requested in an Application for Payment will constitute a representation by Public Works Roads Supervisor to Owner, based on Public Works Roads Supervisor's observations of the executed Work as an experienced and qualified design professional, and on Public Works Roads Supervisor's review of the Application for Payment and the accompanying data and schedules, that to the best of Public Works Roads Supervisor's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Public Works Roads Supervisor's responsibility to observe the Work.
3. By recommending any such payment Public Works Roads Supervisor will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Public Works Roads Supervisor in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Public Works Roads Supervisor's review of Contractor's Work for the purposes of recommending payments nor Public Works Roads Supervisor's recommendation of any payment, including final payment, will impose responsibility on Public Works Roads Supervisor:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Public Works Roads Supervisor may refuse to recommend the whole or any part of any payment if, in Public Works Roads Supervisor's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Public Works Roads Supervisor may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Public Works Roads Supervisor's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Public Works Roads Supervisor has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

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

D. *Reduction in Payment:*

- 1. Owner may refuse to make payment of the full amount recommended because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended, including unsatisfactory work and/or claims against owner on other projects for Wellington; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
- 2. If Owner refuses to make payment of the full amount recommended by Public Works Roads Supervisor, Owner will give Contractor immediate written notice (with a copy to Public Works Roads Supervisor) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
- 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 Contractor's Warranty of Title

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

14.04 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Public Works Roads Supervisor in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Public Works Roads Supervisor issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Public Works Roads Supervisor shall make an inspection of the Work to determine the status of completion. If Public Works Roads Supervisor

does not consider the Work substantially complete, Public Works Roads Supervisor will notify Contractor in writing giving the reasons therefor.

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

14.05 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Public Works Roads Supervisor, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Public Works Roads Supervisor will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Public Works Roads Supervisor in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Public Works Roads Supervisor to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Public Works Roads Supervisor shall make an inspection of that part of the Work to determine its status of completion. If Public Works Roads Supervisor does not consider that part of the Work to be substantially complete, Public Works Roads Supervisor will notify Owner and Contractor in writing giving the reasons therefor. If Public Works Roads Supervisor considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 Final Inspection

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

14.07 Final Payment

A. *Application for Payment:*

1. After Contractor has, in the opinion of Public Works Roads Supervisor, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Public Works Roads Supervisor's Review of Application and Acceptance:*

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

C. *Payment Becomes Due:*

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

14.08 Final Completion Delayed

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

14.09 Waiver of Claims

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

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

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

15.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Public Works Roads Supervisor; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
 - C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of Public Works Roads Supervisors, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Public Works Roads Supervisor as to their reasonableness and, when so approved by Public Works Roads Supervisor, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
 - D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Owner, in its sole discretion, may choose not to terminate Contractor's services if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 15 days of receipt of said notice.
 - E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
 - F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 Owner May Terminate For Convenience

- A. The Owner may terminate this contract for convenience upon providing Contractor fourteen (14) days written notice of the same. If this Contract is terminated as provided herein, the Contractor shall be paid for all completed and acceptable work executed and allowable expenses incurred prior to the date of termination. Payment shall include services actually performed in full prior to termination date, but shall exclude all lost profits, direct, indirect, consequential, special damages, or other damages for the remainder of the project.

If a court of competent jurisdiction finds that the Owner wrongfully terminated this Contract, then in such event, this Contract shall be deemed terminated for convenience as provided for in this Paragraph 15.03A., and the Contractor shall not be entitled to damages or loss of profits, but may be entitled to all items as authorized herein.

15.04 Contractor May Stop Work or Terminate

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

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

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

ARTICLE 16 –

16.01 [This paragraph intentionally left blank].

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

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

17.03 Cumulative Remedies

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

17.04 Survival of Obligations

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

17.05 Controlling Law

- A. This Contract is to be governed by the law of the State of Florida.

17.06 Headings

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

ARTICLE 18 - NO DAMAGES FOR DELAY

18.01 No Damages for Delay

- A. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST OWNER BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Owner for direct, indirect, consequential, impact or other costs, expenses, or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and to the extent specifically provided herein.

END OF SECTION

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions, which are not so amended or supplemented, remain in full force and effect. The General Conditions may also be supplemented elsewhere in the Contract Documents.

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions.

PART 1 – MODIFICATIONS AND SUPPLEMENTS TO GENERAL CONDITIONS

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

SC-4.02B. Limited Reliance by Contractor on Technical Data Authorized

[Insert the identification of any “technical data”, if any, found in reports or drawings that may be relied upon by the Contractor.]

SC-4.06B. Limited Reliance by Contractor on Technical Data Authorized

[Insert the identification of any “technical data”, if any, found in reports or drawings that may be relied upon by the Contractor.]

BONDS AND INSURANCE:

SC-5.04 Contractor’s Insurance

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

Worker’s Compensation, etc., under paragraphs 5.04.A.1 and A.2 of the General Conditions:

(1)	State:	Statutory
(2)	Applicable Federal (e.g. Longshoreman’s and Harbour Workers’ Compensation, Maritime, Jones Act, etc.):	Statutory
(3)	Employer’s Liability:	<u>\$500,000</u>

The coverage and the limits of liability for employer's liability are modified to read as follows:

\$1,000,000 each accident
\$1,000,000 disease policy limit
\$1,000,000 disease each employee

Also, the following wording is added governing employer's liability for contractors that are not incorporated or lease employees: If the contractor is not an incorporated entity (i.e. sole proprietor/partnership), or Leases Employees (under the alternate employer laws of the State of Florida), the Owner shall require a minimum premium policy meeting the aforementioned requirements even though not required by the Worker's Compensation Laws of the State of Florida. Unless and until Owner provides the Owner with proof of exemption and such forms and proof that the Owner deems appropriate.

Comprehensive General Liability (under paragraphs 5.04.A.3 through A.6 of the General Conditions):

- (1) Including coverage for Premises/Operations Liability on an occurrence basis, Contractual Liability, Independent Contractors, Products/Completed Operations Liability on an occurrence basis, and Personal Injury Coverage with the employee exclusion deleted. The Owner will not accept exclusion for explosion, collapse, or underground in the policy.

Acceptable minimum limits are: \$1,000,000 general aggregate

\$1,000,000 products and completed operations aggregate

\$1,000,000 personal injury and advertising injury

\$1,000,000 each occurrence

The required limits may be met by the issuance of an excess or umbrella coverage policy so long as the Owner and Public Works Roads Supervisor are named as an additional insured on such policies.

(2) Personal Injury

\$1,000,000 Annual Aggregate

Comprehensive Automobile Liability shall include coverage for owned vehicles, non-owned vehicles, and hired vehicles. Acceptable minimum limits are \$1,000,000 combined single limit for bodily injury and property damage.

CONCERNING SUBCONTRACTORS, SUPPLIERS AND OTHERS:

SC-6.08 Permits

Not Applicable

PART 2 – ADDITIONAL SUPPLEMENTARY CONDITIONS

The following forms included in the Project Manual shall be used by Contractor for submittals required by the Contract Documents (unless Owner accepts other form):

- a. Construction Performance Bond (00610).
 - b. Construction Payment Bond (00620).
 - c. Contractor's Affidavit to Owner (00670).
 - d. Form of Application for Payment (00680).
 - e. This space left blank intentionally.
1. DESIGN PROFESSIONALS REPRESENTING OWNER AND/OR PUBLIC WORKS ROADS SUPERVISOR AND DIVISION OF RESPONSIBILITIES
 - a. Various Design Professionals (i.e. Civil, Structural, Mechanical, Electrical, Groundwater Hydrology, Environmental, etc.) as consultants to Owner and/or Public Works Roads Supervisor, prepared or assisted in the preparation of Drawings and Specifications for the Project. The Owner and/or Public Works Roads Supervisor may have the various Design Professionals provide services during construction phase of the Project. The Design Professionals will be representatives of the Owner and/or Public Works Roads Supervisor. Visits to the site by the Design Professionals will be on the basis of General Conditions Paragraph 9.02. VISITS TO SITE. Also, General Conditions Paragraphs 9.10. LIMITATIONS ON PUBLIC WORKS ROADS SUPERVISOR'S RESPONSIBILITIES includes the various Design Professionals for this Project.

MISCELLANEOUS

1. When the Contractor herein receives payment from the Owner for labor, services or materials furnished by subcontractor and suppliers hired by the Contractor, the Contractor shall remit payment due those parties within Ten (10) days after receipt of payment from the Owner, unless otherwise provided for by Florida Law.

2. The parties hereto agree to develop a list of uncompleted items which shall be known as the "Punch List", which shall be those items that are required to be completed by the Contractor at the date set for Substantial Completion in the Contract Documents. If the Project herein is a phased project the parties agree to develop such Punch List for each phase based upon the date(s) set for substantial completion of each phase within the time set forth above.

The Owner shall provide the Contractor with a list of Punch List items developed by either, the Owner and/or Public Works Roads Supervisor. The Contractor agrees to the Punch List developed herein and this process. Regardless of the foregoing, nothing herein shall alter the responsibility of the Contractor to complete all construction services, materials and items contracted herein by the Owner. The Owner shall have the right, but not the obligation, to withhold the Owners, and/or Public Works Roads Supervisors estimated cost of completion for such items on the Punch List referenced above. The Contractor, by execution of this Contract, agrees to the same. Regardless of any provision to the contrary, the Owner may withhold from each of the Contractor's pay requests an amount not to exceed Ten 10% of the payment as retainage until 50% of completion of the Work/Contract as determined by either the Owner or Public Works Roads Supervisor. The Contractor by execution of this Agreement hereby agrees to the same. After 50% completion of the Contract as determined herein the Owner agrees to reduce the retainage to five (5) % of each draw schedule/pay request of the Contractor. Regardless of the foregoing, nothing herein shall require the Owner to reduce retainage to the Contractor if the Owner has determined that the Contractor is in default or if the Owner or Public Works Roads Supervisor reasonably believes that the retainage and/or future payments to the Contractor will not be enough for the Owner to complete the Work/Project or cover its damages as a result of the Contractor's breach or default or for any other reason, or there is a good faith dispute by Owner against the Contractor and/or its bonding company.

3. Deductions of Work – The Owner reserves the right to remove any items from the scope of work in the Contract Documents by the deductive change order. Such deduction shall be determined by the Public Works Roads Supervisor using the Contractor's Schedule of Values. The deductions, if any, shall not be considered a cardinal change to the contract. The parties hereto recognize that the Owner has materially relied on this provision in entering into contract with Contractor. Such value deduction shall be conclusive as it relates to utilizing the Contractor's Schedule of Values.

4. The Contractor shall also provide to the Owner AIA Form G-702 and G-703 with the Wellington's application for payment form on each draw.

5. Prior to any payment being made herein the Contractor shall provide all partial release of liens determined by the Owner.

END OF SECTION

REQUEST FOR PROOF OF WORKERS COMPENSATION INSURANCE OR EXEMPTION

Dear Provider of Services or Goods:

In order to provide services or goods to the Wellington, we require that you provide us either proof of workers compensation coverage or proof of exemption.

Workers compensation insurance is required of all employers in Florida that employ 4 or more part or full time employees. In the event that you are an employer in the construction industry, you are required to have workers compensation insurance if you employ one or more workers. Corporate officers and sole proprietors are included when calculating the number of employees. Note: Corporate officers may claim exemption from workers compensation coverage on themselves only, by filing *Form DWC 250, Notice of Election to Be Exempt*. This form can be found at <http://fldfs.com/WC/forms.html>.

If you meet the above criteria to be exempt, you **MUST** provide us with one of the following:

- If your business is a sole proprietorship or unincorporated business: provide us a Verification of Automatic Exempt Certificate. This verification is a letter that is issued by the State of Florida Department of Financial Services. To receive a letter from the State, complete the following directions: 1) Call the National Council of Compensation Insurance 1-800-622-4123, Option 5, and ask them for the class code for your type of business. 2) Once you have received this code, call the Department of Financial Services at 1-850-413-1601 and provide them your business name, class code, mailing address, and contact phone number. They will send you the Verification of Automatic Exempt Certificate. 3) Provide us a copy of the Verification of Automatic Exempt Certificate.
- If your business is a corporation (including a professional association or limited liability company), and you are not required to have workers compensation insurance as per the requirements as outlined above, you must complete the attached Workers Compensation Exemption Affidavit, have it notarized, and return the original to us.

If you are an employer that meets the requirements of workers compensation and needs to obtain coverage, contact your current business insurance agent, or you may use the following resources to locate an agent: www.faia.com, www.piafl.org/wc-info.pdf, or call (850) 893-8245.

Please be reminded that the furnishing of this information to Wellington is a non-negotiable requirement to perform services for us. Failure to provide this timely may result in either termination of your services or delay of payment for services. Your workers compensation Certificate of Coverage, Workers Compensation Exemption Affidavit, or Verification of Automatic Exempt Certificate must be delivered or mailed to the Purchasing Department located at 12300 Forest Hill Boulevard, Wellington, Florida, 33414.

WORKERS COMPENSATION EXEMPTION AFFIDAVIT

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

Form should be completed by an officer of a sole proprietorship or a corporation with three (3) or less employees.
Form must be signed and notarized.

Name _____
First Last

Address _____
Street City

Phone _____
Home Business

This is to certify that _____
(Business Name)

_____ is a
Street City State Zip

Sole Proprietorship

OR

Corporation/Partnership

And has _____ employees, other than the owner his/her self.
(no. of employees)

Therefore, under the terms of Chapter 440,F.W., Workers' Compensation regulations it is NOT necessary for the above company to carry Workers' Compensation Insurance.

(signature)

Sworn and subscribed to me this _____ day of _____, 20_____.

Personally known _____ Or, Produced ID: _____ (Type Produced)_____

NOTARY PUBLIC _____

My Commission Expires:

WELLINGTON LOCAL PREFERENCE

APPLICATION TO BE CONSIDERED A LOCAL BUSINESS IN ACCORDANCE WITH WELLINGTON FLORIDA'S LOCAL PREFERENCE POLICY (SECTION 2.12.F OF WELLINGTON'S PURCHASING AND PROCUREMENT MANUAL)

Wellington gives preference to local businesses in certain purchasing situations as set forth in Section 2.12(F) of Wellington's Purchasing and Procurement Manual. In order to be considered a local business, entitled to be given preference, the business must make application with Wellington and meet one of the following criteria as such is more fully set forth in Section 2.12.F(2) of Wellington's Purchasing and Procurement Manual:

2.12.F (2) Definition of Local Businesses

Western Communities Local Business - For the purpose of determining a "Western Communities local business" a vendor must have a principal permanent business location and headquarters within Wellington, Florida or west of the Florida Turnpike to the Palm Beach County western boundary line as depicted in Exhibit "A" hereto. This applies to all entity formations, including, but not limited to, limited liability companies, partnerships, limited partnerships and the like or sole proprietors. Further, the entity or sole proprietor must provide that it, he or she has been domiciled and headquartered in the jurisdictional boundaries of the Western Communities for at least six months prior to the solicitation. Post Office boxes will not be considered a permanent business location within the Western Communities. Home business offices shall be considered as a business location if it otherwise meets the requirements herein. In order to be eligible for such local preference the vendor shall have a local business tax receipt pursuant to the County's and/or municipalities' Code of Ordinances, having jurisdiction over the location of the business, unless otherwise exempt there from. Further, the vendor must be properly licensed and authorized by law to provide the goods, services or professional services to the extent applicable and the location of the business must be properly zoned in order for the vendor to conduct its business.

Palm Beach County local business - For the purpose of determining a "Palm Beach County local business" a vendor must have a principal permanent business location and headquarters within Palm Beach County, Florida. This applies to all entity formations, including, but not limited to, limited liability companies, partnerships, limited partnerships and the like or sole proprietors. Further, the entity or sole proprietor must provide that it, he or she has been headquartered and domiciled in the jurisdictional boundaries of Palm Beach County, Florida for at least six months prior to the solicitation. Post Office boxes will not be considered a permanent business location within Palm Beach County, Florida. Home business offices shall be considered as a business location if it otherwise meets the requirements herein. In order to be eligible for such local preference the vendor shall have a local business tax receipt pursuant to the Palm Beach County Code of Ordinances as amended from time to time, unless otherwise exempt there from. Further, the vendor must be properly licensed and authorized by law to provide the goods, services or professional services to the extent applicable and the location of the business must be properly zoned in order for the vendor to conduct its business.

Subcontractor utilization - In competitive bid situations, a business may also qualify as either a Palm Beach County or Western Community local business if they are utilizing subcontractors to perform the work or materialmen to supply the job and more than fifty (50%) percent of their proposed bid price will be paid to subcontractors and/or materialmen who qualify, under the above standards, as Palm Beach County and/or Western Community local businesses.

Please check the box below indicating which preference category your business is applying for:

- ☐ Western Communities Local Business
- ☐ Palm Beach County Local Business
- ☐ Subcontractor Utilization

1. The name of the business is: _____
2. The address of the business is: _____
3. How long has the business been located at its current address: _____
4. If the business has relocated within the last six months, please provide the answers to questions 1-3 for the previous location:
5. The previous name of the business is: _____
6. The previous address of the business is: _____
7. How long was this business at the previous location: _____
8. If the business is attempting to qualify under the subcontractor utilization provision, please provide a breakdown of the subcontractors who would qualify for either the Palm Beach County or Western Community, business classification, the requisite information, provide their responses to the above 1 - 7 questions and for each of the subcontractors, indicate the amount that they are proposed to be compensated at under the bid price.
9. The business as a local business tax receipt from: (1) Palm Beach County ☐ (2) the following municipality: _____ (3) located in unincorporated Palm Beach County: ☐
10. Please provide a copy of Local Business Tax Receipts from Palm Beach County and the applicable municipality are attached.
11. Please provide a Certificate of Good Standing indicating the formation or domestication of the entity in and for the State of Florida is attached.
12. Please provide copies of licenses if applicable from the State of Florida authorizing the business to provide the good services or professional services contemplated in the bid documents.
13. Please provide a letter from the either the Palm Beach County if located in unincorporated Palm Beach County or the municipality if located within the municipality evidencing that the headquarters for the business is properly zoned for the business.

By signing below, I hereby certify that under penalty of perjury I believe my business qualifies as a Palm Beach County, Western Community or subcontractor utilization business in accordance with Wellington's Local Preference Policy and that I have submitted current and accurate information and documents relating to my qualifications. I further acknowledge and agree that any fraudulent or duplicitous information submitted in furtherance of this application will be grounds for disqualification from bidding on this project and doing business with Wellington in the future.

Applicants Federal Tax ID Number - _____

Applicants Business Address _____

Signature of Authorized Representative of Corporation, Partnership, or other business entity:

Print Name: _____

Title: _____

Date: _____

CITY OF: _____

COUNTY OF: _____

SUBSCRIBED AND SWORN TO (or affirmed) before me on this ____ day of _____, 2010, by _____ He/She is personally known to me or has presented _____ as identification.

(Signature of Notary)

(Print or Stamp Name of Notary)

Notary Public _____
(State)

Notary Seal

Signature of Individual if Sole Proprietor:

Print Name: _____

Date: _____

CITY OF: _____

COUNTY OF: _____

SUBSCRIBED AND SWORN TO (or affirmed) before me on this ____ day of _____, 2010, by _____ He/She is personally known to me or has presented _____ as identification. (Type of Identification)

(Signature of Notary)

(Print or Stamp Name of Notary)

Notary Public _____
(State)

Notary Seal

RESIDENT PROJECT REPRESENTATIVE

PUBLIC WORKS ROADS SUPERVISOR may furnish a Resident Project Representative (RPR), assistants and other field staff to assist PUBLIC WORKS ROADS SUPERVISOR in observing performance of the Work of the Contractor. RPR may only be part-time on site, and CONTRACTOR shall coordinate with RPR as required in the Contract Documents.

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

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

A. GENERAL

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

B. DUTIES AND RESPONSIBILITIES OF RPR

1. SCHEDULES:

Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with PUBLIC WORKS ROADS SUPERVISOR concerning acceptability.

2. CONFERENCES AND MEETINGS:

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

3. LIAISON:

- a. Serve as PUBLIC WORKS ROADS SUPERVISOR's liaison with CONTRACTOR, working principally through CONTRACTOR'S superintendent and assist in understanding the intent of the Contract Documents; and assist PUBLIC WORKS ROADS SUPERVISOR in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR'S operations affect OWNER'S on-site operations.
- b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

4. SHOP DRAWINGS AND SAMPLES:

- a. Record date of receipt of Shop Drawings and samples.
- b. Receive samples, which are furnished at the site by CONTRACTOR, and notify PUBLIC WORKS ROADS SUPERVISOR of availability of samples for examination.

- c. Advise PUBLIC WORKS ROADS SUPERVISOR and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by Public Works Roads Supervisor.

5. REVIEW OF WORK, REJECTION OF DEFECTIVE WORK, INSPECTIONS AND TESTS:

- a. Conduct on-site observations of the Work in progress to assist PUBLIC WORKS ROADS SUPERVISOR in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to PUBLIC WORKS ROADS SUPERVISOR whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise PUBLIC WORKS ROADS SUPERVISOR of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to PUBLIC WORKS ROADS SUPERVISOR appropriate details relative to the test procedures and startups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to PUBLIC WORKS ROADS SUPERVISOR.

6. INTERPRETATION OF CONTRACT DOCUMENTS:

Report to PUBLIC WORKS ROADS SUPERVISOR when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by PUBLIC WORKS ROADS SUPERVISOR.

7. MODIFICATIONS:

Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to PUBLIC WORKS ROADS SUPERVISOR. Transmit to CONTRACTOR decisions as issued by PUBLIC WORKS ROADS SUPERVISOR.

8. RECORDS:

- a. Maintain at the job site or PUBLIC WORKS ROADS SUPERVISOR's office files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, PUBLIC WORKS ROADS SUPERVISOR's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
- b. Record names, addresses, and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.

9. REPORTS:

- a. Furnish PUBLIC WORKS ROADS SUPERVISORS periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawings and sample submittals.

- b. Consult with PUBLIC WORKS ROADS SUPERVISOR in advance of scheduled major tests, inspections, or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to PUBLIC WORKS ROADS SUPERVISOR Change Orders, Work Directive Changes, and Field Orders.
- d. Report immediately to PUBLIC WORKS ROADS SUPERVISOR and OWNER upon the occurrence of any accident witnessed by RPR or that was otherwise made known to RPR.

10. PAYMENT REQUESTS:

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

11. CERTIFICATES, MAINTENANCE AND OPERATION MANUALS:

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

12. COMPLETION:

- a. Before PUBLIC WORKS ROADS SUPERVISOR issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of PUBLIC WORKS ROADS SUPERVISOR, OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to PUBLIC WORKS ROADS SUPERVISOR concerning acceptance.

C. LIMITATIONS OF AUTHORITY

Resident Project Representative:

- 1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by PUBLIC WORKS ROADS SUPERVISOR.
- 2. Shall not exceed limitations of PUBLIC WORKS ROADS SUPERVISOR's authority as set forth in the Contract Documents.
- 3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors, or CONTRACTOR's superintendent.
- 4. Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
- 5. Shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Work.
- 6. Shall not accept Shop Drawing or sample submittals from anyone other than Contractor.

7. Shall not authorize OWNER to occupy the Property in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by PUBLIC WORKS ROADS SUPERVISOR.

END OF SECTION

GENERAL REQUIREMENTS SECTION 1000

1.0 PROJECT LOCATION

This Project is located in Wellington, Florida. See Drawings for specific location.

2.0 SCOPE OF WORK

- A. The Work to be performed by the Contractor includes furnishings all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to modify, construct, complete, deliver and place in operation the subject Project as shown on the Drawings and/or as herein described as specified. All Work to be in accordance with the Contract Documents.

3.0 REFERENCE POINTS

- A. The reference points which will be provided by the Owner as mention in Article 4.05 of the General Conditions, will be the staking (or otherwise marking) of the baseline as shown on the Drawings. A benchmark for vertical control will also be provided. All construction staking to be provided by the Contractor.

4.0 GRADES, DIMENSIONS, AND ELEVATIONS

- A. Grades shown are finished grades. Written dimensions have preference over scaled dimensions. All elevations are based on the 1929 National Geodetic Vertical Datum (N.G.V.D.).

5.0 EXISTING STRUCTURES AND UTILITIES

- A. All known utilities have been shown on the Drawings according to the best information available. It is the Contractor's responsibility to contact all owners of structures or utilities above ground, on the surface, or below the ground, within the Project area so that said owners may stake, otherwise mark, or protect their facilities. The Contractor must provide facilities and be responsible for the protection of all structures, buildings and utilities, underground, on the surface, or above ground against trenching, dewatering, or any other activity connected with the Work throughout the entire Contract Time.
- B. When structures and utilities have been properly shown or marked and are disturbed or damaged in the execution of the Work, they must be repaired immediately in conformance with best standard practice and the approval of the owner of the damaged utility or structure. In the case of structures and utilities which have not been properly shown or located as outlined above and are disturbed or damaged in the prosecution of the Work, take whatever steps are necessary for safety and notify the affected utility owner and avoid any actions which might cause further damage to the structure or utility.
- C. Should the Work require repairs, changes, or modifications of the Owner's utilities as well as other utilities, it is the responsibility of the Contractor to provide for the maintenance of continuous water, sewage, electric, telephone and other utility services to all present customers of such utilities, unless approval in writing is secured from the applicable utility company or Owner for interruption of such service.

6.0 QUALITY CONTROL

- A. Testing Laboratory Services - All tests and analyses, which are called for in the Specifications and/or Drawings to be performed by an Independent Testing Laboratory, will be at the Contractor's expense unless otherwise specified, provided the tests and analyses determine that the material(s) and/or Work meets the requirements as specified. All such tests that pass or fail to meet the Project requirements are to be paid by the Contractor.
- B. Field Observations - Provide twenty-four (24) hour notification to the Public Works Roads Supervisor for all specified field observations, unless otherwise noted.

7.0 MOBILIZATION

- A. Consists of the preparatory Work and operations in mobilizing for beginning Work on the Project, including, but not limited to, those operations necessary for the movement of personnel, equipment, supplies and incidentals to the Project site, and for the establishment of temporary offices, buildings, safety equipment and first aid supplies, sanitary and other facilities, as required by these Specifications, and State and local laws and regulations.

The costs of bonds, insurance and any other pre-construction expenses necessary for the start of the Work, excluding the cost of construction materials, is to be included in Mobilization.

- B. When the Bid Form includes a separate pay item for Mobilization, partial payments will be made in accordance with the following:

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

The standard retainage will be applied to these payments. Previous payments for Mobilization and unpaid amounts on Allowances will not be considered in calculating the percent of the Contract Price earned. Payments will be made in stepped increments as shown and will not be interpolated between steps.

- C. When the Bid Form does not include a separate item for Mobilization, all Work and incidental costs specified as being covered under Mobilization is to be included for payment under the several scheduled items on the Bid Form, and no separate payment will be made therefor.

8.0 MAINTENANCE OF TRAFFIC

- A. The Contractor's use of streets and highways for the Work to be done under these Specifications, shall conform to all applicable Municipal, County, State and Federal laws and regulations. Provide, erect, and maintain effective barricades, warning lights, and signs on all intercepted streets or highways for protection of the Work and safety of the public. All barricades or obstructions, which encroach on or are adjacent to the public rights of way, should be provided with lights, which are illuminated at all times between sunset and sunrise.
- B. Arrange Work to cause minimum disturbance of normal pedestrian and vehicular traffic and be responsible for providing suitable means of access to all public and private properties during all stages of the construction. Other than for an emergency safety condition, the Contractor must contact the Owner and Public Works Roads Supervisor for approval prior to completely blocking off any street to vehicular traffic during construction.
- C. Maintain traffic in accordance with Section 102 of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, 1991 Edition, except as follows:

1. Contractor is responsible for preparing Maintenance of Traffic plan. Submit plan for Owner or roadway authority (City, County, D.O.T.) review only if requested to do so by the Public Works Roads Supervisor.

When required by the roadway authority, the Maintenance of Traffic plan must be prepared by a person who is certified by the State of Florida to prepare such plan.

2. When the Bid Form does not include a separate item for Maintenance of Traffic, the costs are to be included for payment under the several scheduled items on the Bid Form, and no separate payment will be made therefore.

9.0 PLACING EQUIPMENT INTO SERVICE

- A. Do not operate or place into service or energize, electrical and mechanical equipment until approved by the Owner and Public Works Roads Supervisor. Such approval may be granted only after all interested parties have been duly notified, have given approval for placing the equipment into service, and all interest parties are present or waived their right to be present. Notify the Owner and Public Works Roads Supervisor as far in advance as possible of the dates that various items and equipment will be completed and ready for start-up.

10.0 SALVAGEABLE MATERIAL

- A. All salvageable material and/or equipment removed from the existing construction for which specific use, relocation or other disposal is not specifically noted on the Drawings or otherwise specified, will remain the property of the Owner and be turned over to him. All material and/or equipment not in salvageable condition as determined by the Public Works Roads Supervisor must be disposed of by the Contractor. The actual storage site for salvageable material will be designated by the Owner.

11.0 BORING LOGS, OTHER REPORTS AND DRAWINGS UTILIZED BY PUBLIC WORKS ROADS SUPERVISOR

- A. Boring Logs, other reports, and Drawings utilized by Public Works Roads Supervisor, if attached at the end of these Specifications, are provided for Contractor's information in accordance with paragraph 4 of the Instructions to Bidders and are not a part of the Contract Documents. There is no technical data in the Boring Logs, other reports or Drawings that should be relied on by the Contractor. There also were no other reports or drawings utilized by Public Works Roads Supervisor in preparation of the Contract Documents that contained data that could be relied on by the Contractor.

12.0 DISPOSAL OF EXCAVATED MATERIALS AND DEBRIS

- A. All excess excavated material and debris not required for backfill (unless otherwise noted), broken pipe, sidewalks, curbs and other concrete items, together with all roots, boards and other debris are to be disposed of by the Contractor at an appropriate legal site.

13.0 PROTECTION AND RESTORATION OF SURVEY MONUMENTS

- A. The Contractor shall be responsible for protecting and restoring all land and property corners, such as section corners, ¼ section corners, property corners or block control points, and for maintaining all horizontal and vertical control points. All surveying work shall be the responsibility of the Contractor and shall be performed under the supervision of a Florida Registered Land Surveyor. Survey points that will be destroyed during construction shall be properly referenced and replaced at the Contractor's expense with permanent monuments approved by the PUBLIC WORKS ROADS SUPERVISOR.

14.0 EQUIPMENT

- A. All construction equipment necessary and required for the proper construction of this project shall be on the construction site, in first-class working condition, and shall have been approved by the Public Works Roads Supervisor before construction is permitted to start. The Contractor shall provide such tamping tools and equipment as are necessary for the proper compaction of the backfill.

15.0 STORAGE SITES

- A. The contractor shall furnish, at his expense, properly zoned areas suitable for field offices, material storage and equipment service, and storage. The Contractor shall maintain these areas in a clean, orderly condition so as not to cause a nuisance in the area. The Contractor shall restore the storage area to its original or better condition, with all its appurtenances, in kind, to the satisfaction of the Public Works Roads Supervisor.

16.0 LABORATORY TESTS

- A. Except as otherwise provided, sampling and testing of all materials, and the laboratory methods and testing equipment required under these specifications shall be in accordance with the latest standards or tentative of the American Society for Testing Materials or the latest standards or methods of the American Association of State Highway and Transportation Officials (AASHTO).
- B. The testing of samples and materials shall be made at the expense of the Contractor, except where indicated otherwise. The Contractor shall furnish the required samples without charge. The Contractor shall give sufficient notification of the placing of orders for materials to permit testing. In locations where corings are taken by the approved testing lab, the Contractor shall be responsible for plugging these core holes.
- C. All material tests will be made by an independent testing laboratory to be selected by the Owner (refer to Supplementary Conditions). Where tests indicate that materials and/or construction quality are in accordance with specified requirements, the Contractor shall bear the testing cost. When tests reveal that conditions or materials do not comply with the specifications, the cost of such tests shall be assessed against the Contractor.

17.0 MEASUREMENT AND PAYMENT

- A. Payment shall be made at the Contract Unit Price or Lump Sum Prices as outlined hereafter. These prices shall be full compensation for all costs associated with completion of all the work in full conformity with the requirements as stated, shown, or both by the Plans and Specifications. The cost of any item(s) of work, which is not by a definite Contract Unit Price or Lump Sum Price, shall be included in the Contract Unit Price or Lump Sum Price to which the item(s) is most applicable.

END OF SECTION

